



Australian Government

**Department of Infrastructure, Transport,
Regional Development, Communications and the Arts**

Consultation paper

September 2022



© Commonwealth of Australia 2022
September 2022 / INFRASTRUCTURE

Ownership of intellectual property rights in this publication

Unless otherwise noted, copyright (and any other intellectual property rights, if any) in this publication is owned by the Commonwealth of Australia (referred to below as the Commonwealth).

Disclaimer

The material contained in this publication is made available on the understanding that the Commonwealth is not providing professional advice, and that users exercise their own skill and care with respect to its use, and seek independent advice if necessary.

The Commonwealth makes no representations or warranties as to the contents or accuracy of the information contained in this publication. To the extent permitted by law, the Commonwealth disclaims liability to any person or organisation in respect of anything done, or omitted to be done, in reliance upon information contained in this publication.

Creative Commons licence

With the exception of (a) the Coat of Arms; (b) the department of Infrastructure, Transport, Regional Development and Communications photos and graphics; and (c) [OTHER], copyright in this publication is licensed under a Creative Commons Attribution 4.0 Australia Licence.

Creative Commons Attribution 4.0 Australia Licence is a standard form licence agreement that allows you to copy, communicate and adapt this publication provided that you attribute the work to the Commonwealth and abide by the other licence terms.

Further information on the licence terms is available from <https://creativecommons.org/licenses/by/4.0/>.

This publication should be attributed in the following way: © Commonwealth of Australia 2022

Use of the Coat of Arms

The department of the Prime Minister and Cabinet sets the terms under which the Coat of Arms is used. Please refer to the Commonwealth Coat of Arms - Information and Guidelines publication available at <http://www.pmc.gov.au>.

Contact us

This publication is available in hard copy or PDF format. All other rights are reserved, including in relation to any departmental logos or trade marks which may exist. For enquiries regarding the licence and any use of this publication, please contact:

Director – Creative Services
Communication Branch
Department of Infrastructure, Transport, Regional Development, Communications and the Arts
GPO Box 594
Canberra ACT 2601
Australia

Email: publishing@infrastructure.gov.au
Website: www.infrastructure.gov.au

Table of contents

Introduction	5
Regulation of leased federal airports in Australia	5
Sunsetting review	5
Purpose and outline of this paper	7
Responding to this paper.....	8
Privacy and confidentiality	8
1: Liquor control in airports outside NSW	9
1.1 Overview	9
1.2 What policy options are being considered and what are their likely impacts?	9
1.2.1 Option 1: Allow the Regulations to sunset without being remade	9
1.2.2 Option 2: Remake the Regulations without substantive changes.....	9
1.2.3 Option 3: Remake the Regulations with changes.....	10
2: Consumer trading hours	11
2.1 Overview	11
2.2 What policy options are being considered and what are their likely impacts?	11
2.2.1 Option 1: Allow the Regulations to sunset	11
2.2.2 Option 2: Remake the Regulations without substantive changes.....	11
2.2.3 Option 3: Remake the Regulations with changes.....	12
3: Landside Vehicle Parking	14
3.1 Overview	14
3.2 What policy options are being considered and what are their likely impacts?	14
3.2.1 Option 1: Allow the Regulations to sunset	14
3.2.2 Option 2: Remake the Regulations without substantive changes.....	15
3.2.3 Option 3: Remake the Regulations with changes.....	15
4: Airside Vehicles	16
4.1 Overview	16
4.2 What policy options are being considered and what are their likely impacts?	16
4.2.1 Option 1: Allow the Regulations to sunset	16
4.2.2 Option 2: Remake the Regulations without substantive changes.....	16
4.2.3 Option 3: Remake the Regulations with changes.....	17
5: Gambling	18
5.1 Overview	18
5.2 What policy options are being considered and what are their likely impacts?	18
5.2.1 Option 1: Allow the Regulations to sunset	18
5.2.2 Option 2: Remake the Regulations without substantive changes.....	18
5.2.3 Option 3: Remake the Regulations with changes.....	19
6: Smoking	20
6.1 Overview	20
6.2 What policy options are being considered and what are their likely impacts?	20
6.2.1 Option 1: Allow the Regulations to sunset	20
6.2.2 Option 2: Remake the Regulations without substantive changes.....	20
6.2.3 Option 3: Remake the Regulations with changes.....	21
7: Infringement Notices	22
7.1 Overview	22
7.2 What policy options are being considered and what are their likely impacts?	22
7.2.1 Option 1: Allow the Regulations to sunset	22
7.2.2 Option 2: Remake the Regulations without substantive changes.....	22
7.2.3 Option 3: Remake the Regulations with changes.....	23

