



Australian Government

Department of Infrastructure, Transport,
Regional Development and Communications

Sunsetting Airports Regulations Stage 1a: Cutting Red Tape

Consultation Regulatory Impact Statement

December 2021



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Executive Summary

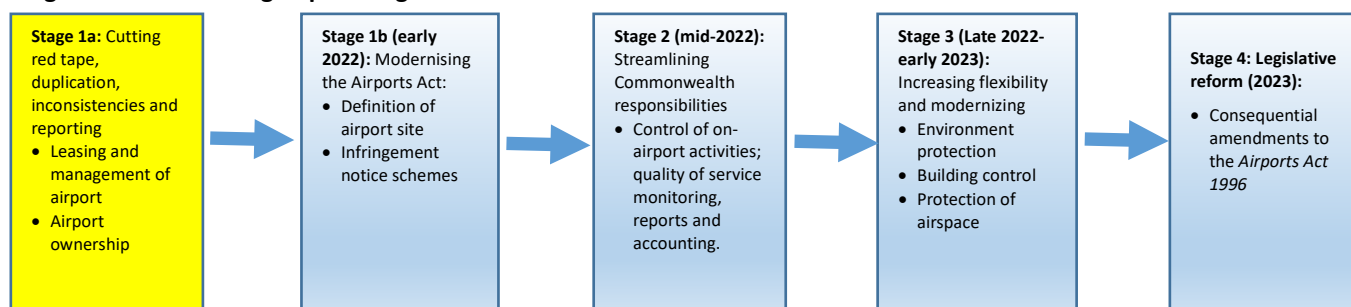
Australia's airports are a major component of the national transport network and make a significant contribution to Australia's overall economic prosperity. As a country with a large proportion of its population located in regional areas, aviation and airports play an integral role connecting regional and metropolitan areas, and providing critical services such as medical, search and rescue, and tourism. Airports and the aviation industry have been devastated by the COVID-19 pandemic, in Australia and around the world. The Australian Government's response to support aviation at the height of COVID-19 was swift and decisive, with initial measures in place to keep Australians connected despite international aviation collapsing. Providing a fit-for-purpose regulatory setting will support aviation as it emerges from, and adapts to, the impacts of COVID-19.

This consultation Regulation Impact Statement (RIS) outlines options developed to support the first stage of the thematic review of sunseting regulations under the *Airports Act 1996* (the Act) and seeks feedback from stakeholders on these options. The Act and subordinate regulations provide a comprehensive regulatory regime for Commonwealth-owned and privately-leased airports. Six of the subordinate legislative instruments that originally came into force in 1996 and 1997 are due to sunset on 1 April 2024:

- Airports Regulations 1997;
- Airports (Ownership—Interests in Shares) Regulations 1996;
- Airports (Building Control) Regulations 1996;
- Airports (Environment Protection) Regulations 1997;
- Airports (Control of On-Airport Activities) Regulations 1997; and,
- Airports (Protection of Airspace) Regulations 1996.

The Department of Infrastructure, Transport, Regional Development and Communications (the Department) will undertake a staged approach to reviewing these sunseting instruments. This approach will allow for more detailed consideration of complex issues as required. Four distinct stages will take place as part of a thematic review including:

Stages of the sunseting airports regulations thematic review



This consultation RIS focuses on Stage 1a and has been developed in accordance with *The Australian Government Guide to Regulatory Impact Analysis* and in consultation with the Office of Best Practice Regulation.

This document covers the first four of the seven standard RIS questions:

1. What is the policy problem to be solved?
2. Why is government action needed?
3. What policy options are being considered?
4. What is the likely net benefit of each option?

Following feedback from stakeholders, this document will be expanded to cover the three remaining RIS questions:

5. Who was consulted and was their feedback incorporated?
6. What is the best option from those considered?
7. How will the chosen option be implemented and evaluated?

Current airport regulations

The Australian Government has historically played a role in managing and regulating airports in Australia. The leased federal airports have been regulated under the Act and subordinate legislation since the airports were privatised. While privatisation had an obvious, significant deregulatory effect, the Act and subordinate legislation have been designed as a system of safeguards to protect airport users and the general community while promoting their efficient and economic development and operation. The objects of the Act are supported by the following six legislative instruments:

- Airports Regulations 1997
 - Leasing and management of airports; land use, Master Plans and Major Development Plans; accounting, financial reporting and quality of services
- Airports (Ownership—Interests in Shares) Regulations 1996
 - Restrictions on ownership of Airport Operator Companies and exemptions from the foreign and airline ownership provisions
- Airports (Building Control) Regulations 1996
 - Mandatory process for all building activity approvals and certificates of compliance
- Airports (Environment Protection) Regulations 1997
 - Environmental management and protection
- Airports (Control of On-Airport Activities) Regulations 1997
 - Control of certain on-airport activities such as liquor, gambling, parking, smoking
- Airports (Protection of Airspace) Regulations 1996
 - Protection of airspace around airports

Sunsetting of airports regulations

The six legislative instruments under the Act, as listed above, are set to sunset on 1 April 2024, which means they will be repealed unless action is taken to remake them. In effect, sunseting provides a 'use-by date' for legislative instruments, including regulations. Sunseting is an important mechanism for reducing red tape, delivering clearer laws and aligning existing legislation with current government policy. The sunseting framework ensures that legislative instruments are reviewed by the responsible agency at least every 10 years to determine whether they:

- remain fit for purpose and should be replaced by an instrument substantially the same in form
- should be replaced with substantial changes and improvements, or
- are spent or redundant and can be actively repealed or allowed to sunset without replacement (cease to exist)¹.

While these regulations have been amended from time to time, the Australian Government is now undertaking a holistic, thematic review to streamline and modernise the regulations. This will ensure they remain fit-for-purpose for a rapidly changing aviation sector, and provide flexibility for the industry in responding to COVID-19 impacts.

Thematic review

The thematic review of the six sunseting regulations under the Act will take place in four distinct stages, this consultation RIS is for Stage 1a. Stage 1a will consider Parts 1-3 of the Airports Regulations 1997 (Airports Regulations) as well as the Airports (Ownership-Interest in Shares) Regulations 1996 (AOISRs), and will focus on cutting red tape, reducing duplication and inconsistencies, and streamlining reporting.

