



Regional Express Response to:
Consultation Regulatory Impact Statement (RIS)
Sunsetting Airports Regulations Stage 1B

June 2022

Documents for review during stage 1B:

- Airport Sites under Schedule 1 (land titles) of the Airports Regulations 1997
- Infringement notice schemes that exist in regulations made under the Airports Act

Key areas for review during stage 1B:

- Airport Sites
- Infringement Notice

Background of the key issues (Airport Sites):

Airport Sites

- An 'Airport Site' is defined according to certificates of title of specific land lots as listed in Schedule 1 to the *Airport Regulations 1997* (the Regulations).
- Schedule 1 becomes obsolete every time the land folio (reference) numbers change, for example due to subdivision, which necessitates changes to the Regulations. This change in Regulations then has to go through the Executive Council process for approval.
- Over time this becomes troublesome as users have to trace through an increasing number of title changes that overlap either fully or partially with other sites. This may be problematic for those who engage with the definition of Airport Sites, such as *Airport Lessee Companies (ALC's)* and other

stakeholders, when working out the scope of the regulatory environment or dealing with land titles listed in airport leases.

- There is the requirement for ALC's to report any changes to land titles to the Department. Any amendments are (allegedly) administratively burdensome to make and requires approval of the Executive Council.
- Given the nature of the current process, it takes a substantial amount of time and resources to make changes that are more mechanical in nature. Government action is needed if this process is to change to make it more streamlined and efficient.
- The Department is now considering creating a new legislative obligation to report changes approximately once per year. This will allow the Schedule to be kept more up-to-date, reduce the burden of reporting requirements on ALC's by reducing reporting frequency, and assist the Department to effectively manage its resources to ensure compliance with obligations and enable routine changes to the law

Summary of proposed options and Rex's response (Airport Sites)

Option 1:

Question: Let the provisions sunset

Summary:

- This option involves letting the Airport Site provisions in the Airports Regulations sunset.
- There would be no existing frameworks to take over if we allow this regulation to sunset, leading to uncertainty for users of the law.
- Removing clarity on what is Airport Site land can also draw into question the applicability of airport regulation, compromising its integrity.

Rex Response:

1. Should Schedule 1 of the Regulations be allowed sunset?

- *Rex is opposed of option 1, Schedule 1 of the Regulations should not be allowed to sunset.*

2. What are the benefits/consequences of not having provisions defining what land is part of an Airport Site?

- *Rex see no benefits of not having the Airport Site provisions from airlines perspectives. If there were no provisions to define the Airport Site, there would be conflict between the ALC's and Lessee, such as airlines, as to the boundary of leased airport sites.*

Option 2

Question: Remake the Airport Regulation without changes

Summary:

- This option involves remaking the provisions in the same form and scope as the law currently provides. This would continue current practices familiar to users
- This option risks maintaining inconsistency and unnecessary administrative burden, as any change in land titles could result in the law not reflecting the land title register. Amendments to regulations might not be immediate as they take time to make due to current administrative processes involved.
- Any underlying issues and complexities with existing frameworks would remain, and uncertainty and inconsistency in the law would continue.
- This problem particularly affects NSW due to the operation of its land laws. It may also pose an ongoing issue with the upcoming development of the Western Sydney Airport.

Rex Response:

- 1. Are the existing provisions fit the purpose in the current and a future operating environment?**
 - *The existing provisions have been proven to be fit for purpose since inception from an airline perspective. Rex has not encountered any challenges of working with ALC's to define Airport Sites. ALC's have been responsive to make accurate changes of land titles on the airport leases. Rex foresees that the existing provisions will be fit for purpose in a future operating environment.*
- 2. What are the benefits/consequences of the remaking the provisions in Schedule 1 without changes?**
 - *Remaking the provisions in Schedule 1 without changes will be beneficial to airlines because the existing provisions have been proven to be an adequate regulatory framework that provides clear guideline of defining Airport Sites and updating land titles as required. The existing provisions appear not to be overly complicated and are sufficient to avoid conflict between airlines and ALC's, Rex does not see any significant consequence of remaking the provisions in Schedule 1 without changes.*

Option 3

Question: Remake the Airport Regulations with changes

Summary:

- Under this option, the regulation would be remade to remove the potential for (supposed) inconsistency between the regulations and land titles register, with minimal impact on the Airports themselves.
- i. Change how the boundaries of Airports Sites are defined**
- Under this option, the problem of plots being subdivided and gaining new land titles in the process could be circumvented.
 - However, if Airport Sites were defined by another mechanism, it might conflict with other regimes driven by land titles that interact with Airport Sites (such as Commonwealth places) causing potential discrepancies as to what legally constitutes an Airport Site.
 - If the land parcels and the boundaries of an airport site ever fell out of alignment, multiple regulatory regimes could apply on different parts of the parcel of land. This might cause legal and practical difficulties for lessees and also potentially for enforcement.
 - If the boundaries of an airport site were defined by some means other than certificates of title, there may also be some practical issues around surveying and mapping that would need to be considered.
 - Any changes to the identification number for a certificate of title is likely to impact other sections and may require further amendments (i.e. any provisions that relate back to section 5(2) of the Act).
- ii. Allow the Minister to declare an Airport Site via legislative instrument**
- Under the current framework, changes to Schedule 1 of the Regulations can only be made through the Executive Council process. Any changes to the Regulations must also be tabled in Parliament and be subject to disallowance.
 - This option would move Schedule 1 from the Regulations into a separate instrument and provide the Minister, or a Delegate, with a new power to declare Airport Sites. This avoids unnecessarily burdensome processes what is in effect a mechanical change to the law. Consideration can also be given as to what level of Parliamentary scrutiny it should be afforded.
 - Placing the definition of Airport Sites in a Ministerial Instrument would allow for a quicker amendment processes and reduces administrative burden. The list of Airport Sites would also be more up-to-date, providing a single source of consolidated accurate information.
 - An additional legislative obligation should be considered as a way to support consistent and up to date law, as the benefits of this streamlining the process of defining Airport Sites could be frustrated if there is no requirement to inform the Commonwealth of changes in land titles.
 - Creating a new legislative obligation is likely to have a regulatory impact on ALC's due to the need for additional reporting to the Department. However, the Department expects that the impact of the legislative obligation will be minimal as the reporting is not live and is only expected once per year.

Rex Response:

1. Would an alternative mechanism for identifying parcels of land be suitable for identifying Airport Sites? Why / Why not?

- *Rex is of the view that an alternative mechanism for identifying parcels of land would not be suitable for identifying Airport Sites. An alternative mechanism would likely create conflict with other regimes driven by land titles that interact with Airport Sites. The discrepancies between different regulatory regimes would only make it more difficult for the ALC's and Lessees to comply with the law.*
- *It is the concern of Rex, as a Lessee, that there may be conflict between stakeholders to agree on a consistent approach and methodology to define Airport Sites.*

2. What alternative mechanisms for identifying parcels of land might be appropriate to be used?

- *The existing provisions and mechanisms for identify parcels of land are appropriate and adequate to be used.*

3. Would it be preferable for an instrument to allow the Minister or a Delegate to define an Airport Site?

- *The current process of making changes through the Executive Council has worked as a safeguard because changes are subject to disallowance. The proposed changes to provide the Minister with a new power to declare Airport Sites would likely remove the safeguard that protects stakeholders.*

Background of the key issues (Infringement Notice):