Appendix A – Leased federal airports – PINS status	24
PINS Airports.....	24
Non-PINS Airports.....	24
Appendix B – Privacy statement	25

Introduction

Regulation of leased federal airports in Australia

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 in connecting regional and metropolitan areas, and providing critical services such as medical, search and rescue, and tourism services.

The Australian Government has historically played a role in managing and regulating airports in Australia. The leased federal airports (see full list in [Appendix A](#)) have been regulated under the *Airports Act 1996* (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 the economic development and efficient operation of airports. The objects of the Act are supported by the following six legislative instruments:

- ***Airports Regulations 1997***, which deal with 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***, which deal with restrictions on ownership of airport lessee companies and exemptions from the foreign and airline ownership provisions.
- ***Airports (Building Control) Regulations 1996***, which deal with the mandatory process for all building activity approvals and certificates of compliance.
- ***Airports (Environment Protection) Regulations 1997***, which deal with environmental management and protection.
- ***Airports (Control of On-Airport Activities) Regulations 1997***, which deal with the control of certain on-airport activities such as liquor, gambling, parking, smoking.
- ***Airports (Protection of Airspace) Regulations 1996***, which deal with the protection of airspace around airports.

Sunsetting review

The Airports Regulations, Airports (Ownership—Interests in Shares) Regulations, and Airports (Control of On-Airport Activities) Regulations are due to sunset on 1 April 2024, with the remaining instruments due to sunset on 1 April 2025, which means they will be repealed unless action is taken to remake them. Sunsetting provides a 'use-by date' for legislative instruments. It is an important mechanism for reducing red tape, delivering clearer laws and aligning existing legislation with best practice. The sunset 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.

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

While these instruments have been amended from time to time, they have never been holistically reviewed. A thematic review to streamline and modernise these instruments will ensure they remain fit for purpose for a rapidly changing aviation sector, and provide flexibility for the industry.

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) is undertaking a staged approach to reviewing these instruments before they sunset. This approach will allow for more detailed consideration of complex issues. The review is being staged as follows and each stage has an associated period of consultation:

- **Stage 1:** Cutting red tape, duplication, inconsistencies and reporting, leasing and management of airports and airport ownership (*Airports Regulations and Airports (Ownership—Interests in Shares) Regulations*). [Submissions closed](#). Next consultation process will be on the exposure draft of Regulations with proposed changes.
- **Stage 1b (former):** Modernising the Act including examining the definition of an airport site and infringement notice schemes (*all Regulations*). [Submissions closed](#). Feedback on the proposed changes was positive but also demonstrated a strong preference from stakeholders to be part of a more detailed development process for an updated enforcement framework. As a result, work on this stage has been split between other relevant stages.
- **Stage 2:** Streamlining Commonwealth responsibilities, control of on-airport activities (*Airports (Control of On-Airport Activities) Regulations*).
- **Stage 3:** Increasing flexibility and modernising environment protection, building control and protection of airspace (*Airports (Environment Protection) Regulations, Airports (Building Control) Regulations, Airports, (Protection of Airspace) Regulations*).
- **Stage 4:** Amendments to the Act.

In 2018, the Department engaged with stakeholders on changes to a number of legislative instruments relevant to airports, including the *Airports (Control of On-Airport Activities) Regulations 1997* (the Regulations). This feedback indicated there may be room to clarify, streamline and simplify the instruments, while reducing administrative burden on airport lessee companies (ALCs). This feedback has been considered when drafting proposed options and changes outlined in this consultation paper.

Purpose and outline of this paper

This consultation paper is for Stage 2 of the sunseting review. This stage will consider whether the *Airports (Control of On-Airport Activities) Regulations 1997* (the Regulations) remain fit for purpose, and what changes (if any) should be made.