¹ Guide to managing the sunseting of legislative instruments (July 2020)- <https://www.ag.gov.au/sites/default/files/2020-07/Guide%20to%20Managing%20Sunsetting%20of%20Legislative%20Instruments.pdf>

Stage 1a will include consideration of the following areas:

- Leasing and sublicensing
- Streamlining reporting timeframes relating to ownership, and aligning reporting with processes across government.
- Clarifying and simplifying language and structure of the regulations.

The Airports Regulations contain diverse requirements across a range of subject areas. Other issues in the Airport Regulations regarding the management of airports, land use, planning, environment and building controls will be subject to consultation in later stages.

A consultation road map is available at [Appendix A](#).

Emerging issues

Subleases and Licensing

Subleases and licensing regulations in Part 2 of the Airports Regulations allow businesses to rent space and operate at the airport. Under the current regulatory framework, and generally speaking airport-lessee companies (ALCs) must apply to the Secretary of the Department to be permitted a sublease or license. Based on departmental data, the vast majority of applications are approved without amendment.

Ownership

Feedback from airport lessee companies in 2018 indicated the current ownership and control definitions are unwieldy, overly complex, ambiguous, and could be drafted with improved clarity. The language in the AOISRs was drafted to meet the needs of diverse ownership structures of different airports. However, both the Department and AOCs encounter difficulties in interpreting this very detailed and complicated language in ensuring airports remain compliant with the ownership and control provisions. Both the Airports Regulations (Part 3) and the AOISRs contain material relating to ownership and control of airports, creating duplicative instruments about a single regulatory area.

In addition, there has been very little change in ownership of airports in the past 20 years, so annual reporting may not represent current best practice and may create an unnecessary administrative burden on airport operator companies (AOCs).

Policy options

In 2017-2018, the Department engaged in considerable stakeholder engagement with airports, airlines, state governments, Commonwealth agencies, councils and community groups on revisions to a number of legislative instruments relevant to airports. This feedback indicated there is room to clarify, streamline and simplify the regulations, while removing administrative burden on ALCs. This feedback has been considered when drafting proposed options and changes outlined in this consultation RIS.

The available options for Stage 1 include:

1. Status quo: Allow the Airports Regulations and the AOISRs to sunset.
2. Remake the Airport Regulations and the AOISRs without changes.
3. Remake the Airport Regulations and the AOISRS with changes.

Option 1: Status quo: Allow the Airports Regulations and the AOISRs to sunset

Allowing the Airport Regulations and the AOISRs to sunset would remove some regulatory reporting requirements from ALCs. However, this would also relinquish safeguards that have protected the community and airport users since privatisation, in relation to how an airport site is used.

Option 2: Remake the Airports Regulations and the AOISRs without changes.

Remaking the Airports Regulations and the AOISRs without amendment would continue current practices familiar to ALCs. The current level of regulation, was implemented in 1996-97 following the privatisation of the leased federal airports to give the Australian Government substantial oversight of activities taking place on Commonwealth land. Remaking the instruments risks retaining unnecessary complexity in the regulations and placing an avoidable level of regulatory burden on airports, as certain parts are duplicative and may no longer be fit-for-purpose.

Option 3: Remake the Airports Regulations and the AOISRs with changes

Under this option, both instruments will be remade to maintain appropriate levels of Commonwealth oversight, while amending aspects which are outdated and no longer fit-for-purpose. This will remove unwarranted regulatory burden for ALCs and other stakeholders, particularly with respect to the clarity and legibility of the administrative processes and reporting that ALCs are obliged to follow, while retaining an appropriate level of Commonwealth Government oversight.

Responding to this paper

Options considered in this paper relate to subleases and licensing on airports, which fall under the [Airports Regulations 1997](#) and those relating to financial structures and reporting, which fall under the [Airports \(Ownership - Interest in Shares\) Regulations 1996](#).

Please provide input on proposed amendments according to your area of interest and professional expertise. It is not expected that individuals provide feedback beyond the scope of their professional responsibilities. Sharing this paper with an appropriately qualified person between or within organisations is encouraged.

Consultation

The Australian Government appreciates your engagement with this paper. Remaking the sunseting regulations under the *Airports Act 1996* will be critical to determining the regulatory setting as we establish fit-for-purpose regulations and the sector emerges from COVID-19 and into the next decade.

You are welcome to respond to some or all of the questions included in this paper, as appropriate.

A consolidated list of questions is at [Appendix B](#). You can provide written submissions on the discussion paper until Monday, 7 March 2022.

The preferred method for receiving submissions is electronically to the email aviationreform@infrastructure.gov.au.

Submissions may also be made in hard copy to:

Attention:

Director, Airport Reform, Sunseting and IFAM Section

Airports Branch

GPO Box 594

CANBERRA ACT 2601

Please provide your contact details so the Department can follow up on any issues raised.

Written submissions to this discussion paper **will be made publicly available** in full on the Department's website unless you indicate you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Any personal information respondents provide to the Department will be used for purposes related to considering issues raised in this paper, in accordance with the *Privacy Act 1988* (see [Appendix C](#)). You are also welcome to provide submissions confidentially.

Questions?

If you have any questions about the process for responding to the discussion paper, please contact the Department:

Email: aviationreform@infrastructure.gov.au

Background

Australia's airports are a major component of the national transport network and make a significant contribution to Australia's overall economic prosperity. As a country with a large proportion of its population located in regional areas, aviation and airports play an integral role connecting regional and metropolitan areas and providing critical services such as medical, search and rescue and tourism.² Before the COVID-19 pandemic, aviation contributed 20 billion dollars to the economy each year and it employed around 90,000 people. Aviation moved over 100 million domestic and international passengers each year. At the same time, around 20 per cent of international trade (by value) was transported by air, up to 80 per cent for some time-sensitive exports.³

Aviation and airports enable our most important industries such as mining, construction, manufacturing and international education. Airports are fundamental to providing critical connections within Australia and with the world, facilitating passenger movement and the maintenance of international supply chains. The Australian Government is working to support an efficient, sustainable, safe and accessible aviation industry. Establishing the right regulatory settings for airports are key to recovery from the effects of COVID-19 and the ongoing success of Australia's aviation sector and economy more broadly.