- There are currently three different infringement notice frameworks in the various regulations made under the Airports Act. The frameworks have been in operation for at least 20 years without any major changes.
- Over time, accepted practices have changed, which has led to frameworks that do not reflect contemporary norms.
- The three frameworks are largely similar in terms of governance, process and procedure. Differences lie in the detail of process and procedure specified in the law rather than in fundamental operation. The provisions have generally stood the test of time well, however there is scope to modernise and streamline them.
- Part 5 of the *Airports (Building Control) Regulations 1996* (Building Control Regulations) governs the issuing of infringement notices in relation to offences against Part 5 of the Airports Act. Part 5 relates to land use, planning and building controls.
- The offences in Part 5 are generally ordinary criminal offences. This means that infringement notice can be issued in respect of these offences if there are reasonable grounds for believing a person has committed an offence against Part 5.
- Part 7 of the *Airports (Control of On-Airport Activities) Regulations 1997* (Control of On-airport Activities Regulations) governs the issuing of infringement notices in relation to offences against those regulations marked as infringement notice offences. This includes offences against liquor supply and consumption, parking and smoking and the offences are generally strict liability.
- Part 8 of the *Airports (Environment Protection) Regulations 1997* (Environment Protection Regulations) governs the issuing of infringement notices in relation to offences against those regulations. The offences are generally a combination of ordinary and strict liability offences, and are generally minor in nature.
- The effectiveness of an infringement notice scheme depends on the reliability of the assessments made by the infringement officers as to whether an offence has occurred. The more difficult and complex the assessment, the more potential there is for uncertainty and differing views as to whether a contravention has occurred, undermining the infringement notice scheme.
- The legitimacy of the schemes could be called in to question if there are constant 'overreaches' for infringement notices being issued in borderline instances of contraventions.
- The current frameworks do not cater for more recent advancements, and are not futureproofed to allow utilisation of other enforcement options.
- A non-fit for purpose infringement notice scheme can compromise the ability to deter contravening conduct and place pressure on more traditional methods of enforcement, which are often time consuming and burdensome.

- An ineffective infringement notice scheme can make it more difficult to bring non-compliance to account, and could risk safety and compromise the governance of airports, increasing costs for, and placing additional burdens on, businesses and other users of airports.
- It is important that the Australian Government maintains a modern fit for purpose regulatory framework to support the viability of, and economic developments on, leased federal airports.
- The objectives of Government action include ensuring the regulatory framework: is fit for purpose and future proofed; is clear and unambiguous in its drafting; maintains an appropriate level of government oversight while minimising regulatory burden on its users; and provides flexibility while maintaining overall Government policy objectives.

Summary of proposed options and Rex's response (Infringement Notice):

Option 1:

Question: Let the provisions sunset

Summary:

- Under this option, the infringement notice provisions would be allowed to sunset, effectively repealing them without any substitute or replacement. This would result in no ability to issue infringement notices in respect of alleged contraventions of the law, and would take away a key enforcement option to bring contravening conduct to account.
- This option could adversely affect users of airports, as it could impact business operations, increase costs, and risk the integrity and safety of airports, due to a reduced incentive to comply with the law and reduced ability to bring contravening conduct to account.
- Without infringement notices, enforcement of airport regulation would heavily rely on the prosecution of offenders before a court, which comes with a financial cost to both an accused and the Commonwealth, and can take time and resources.

Rex Response:

1. **Should the infringement notice provisions be allowed sunset?**
 - *The infringement notice provisions should not be allowed to sunset.*
2. **What are the benefits/consequences of not having an infringement notice scheme?**
 - *Rex does not see any benefits of not having an infringement notice scheme. The aviation industry is a highly regulated industry and it is critical to have a fit for purpose regulatory framework that governs the Airport Users. If these provisions were allowed to sunset, this poses substantial consequences that deregulate the industry and risk the safety of all Airport Users. Compliance with regulatory matters under review would become inefficient if the enforcement of airport regulations would rely on prosecution of offenders before a court without infringement notice.*

Option 2

Question: Remake the provisions in the same form

Summary:

- Under this option, the infringement notice provisions would be remade in the same form and with the scope. Existing Government policy settings would remain in place and the provisions would be remade to reflect this, but would be drafted in accordance with modern drafting practices.
- There would be no change in regulatory impacts on users, as users of the law would not have to learn any new laws or adjust any existing compliance mechanisms, practices or procedures.
- This option however may result in the infringement notice provisions not being fit for purpose in a future operating environment. It is questionable whether an aged framework would remain fit for purpose into the future and achieve its intended purpose in a changing operating environment.
- Any underlying complexities and differences would remain as this option involves renewing the multiple and slightly differing frameworks. Having three slightly different frameworks could increase risks that infringement notices are not properly issued or managed in accordance practice and procedure. Users of infringement notices would likely bear the most burden of having multiple frameworks.
- The existing frameworks may also be subject to a heightened level of scrutiny due to reflecting dated norms on the scope of their operation. For example, under this option, infringement notices can continue to be issued in respect of non-strict liability offences.