COVID-19 impacts

Aviation has been devastated by the COVID-19 pandemic, in Australia and around the world. At the peak of the crisis in 2020 in Australia, passenger numbers fell by 97 per cent and over 30,000 aviation workers were stood down or made redundant. In 2019, the total passenger movements in Australian airports was 164 million and in 2020, this decreased by 70.9 per cent to 48 million total passenger movements.

The Australian Government's response to support aviation at the height of the COVID-19 pandemic was swift and decisive, with initial measures in place to keep Australians connected despite international aviation collapsing. Since the initial COVID-19 response measures, the Australian Government has committed over \$5.3 billion to maintain essential air connectivity, preserve critical aviation capacity, and keep supply chains open for air freight imports and exports.

As the COVID-19 pandemic has progressed, the Australian Government has released the four step National Plan to Transition Australia's COVID-19 Response. International travel is now recommencing in jurisdictions in line with the National Plan.

Providing a fit-for-purpose regulatory setting for airports will support aviation as it emerges from, and adapts to, the impacts of COVID-19.

The role of airports regulations

The Act and subordinate regulations provide a comprehensive regulatory regime for privately-leased airports located on Commonwealth-owned land. Six of the subordinate instruments that originally came into force in 1996 and 1997 are set to sunset on 1 April 2024. On 24 August 2018, the Attorney General agreed to align the sunset date for the following instruments to 1 April 2024 to facilitate a thematic review:

- Airports Regulations 1997 (Airports Regulations)
- Airports (Ownership—Interests in Shares) Regulations 1996 (AOISRs)
- Airports (Building Control) Regulations 1996
- Airports (Environment Protection) Regulations 1997
- Airports (Control of On-Airport Activities) Regulations 1997
- Airports (Protection of Airspace) Regulations 1996

² The Future of Australia's Aviation Sector: Flying to Recovery Department of Infrastructure, Transport, Regional development and Communications (Issues Paper 2020), p. 5.

³ The Future of Australia's Aviation Sector: Flying to Recovery Department of Infrastructure, Transport, Regional development and Communications (Issues Paper 2020), p. 5.

The focus of Stage 1a and this consultation RIS is on subleases and licensing and ownership in the Airports Regulations and AOISRs. Other issues in the Airport Regulations regarding the management of airports, land use, planning, environment and building controls will be subject to consultation in later stages.

Subleases and licenses

Part 2 of the Airports Regulations sets out matters related to the leasing and management of airports. It identifies the prohibited kinds of subleases (regulation 2.04) and licences (regulation 2.12). Unless the Secretary of the Department grants a declaration, subleases and licenses are prohibited, except for Commonwealth authorities, constitutional corporations and banks. The policy intent of these provisions is to prevent subleasing and licensing that is not in the public interest and support Part 2 of the Act, under which the ALC has a statutory obligation to use the airport site as an airport, and have the sole business of running the airport.

Table 1: Summary of current subleases and licensing regulations in the Airports Regulations.

Regulations	Details
2.04 and 2.12	Specifies the prohibited kinds of subleases and licenses.
2.05 and 2.13	Airport-lessee companies (ALCs) must apply to the Secretary to make a declaration that other types of leases and sublicenses are not prohibited.
2.06 and 2.14	The Secretary may revoke declarations made under regulations 2.05 and 2.13.
2.07 and 2.15	Provides that the Secretary may, by way of legislative instrument, approve a sublease or license to State or Territory government or authorities, on the basis that the activity for which the sublease/license is granted will be carried out on a fully commercial basis.
2.10 and 2.18	Provides for the prohibition on dealings with subleases and licenses by way of trust.
2.11 and 2.19	Specifies the Secretary can declare that certain dealings with subleases and licenses are not prohibited.
2.20	Provides that application to seek review from the Administrative Appeals Tribunal may be made for decisions to not make a declaration or revoke a declaration.

Ownership

The AOISRs came into effect in 1996 to ensure a diverse range of airport ownership structures could achieve compliance with the objects of the Act around the various ownership and control restrictions. These regulations work to mostly specify certain prescribed interests in shares that are to be disregarded in giving effect to ownership provisions in the Act. Similarly, the Part 3 (Ownership of Airports) of the Airports Regulations also contain provisions on the ownership and control of airports.

Table 2: Summary of current ownership regulations in the AOISRs and the Airports Regulations.

	Details
Parts 2 and 4 of the AOISRs	Identifies the prescribed interests that must be disregarded when considering foreign ownership and airline ownership of leased federal airports – to be disregarded if an airport applies for and is granted a declaration by the Secretary of the Department. These are known respectively as “substantially Australian investment funds” (SAIFs) in the case of foreign interests and “distanced investment funds” (DIFs) in the case of airline interests.

Details	
Part 3 of the AOISRs	Provides that interests shall be disregarded if undertaken as an agent for another person.
Part 5 of the AOISRs	Identifies the prescribed interests that must be disregarded when considering cross-ownership situations.
Part 6 of the AOISRs	Provides for the revocation of declarations made under relevant parts of the regulations, and that the holder may apply to the Administrative Appeals Tribunal for review of the decision to revoke the declaration.
Part 3 of the Airports Regulations	Requires that an airport operator must maintain a register of any stake held by a foreign person, airline and group of companies, and submit reporting at least every 12 months.

1 What is the policy problem to be solved?

With the privatisation of the leased federal airports, the Australian Government moved away from full Government ownership and financial responsibility to a policy of diversification in ownership of airports, promotion of innovation and competitive benchmarking, access to airports for air service operators, and provision of quality airport services by airport lessee companies (ALCs).

Despite the deregulatory aims of privatisation, it has become clear since the establishment of the Act and associated legislation in 1996-97 that aspects of the regulations have become unfit for purpose. These sunseting instruments under the Act have been amended from time to time, but they have never been holistically reviewed. As a result, parts are now outdated and need to be modernised so that they are fit for purpose for a rapidly changing aviation sector, and provide flexibility for the industry in recovers from the impacts of the COVID-19 pandemic.

Emerging issues addressed in this consultation RIS are listed below.

1.1 Airports Regulations 1997 (Airports Regulations)

1.1.2 Subleases and licences

Subleases and licensing regulations in Part 2 of the Airports Regulations allow businesses to rent space and operate at the airport. Under the current regulatory framework, subleases and licenses are generally prohibited (except for Commonwealth authorities, constitutional corporations and banks) unless the Secretary of the Department makes a declaration about the sublease or license (regulations 2.04, 2.05, 2.12 and 2.13).

ALCs must apply to the Secretary to make a declaration that other types of leases and sublicenses are not prohibited. This was designed to support Part 2 of the Act, under which the ALC has a statutory obligation to use the airport site as an airport, and have the sole business of running the airport. The intention of these provisions is to prevent subleasing and licensing that is not in the public interest.

Based on departmental data, the vast majority of exception applications are approved without amendment. This creates a significant administrative burden for ALCs and the Department. It may also impede investment and create market distortion between on and off airport sites.

1.2 Airports (Ownership – Interests in Shares) Regulations 1996 (AOISRs)

The regulation of ownership and control of leased federal airports encounters a number of issues with provisions in the two sets of instruments, as detailed below:

- Both the Airports Regulations (Part 3) and the AOISRs contain material relating to ownership and control of airports, creating duplicating instruments about a single regulatory area
- There is administrative burden in the processes behind the Part 3 provisions that could be simplified
- The language of the AOISRs is complex and should be simplified, noting the overarching policy intention is set to remain the same (i.e. to ensure adequate oversight of ownership and control arrangements of leased federal airports).

1.2.1 Reporting on ownership and control

Feedback from airport lessee companies in 2018 indicated the current ownership and control definitions are unwieldy, overly complex and ambiguous, and could be drafted with improved clarity. This feedback was consistent with the Department's regulatory compliance area which also reported a high administrative burden and a generally held view

that there may be benefits in modernising foreign ownership and control regulations in line with the contemporary foreign investment framework.

More specifically, while there have been some larger acquisitions of some airports over the years which have necessitated detailed due-diligence activities by the Department, in general there has been little change in the ownership composition of most airports in the past 20 years. In this way, annual reporting may not represent current best practice and may create an unnecessary administrative burden on AOCs. This has been demonstrated in the annual ownership and control reports compiled by the Department over the last several years which summarise the changes in airport ownership and control structures of a given 12-month period. Approximately 50 changes in airport ownership were reported to the Department across the period from 2014 to 2021. The majority of these changes were minor in nature; that is, individual stakes in the company did not increase greater than 5 per cent per owner and/or there was an increase of fewer than 5 new owners for the entire reporting period. Each of these minor changes in ownership has been within the permissible ownership limits prescribed in the Act and associated regulations and has not breached any of the requirements.

As the majority of airports' ownership structures have remained fairly stable, it may be useful to consider a "threshold" trigger for reporting or a longer timeframe for reporting, such as every three years instead of every year. Reducing reporting to every second or third year may be more appropriate when considering the low rate of ownership changes (an average of seven per year, all within prescribed limits) as well as the financial burden incurred by the Department and ALCs as a result of annual reporting requirements (see [Section 4](#)).

In addition, there may be an opportunity to reform the Department's internal compilation and assessment of the ownership and control submissions to more actively seek external advice from other federal agencies and involve them to ensure ownership and control remains consistent with current foreign investment and other business practice.

Currently, the Department's assessment of ownership and control is based on comparisons with previous structures over the years. Analysis against the current set of regulations can be confusing when there are changes of ownership or control, and this analysis is quite time-consuming and resource intensive.

On the administration of the annual ownership and control reporting between ALCs and the Department, the Department acknowledges there is scope for improvement in the "online portal" technology that the Department administers for ALCs to submit their information. A review of the Portal was conducted in 2021 and found that, while the Portal has been an effective tool for collection of ownership information, the system is antiquated and would benefit from an update or refresh of the Portal to reduce the risk of information being lost and improve administrative efficiency.

1.2.2 Simplifying regulation

The regulation of ownership and control of leased federal airports encounters a number of issues with provisions in the two sets of instruments, as detailed below:

- The language of the AOISRs is complex and should be simplified
- Both the Airports Regulations (Part 3) and the AOISRs contain material relating to ownership and control of airports, which in turn must refer to terms and definitions in the Schedule of the Act, creating duplicating instruments about a single regulatory area.

The language in the AOISRs was drafted to meet the needs of diverse ownership structures of different airports. However, both the Department and airport-operator companies encounter difficulties in interpreting this very detailed and complicated language in ensuring airports remain compliant with the ownership and control provisions.

Both the Airports Regulations (Part 3) and the AOISRs – as well as the Schedule to the Act – contain material relating to ownership of airports. Having information on the same topic in multiple locations makes reading regulations confusing, and compliance difficult, for stakeholders.

The burden of having multiple places for the sources of ownership and control regulation is highlighted when an external proponent proposes to acquire significant or 100 per cent shares in a leased federal airport. Such proposals necessarily attract significant legal and financial oversight from both acquisition proponents and the Department. In some recent cases, some proponents may have not been aware of some features of the ownership and control provisions, such as

substantially Australian investment funds, that could help them achieve a compliant proposal. While proponents have generally been able to navigate the Act and regulations to form compliant proposals to acquire large shares airports, the legal and financial oversight task could be significantly reduced if terminology and expression in the regulations were clarified and if the regulations were brought more into line with the contemporary modern investment framework.

For instance, certain terms in the AOISRs do not clearly identify the specific characteristics of companies/individuals to which the regulations apply. For example, regulation 2.02 refers to “holding company 1” and “holding company 2” but characteristics distinguishing the two holding companies are unclear. It also raises questions as to whether both these companies are trustees of a holding company that owns a fund or part of a fund. Additionally, regulation 2.04 refers to an “interest-holder” but does not specify if it is referring to an entity or person with an interest, or whether it aligns with the definition of “interest in a share” in the Schedule of the Act.

2 Why is Government action needed?

The Australian Government regulates leased federal airports and is dedicated to supporting Australia's critical infrastructure and transport networks, of which airports play a key role. 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. With the COVID-19 pandemic continuing to cause significant disruptions to airports and the aviation industry, it is crucial to review current regulations and identify ways to streamline and provide flexibility for airports as they recover from the impacts. The regulations discussed in this consultation RIS focus on cutting red-tape, reducing duplication and streamlining reporting requirements in the Airports Regulations and the AOISRs.