Rex Response:

- 1. Are the existing provisions fit the purpose in the current and a future operating environment?**
 - *Rex has seen no issue with the current regulatory process and sees them as being fit for purpose*
- 2. What are the benefits/consequences of having separate infringement notice frameworks for different subject matters?**
 - *The multiple existing frameworks are distinctive to separate the issuing of infringement notices that are in relation to different subject matters. It is unlikely that different frameworks would lead to complexity and confusion for Airport Users. Rex has seen no issue with the current regulatory process and sees them as being fit for purpose*
- 3. Should infringement notices continue to be issued in respect of non-strict liability offences?**
 - *Rex has seen no issue with the current regulatory process and sees them as being fit for purpose, Infringement notices related to non-strict liability offences should remain as per the current regulation.*

Option 3

Question: Remake the provisions in a modern and streamlined way

Summary:

- Under this option, the infringement notice frameworks would be remade in a modern, efficient and consistent way. This would involve reducing the existing frameworks into one standard overarching framework that would govern the issuing of infringement notices across airport regulation.
 - There are two possible options to achieve a modern, efficient, and consistent infringement notice scheme. The first is to draw on the standard provisions from the Regulatory Powers Act. The second is to design a bespoke framework that solely governs the issuing of infringement notices under airport regulations.
 - This options presents an opportunity to align the infringement notice scheme with modern expectations and would enable the provisions to be drafted in accordance with modern drafting practices.
 - It may reduce regulatory costs, as users and regulators would only have to engage and comply with one overarching framework when issuing or complying with infringement notices.
 - It may reduce risk of errors in following processes and procedures stemming from differences that are present in the existing frameworks.
 - A modern infringement notice framework can also utilise more recent advancements in enforcement options. The use of civil penalties as an alternate to criminal sanctions for instance has been used in many Commonwealth regulatory frameworks such as in the *Corporations Act 2001*.
- i. Draw on the Regulatory Powers Act (framework option 1)
- Under this option, the Regulatory Powers Act framework would be utilised to govern the issuing of infringement notices across airport regulations. This would apply a single standard framework that is contemporary, accepted and is utilised in other Commonwealth regulatory frameworks.
 - There are only minor differences between the existing frameworks in airport regulations and the standard framework in the Regulatory Powers Act. Transitioning the existing frameworks to the standard Regulatory Powers Act framework may not be a burden on regulators and users.
 - The benefits of this option might be defeated if a number of special requirements are needed to ensure the infringement notice framework would operate effectively within airport regulation. The more adjustments that are needed, the less value there is in drawing on the Regulatory Powers Act framework, as too many adjustments could result in processes and procedures residing in two different parts of the law.
- ii. A bespoke framework

- Under this option, a bespoke framework would be designed to govern the issuing of infringement notices across airport regulations. This option would still result in a single standard framework and would provide the same core benefits of using the Regulatory Powers Act framework.
- However, it would better manage any special requirements or provisions needed to ensure the scheme operates effectively within airport regulation.
- If not effectively managed, too many adjustments could result in a framework that has substantially similar issues to the existing ones, and could result in effectively putting the existing frameworks into one place rather than streamlining them.

Rex Response:

- 1. Should the infringement notice scheme cater for the future ability to issue infringement notices in respect of civil penalty provisions?**
 - *Rex has seen no issue with the current regulatory process and sees them as being fit for purpose and propose no change is required.*
- 2. Should all strict liability offences across airports law be subject to infringement notices? Are there any particular offences that should or should not be subject to an infringement notice?**
 - *Rex has seen no issue with the current regulatory process and sees them as being fit for purpose and propose no change is required.*
- 3. Are the existing maximum infringement notice penalty amounts appropriate?**
 - *Rex has seen no issue with the current regulatory process and sees them as being fit for purpose and propose no change is required.*
- 4. Would the Regulatory Powers Act Framework provide an appropriate and fit for purpose infringement notice framework across airport regulation?**
 - *Rex has seen no issue with the current regulatory process and sees them as being fit for purpose and propose no change is required.*
- 5. Would it be preferable to design a bespoke infringement notice framework to operate across airport regulations?**
 - *Rex has seen no issue with the current regulatory process and sees them as being fit for purpose and propose no change is required.*
- 6. Are there any special provisions that should be carried over from existing infringement notice frameworks into the single standard framework?**
 - *Rex has seen no issue with the current regulatory process and sees them as being fit for purpose and propose no change is required.*