The objectives of Government action include ensuring the Act and subordinate regulations provide:

- Fit-for-purpose requirements;
- Clarity of regulations;
- No unintentional regulatory burden on airports while maintaining an appropriate level of government oversight; and,
- Provide flexibility in the regulations while maintaining the overall policy objectives of the Airports Act.

2.1 Sunsetting and review of existing regulations

Sunsetting is an important mechanism for the Australian Government to implement policies to reduce red tape, deliver clearer laws, and align existing legislation with current government policy. While the six sunsetting regulations under the Act have been updated over time, they have not been holistically reviewed. As they are sunsetting on 1 April 2024, this is an opportunity to complete a thematic review. Sunsetting also aligns with the Australian Government's deregulation agenda to support Australia's economic recovery by streamlining processes and regulations. The outcomes of work on the sunsetting airports regulations stage 1a will be modern and streamlined regulations of subleases and licensing, and ownership of leased federal airports.

2.2 To maintain an appropriate regulatory regime

The Act provides for a comprehensive regulatory regime for Commonwealth-owned and privately-leased airports. However, it provides that much of the detail of the regulatory regime will be dealt with in subordinate legislation because of the large quantity of detail that is to be included in the regime. The Airports Regulations contains critical details regarding subleases, licensing and ownership. Similarly, the AOISRs ensure a diverse range of airport ownership structures could achieve compliance with the objects of the Act to ensure diversity of ownership and control of certain major airports, and promote efficient and economic development and operation of airports.

3 What policy options are being considered?

The Department is considering the following three options:

1. Status quo: Allow the Airports Regulations and the AOISRs to sunset
2. Remake the Airport Regulations and the AOISRs without changes.
3. Remake the Airport Regulations and the AOISRs with changes.

Please note that this consultation RIS only addresses Part 1, 2 and 3 of the Airport Regulations. Options affecting Parts 5, 7, 8, 12 and 13 of the Airports Regulations will be discussed in consultation papers at later stages.

3.1 Option 1: Status quo: Allow the Airports Regulations and the AOISRs to sunset

Under this option the Airports Regulations and the AOISRs would be allowed to sunset.

3.1.1 Airports Regulations 1997

Matters in the Airports Regulations are essential to give effect to sections of the Act and allow the Government to maintain a necessary level of regulatory oversight on the use of airport sites and the quality of service provided to airport users, as well as record-keeping and monitoring by the Australian Competition and Consumer Commission.

Part 2 provides for the leasing and management of airports, including subleasing and licences. If this were allowed to sunset, then the grounds for refusing to approve the transfer of an airport lease or an airport-management agreement or variation of an agreement for the purposes of the Act will no longer be specified. The prohibited kinds of subleases and licences for subsection 35(1) of the Act will no longer be specified.

Part 3 is discussed below.

3.1.2 Airports (Ownership – Interests in Shares) Regulations 1996

If the AOISRs were allowed to sunset, certain investment funds or stakeholders (foreign funds, airlines or operators of certain airport pairs) could find themselves owning a stake in an airport that would exceed the limits in the Act and, as such, be instantly in breach. This is not an acceptable position for the Commonwealth to adopt. They would no longer be able to obtain (or maintain) exemptions from the foreign-ownership provisions as that system would no longer exist. Similarly, investment funds would not be able to obtain exemptions from the airline ownership provisions.

The Act imposes limitations on the ownership of leased airports by foreign persons and by airlines, and on the cross-ownership of certain airport pairs. Part 3 limits foreign ownership of an "airport-operator company" (i.e. a lessee or management company for a leased airport) to 49 per cent, limits cross-ownership of certain airport pairs (i.e., Sydney and any of Melbourne, Brisbane or Perth airports) to 15 per cent and limits ownership by airlines (and their associates) of such companies to 5 per cent.

The purpose of the AOISRs is to identify interest in shares that are to be disregarded in giving effect to certain ownership provisions in the Airports Act, including:

- Foreign ownership arrangements;
- ownership in shares held by agents;
- ownership by airlines; and,
- requirements on cross-ownership of the big four airports (Brisbane, Sydney, Melbourne and Perth), to promote diversity of airport ownership and promote economic development of airports.

While the Australian Competition and Consumer Commission (ACCC) have powers to ensure conflicts of interests and collusion do not occur, the AOISRs strengthens this power.

3.2 Option 2: Remake the Airport Regulations and the AOISRs without changes

Remaking the Airports Regulations and the AOISRs without amendment would continue current practices familiar to ALCs but risks maintaining a level of complexity and unnecessary regulatory burden. The current level of regulation, was implemented in 1996-97 following the privatisation of the leased federal airports to give the Australian Government substantial oversight of activities taking place on Commonwealth land. A number of provisions have since become outdated.

Feedback from consultations with stakeholders and regulatory trends over time have indicated certain parts of the Airports Regulations and the AOISRs may no longer be fit-for-purpose, duplicative and confusing to the reader. With no change to legislation, the following requirements would remain:

- Under Part 2 of the Airports Regulations, unless the Secretary of the Department grants a declaration, subleases and licenses would only be permitted for Commonwealth authorities, constitutional corporations and banks. All ALCs would need to continue submitting declaration requests for approval of other types of leases and sublicenses. Currently, almost all declaration applications are approved without amendment, demonstrating this level of regulatory oversight is unnecessary.
- Failing to combine Part 3 of the Airports Regulations and the AOISRs, and maintaining the same subject matter in two different sets of regulations, would continue to make it difficult for stakeholders to understand and comply with ownership provisions.
- Requirements in both Part 3 of the Airports Regulations and Part 2 of the AOISRs require reporting on airport ownership annually. If unaddressed, the Airports Regulations and the AOISRs will continue to impose an unnecessarily high level of regulatory burden on ALCs and will mean these regulatory activities may no longer represent modern best practice. Therefore, remaking these regulations with changes would be preferred to achieve the objectives of cutting red tape and reducing regulatory burden on airports.

3.3 Option 3: Remake the Airport Regulations and the AOISRs with changes

Under this option, both instruments would be remade (as part of Stage 1 of the Department's thematic review), with minimal redrafting, to maintain an appropriate level of Commonwealth oversight, while amending aspects that are outdated and no longer fit-for-purpose. This will remove unwarranted regulatory burden for ALCs and other stakeholders, particularly with respect to the clarity and legibility of the administrative processes and reporting that ALCs are obliged to follow.

Remaking the Airports Regulations and the AOISRs with amendments would cut red tape and reduce duplication, inconsistencies and reporting, while retaining an appropriate level of Commonwealth Government oversight. These changes reflect feedback received from ALCs over a number of different processes, and will allow for re design of the regulations so they are fit-for-purpose.

3.3.1 Subleases and licensing

There is an opportunity to cut red tape by amending Part 2 of the Airports Regulations to permit declaration by exception rather than as the rule, while maintaining a requirement for airports to maintain a register of subleases/licenses. The Department would have visibility of the register and the ability to intervene if required. This will ensure an appropriate level of regulatory oversight for the Australian Government.

3.3.2 Ownership

Reporting on ownership and control

The AOISRs came into effect in order to ensure a diverse range of airport ownership structures could achieve compliance with the objects of the Act around the various ownership and control restrictions. However, administrative processes for airport operator companies are rather onerous and may no longer represent modern best practice. As such, they need to be revised. Key to this reform is the potential for annual reporting (as required in both the Airports Regulations and the AOISRs) to be made less frequent – potentially to a maximum of every three years or when a significant change in ownership occurs.

In addition to the Part 3 requirements, Parts 2 and 4 of the AOISRs provide for certain ownership interests – foreign ownership and airline ownership of leased federal airports – to be disregarded if an airport applies for and is granted a declaration by the Secretary of the Department. These are known respectively as “substantially Australian investment funds” (SAIFs) in the case of foreign interests and “distanced investment funds” (DIFs) in the case of airline interests.

Under the current regulations, the holder of such declarations must provide a written statement on the anniversary of the declaration each year declaring that the interests remain eligible to be called SAIFs or DIFs. As with the reporting under the Airports Regulations, this administrative process is onerous and may no longer represent modern best practice. There is similarly an opportunity for reform.

Simplifying regulation

The language in the AOISRs was drafted to meet the needs of diverse ownership structures of different airports. However, both the Department and AOCs encounter difficulties in interpreting this very detailed and complicated language in ensuring airports remain compliant with the ownership and control provisions.

Certain terms in the AOISRs need to clearly identify the specific characteristics of companies/individuals to which the regulations apply. For example:

- Regulation 2.02 refers to “holding company 1” and “holding company 2” but characteristics distinguishing the two holding companies are unclear. It also raises questions as to whether both these companies are trustees of a holding company that owns a fund or part of a fund.
- Regulation 2.04 refers to an “interest-holder” but does not specify if it is referring to an entity or person with an interest, or whether it aligns with the definition of “interest in a share” in the Schedule of the Act.

Similarly, the language of certain regulations requires simplifying or clarifying. For example:

- Subregulation 5.02(2) refers to “For subregulation (1), a person is an irrelevant associate in relation to an interest in a share (a relevant share) held by the primary interest holder that results in the primary interest holder having a direct control interest in an airport-operator company if:
 - (a) the person is not a related entity of the primary interest holder; and
 - (b) the person does not hold any direct control interest in the airport-operator company arising from any relevant shares; and
 - (c) the person is not an associate of the primary interest holder because of paragraph 5(1)(i) or (j), or subclause 5(2), of the Schedule to the Act; and
 - (d) the primary interest holder and the person are each not an airport entity.”

Finally, all provisions relating to ownership in Part 3 of the Airport Regulations and in the AOISRs should be consolidated and simplified to ensure clarity and reduce duplication.

4 What is the likely net benefit of each option?

This section identifies the net benefits of each reform option and seeks stakeholders' views on the assessment presented. In doing so, this section provides:

- an estimate or description of regulatory burden based on options of reform
- an impact analysis on affected stakeholders
- a preliminary net benefit assessment of each option.

This analysis indicates that option 3 provides the greatest net benefit for stakeholders, and seeks feedback on this assessment for further consideration.

4.1 Option 1: Status quo: Allow the Airports Regulations and the AOISRs to sunset

As the Airports Regulations and the AOISRs will sunset on 1 April 2024, as set out in the *Legislation Act 2003*, both will be automatically repealed. This introduces substantial deregulation of subleases, licensing and ownership. Consequently, if they were allowed to lapse, provisions relating to the prohibited kinds of subleases and licences for subsection 35(1) of the Act will no longer be specified.

Furthermore, diversity in ownership would be implemented too rigidly and would provide limited scope for Australian investment in leased airports. It is likely that the Australian Government will no longer meet the objectives of ownership provisions in the Act, including:

- ensure majority Australian ownership of airports;
- place limits on the ownership of airports by airlines;
- ensure diversity of ownership and control of certain major airports; and
- promote efficient and economic development and operation of airports.

This option would provide some benefits in reducing regulatory reporting requirements. It would also lead to the Airports Act no longer providing an appropriate regulatory environment due to substantial deregulation and limited scope for future investment in leased federal airports. Option 1 does not offer any regulatory savings.

Questions for consideration – Option 1

1. Do you think the Airports Regulations and the AOISRs should be allowed to sunset?
2. What are the benefits of no regulations on airport subleases, licensing and ownership?
3. What are the consequences of no regulations on subleases, licensing and ownership?

4.2 Option 2: Remake the Airports Regulations and the AOISRs without changes

Under this option, the Airports Regulations and the AOISRs would be remake without changes to maintain the same level of regulation considered fit-for-purpose when they were implemented in 1996-97 and well understood by ALCs. As described in previous sections, Parts 1, 2 and 3 of the Airports Regulations and the AOISRs are no longer fit-for-purpose and place unnecessary regulatory burden on airports. Furthermore, complex language, annual reporting requirements and ownership provisions currently in both Part 3 of the Airports Regulations and the AOISRs making it difficult for stakeholders to understand and comply with them.

Retaining onerous provisions in the Airports Regulations and AOISRs results in annual regulatory costs of approximately \$62,000 for business and \$71,000 for government.

4.2.1 Subleases and licensing

Departmental records from over the last 10 years show that the Department has processed on average 120 requests annually to have subleases and licences declared not prohibited. Each of these requests requires a Departmental staff member to review each submission to ensure it is complete to our requirements, reviewed by an executive level staff and provided to a senior executive service (SES) level staff for review and signing. This takes the Department approximately five work hours per submission, with an annual regulatory cost of \$44,000.

To provide each submission to the Department and ALC will be required to compile the required documents and write to the Department requesting the declaration. This is most often done by a member of the ALC's legal team. It is estimated each submission takes the ALC one work hour, at a regulatory cost of \$8,800 per year across all 22 ALCs.

4.2.2 Ownership

The Department processes 22 ownership reports each year, one for each leased federal airport, and each ALC must compile an official declaration annually. This represents a regulatory cost of approximately \$80,000 per annum for the 22 ALCs, and an additional \$40,000 in government regulatory costs to process and assess the reports. However, as discussed in [section 1.2.1](#), the majority of airports' ownership structures have remained fairly stable.

Questions for consideration – Option 2

1. Do you agree or disagree with keeping the Part 1, 2 and 3 of the Airports Regulations and the AOISRs as is and without changes?
2. What are the benefits or efficiencies in keeping these two Regulations as is?
3. What are the inefficiencies in keeping these two Regulations as is?

4.3 Option 3: Remake the Airport Regulations and the AOISRs with changes

4.3.1 Subleases and licensing

Amending Part 2 of the Airports Regulations to permit declaration by exception rather than as the rule, while maintaining a requirement for airports to maintain a register of subleases and licenses, will ensure an appropriate level of regulatory oversight for the Australian Government. The Department would have visibility of the register and the ability to intervene if required. This would yield the following cost benefits and savings.

As discussed in section 4.2.1, records from over the last 10 years show that the Department has processed on average 120 requests annually to have subleases and licences declared not prohibited.

Each of these requests requires a team member to review each submission to ensure it is complete to our requirements, and then following up via phone/email if additional information or clarification is required. Once complete information is in place a brief, instrument and letter needs to be prepared. Occasionally, due to the nature of the request legal advice may need to be sought to determine if the submission can or should be processed. In all this process can take from 3-5 work hours per submission.

Each submission would then need to be reviewed by the Team Lead and provided to the Senior Executive Officer for review and signing. It is estimated this takes the Department approximately five work hours per submission, with an annual regulatory cost of \$44,000.

To provide each submission to the Department, an ALC will be required to compile the required documents and write to the Department requesting the declaration. This is most often done by a member of the ALC's legal team. It is estimated it takes the ALC one work hour for each submission, a total of 120 hours per year and a regulatory cost of \$8,800. The proposed changes will remove these costs for the ALC as well as for the Department. With the proposed changes there would need to be an initial piece of administrative work for both the ALC and the Department as new systems are put into place, but there are obvious cost savings in the longer term.

Questions for consideration – Option 3 - Subleases and licensing

1. Do you agree or disagree with the proposed amendments? Please specify.
2. Can you suggest any improvements to the proposed amendments (e.g. is there anything else that should be included)?
3. What level of benefit would you expect these changes to bring to your business?
4. Are there other opportunities to streamline and reduce red tape in regard to subleases and licensing?
5. Do you agree with the Department's estimate of the regulatory impact of proposed changes?

4.3.2 Ownership

Reporting on ownership and control

Reducing the frequency of reporting on airport ownership to potentially every three years and/or following a change in ownership of a certain threshold or nature will save administrative costs for both ALCs and the Department.

Airport ownership reporting provided to the Department each year, which all ALCs are required to do, generally does not differ from the year before. This represents a significant, unnecessary cost to ALCs. It is estimated each ALC requires approximately 50 work hours to prepare the report.

ALCs are required to compile the required documents including an official declaration. This is most often done by a member of the ALC's legal team. Across all 22 ALCs this reporting represents a regulatory cost of approximately \$80,000 per year, which would be reduced to approximately \$27,000 per year with a reduction in reporting requirements.

The Department processes 22 ownership reports each year. This requires a team member to review each report to ensure it is complete to our requirements prior to seeking SES approval of the final consolidated report. In all, this process can take up to 25 hours per report and incurs a total cost of approximately \$40,000.00 to the Department each year, which would be reduced to approximately \$13,000 per year with a reduction in reporting requirements.

The proposed changes will reduce these costs for the ALC as well as costs for the Department. With the proposed changes there would need to be an initial piece of administrative work for both the ALC and the Department as new systems are put into place, but there are obvious cost savings in the longer term.

Simplifying regulation

Simplifying language and consolidating the AOISRs with ownership provisions in Part 3 of the Airports Regulations will provide a positive benefit by ensuring clarity through having all regulations relating to airport ownership in one place only.

4.3.2 Regulatory savings

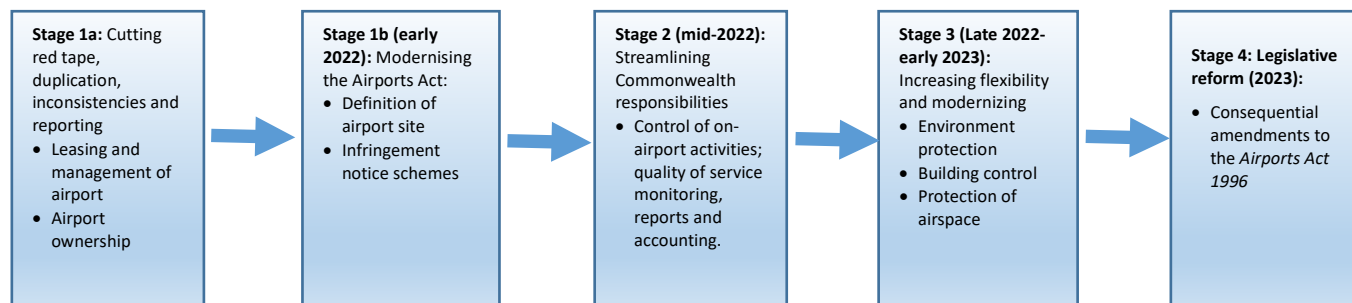
Option 3 offers annual regulatory savings to airports of \$62,000. There would be a further annual regulatory saving to government of \$71,000.

Questions for consideration – Option 3 - Ownership

1. Do you agree or disagree with the proposed amendments? Please specify.
2. Can you suggest any improvements to the proposed amendments (e.g. is there anything else that should be included)?
3. What level of benefit would you expect these changes to bring to your business?
4. How could airport ownership remain as competitive as possible, while protecting Australia's national infrastructure?
5. Do you agree with the Department's estimate of the regulatory impact of proposed changes?

Appendix A – Consultation Roadmap

Image 1: Sunsetting Airports Regulations Consultation Roadmap



Stage 1a: Cutting red tape, duplication, inconsistencies and reporting

- **Affected legislation: Airports Regulations 1997 and the Airports (Ownership-Interest in Shares) Regulations 1996 (AOISRs).**

Stage 1 of the thematic review will consider Parts 1-3 of the Airports Regulations as well as the AOISRs, and will focus on cutting red tape, reducing duplication and inconsistencies, and streamlining reporting.

The Department is proposing to remake the Airports Regulations and the AOISRs with amendments to reduce duplication, streamline reporting requirements and align them with existing processes across government. Under this option, both instruments will be remade to maintain appropriate levels of Commonwealth oversight, while amending aspects which are outdated and no longer fit-for-purpose. This will remove unwarranted regulatory burden for ALCs and other stakeholders, particularly with respect to the clarity and legibility of the administrative processes and reporting that ALCs are obliged to follow.

Stage 1a will include consideration of the following areas:

- Leasing and sublicensing
- Streamlining reporting timeframes relating to ownership, and aligning reporting with processes across government.
- Clarifying and simplifying language and structure of the regulations.

The Airports Regulations 1997 contain diverse requirements across a range of subject areas. Other issues in the Airport Regulations 1997 which have been identified for review, including the management of airports, land use, planning, environment and building controls, will be consulted on in due course stages 2 and 3.

Stage 1b: Modernising the Airports Act

Stage 1b consultations will take place in early 2022 and will encompass early amendments to the Airports Act (not to the regulations).

This will include:

- Defining an airport site by legislative instrument (signed by the Minister), rather than in the regulations; and
- Aligning and updating the three existing infringement notice schemes.

Stage 2: Streamlining Commonwealth responsibilities

Stage 2 consultation will take place in Quarters 2 and 3 2022. Stage 2 aims to streamline Commonwealth responsibilities for the control of on-airport activities, including liquor, gambling, smoking, commercial trading and vehicles.

Stage 3: Increasing Flexibility and Modernising

Stage 3 consultation will take place in late 2022 to early 2023.

Stage 3 proposals will aim to increase flexibility and modernising airspace protection, airport building control and environmental regulatory frameworks. Stage 3 may entail further amendments to the Airports Regulations as subject matter is considered in a thematic way.

Stage 4: *Airports Act 1996* reform

The Department will engage with relevant stakeholders in 2023 about proposed changes to the *Airports Act (1996)*.

Appendix B – Consolidated Discussion Questions

Option 1: Status quo: Allow the Airports Regulations and the AOISRs to sunset

1. Do you think the Airports Regulations and the AOISRs should be allowed to sunset?
2. What are the benefits of no regulations on airport subleases, licensing and ownership?
3. What are the consequences of no regulations on subleases, licensing and ownership?

Option 2: Remake the Airports Regulations and the AOISRs without changes

1. Do you agree or disagree with keeping the Part 1, 2 and 3 of the Airports Regulations and the AOISRs as is and without changes?
2. What are the benefits or efficiencies in keeping these two Regulations as is?
3. What are the inefficiencies in keeping these two Regulations as is?

Option 3: Remake the Airport Regulations and the AOISRs with changes

Subleases and Licensing

1. Do you agree or disagree with the proposed amendments? Please specify.
2. Can you suggest any improvements to the proposed amendments (e.g. is there anything else that should be included)?
3. What level of benefit would you expect these changes to bring to your business?
4. Are there other opportunities to streamline and reduce red tape in regard to subleases and licensing?
5. Do you agree with the Department's estimate of the regulatory impact of proposed changes?

Ownership

1. Do you agree or disagree with the proposed amendments? Please specify.
2. Can you suggest any improvements to the proposed amendments (e.g. is there anything else that should be included)?
3. What level of benefit would you expect these changes to bring to your business?
4. How could airport ownership remain as competitive as possible, while protecting Australia's national infrastructure?
5. Do you agree with the Department's estimate of the regulatory impact of proposed changes?

Appendix C – Privacy Statement

Any personal information supplied in your submission is collected by the Department of Infrastructure, Transport, Regional Development and Communications (the Department), in accordance with the Privacy Act 1988 (the Privacy Act). Personal information may be needed by the Department to us to make further contact with you about the consultation process, and so that the Department can record interactions between you and the Department.

Your personal information will not be disclosed to any other parties, except in the circumstances outlined below. Submissions, in part or full, including the name of the author may be published on the Department's website or in the Australian Government's response, unless the submission is confidential. Confidential submissions (including author name) will not be published. Private addresses and contact details will not be published or disclosed to any third parties unless required by law.

Submissions will be treated as confidential only if they are expressly stated to be confidential. Automatically generated confidentiality statements or disclaimers appended to an email do not suffice for this purpose. If you wish to make a confidential submission, you should indicate this by ensuring your submission is marked confidential.

Confidential submissions will be kept securely and will only be disclosed in the following circumstances:

- in response to a request by a Commonwealth Minister;
- where required by a House or a Committee of the Parliament of the Commonwealth of Australia; or
- where required by law.

The Department may also disclose confidential submissions within the Commonwealth of Australia, including with other Commonwealth agencies, where necessary in the public interest.

Please note that in order to protect the personal privacy of individuals in accordance with the Privacy Act any submissions containing sensitive information, personal information or information which may reasonably be used to identify a person or group of people may not be published, even if not marked as confidential.

The Department's Privacy Policy contains information regarding complaint handling processes and how to access and/or seek correction of personal information held by the Department. The Privacy Officer can be contacted at privacy@infrastructure.gov.au.