The options in this paper are not government policy – they are examples to support the consultation process, which will inform decisions about necessary reforms (if any). Conferring any functions on other regulators (such as state or territory regulators) would be subject to their agreement.

This paper deals with each of the controlled on-airport activities (liquor, gambling, smoking, consumer trading hours and vehicles) in turn. Arrangements for the regulation of liquor in NSW leased federal airports will be considered separately. Each chapter outlines the issue and possible sunseting options, for consideration. These options are:

- Allow the Regulations to sunset, with relevant state or territory regulations to apply (if any).
- Remake the Regulations without substantive changes.
- Remake the Regulations with changes.

Environment protection, building control and airspace protection matters will be the subject of consultation in later stages.

[Attachment B](#) discusses the impacts of Gold Coast Airport's location (across the QLD-NSW border), and issues relating to laws that could apply under the current regulatory framework or as a result of any reforms.

Regulation Part	Details	Chapter of Paper
Part 1A	Controls the sale and supply of liquor in three NSW airports (Sydney (Kingsford-Smith) Airport, Bankstown Airport and Camden Airport).	N/A - to be considered separately
Part 2	Controls the sale and supply of liquor in leased federal airports outside NSW. Relevant state or territory liquor laws are applied in each state and territory (except NSW), with some adjustments.	Chapter 1
Part 3	Regulates consumer trading hours at leased federal airports, for example the hours or days that shops or restaurants can open. For some, the relevant state or territory law applies. For others (leased federal airports in NSW, Queensland, and SA, and Melbourne and Perth Airports), the relevant state law is modified or not applied, to reduce restrictions on trading hours for these airports.	Chapter 2
Part 4	Controls vehicle movements and parking on leased federal airports – some use local government regulation, while others operate under the Commonwealth Parking Infringement Notice Scheme (PINS) contained in the Regulations.	Chapter 3
Part 5	Prohibits gambling at leased federal airports, with two exceptions (based on existing gambling authorities, and regulated by the Commonwealth and the respective airport lessee companies).	Chapter 4
Part 6	Controls smoking activities on leased federal airports.	Chapter 5
Part 7	Provides for the issue of infringement notices related to on-airport activities on leased federal airports.	Chapter 6
Part 8	Enables the Secretary to delegate the Secretary's powers under the Regulations.	N/A

Responding to this paper

Public consultation on the stage 2 consultation paper will open on 16 September 2022 and will close on 19 October 2022 at 5:00pm AEDT. Please provide submissions to aviationreform@infrastructure.gov.au.

Respondents are encouraged to use [Attachment A](#) when responding to the policy questions and considerations of this paper. This may assist respondents to cover all questions to which they wish to reply. It will also assist in the Department's analysis in a timely manner.

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

The Department appreciates your engagement with this paper. Remaking the Regulations will be critical to determining the future regulatory setting as we establish fit-for-purpose regulations through the sunseting process and as the aviation sector emerges from COVID-19.

Please provide submissions or direct your questions to aviationreform@infrastructure.gov.au.

Alternatively, submissions may be made in hard copy to:

Attention: Director, Airport Reform and Sunsetting Section
Domestic Aviation Policy and Programs
GPO Box 594
CANBERRA ACT 2601

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

Privacy and confidentiality

Written submissions **will be made publicly available** in full on the Department's website unless you indicate that 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. Please clearly mark submissions as confidential at the top of the document.

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 B](#)). You are also welcome to provide submissions confidentially.

1: Liquor control in airports outside NSW

1.1 Overview

Part 2 of the Regulations outlines how the sale, supply, disposal or possession of liquor is to be controlled at leased federal airports outside NSW, with modifications to relevant state and territory liquor legislation provided in Part 2 and Schedule 1 of the Regulations. These modifications provide for transitional arrangements (such as recognition of existing authorities to sell liquor) and make other minor or technical adjustments to operation of the laws to enable their application as Commonwealth law on airport sites.

The sunseting of the Regulations provides an opportunity to determine if the current arrangements remain appropriate, and if any changes should be considered. Some examples of matters for consideration are:

- Whether all modifications of state and territory law continue to be required.
- Whether certain references may need to be updated. For example, modifications of the *Liquor Act 1978* of the Northern Territory (NT) in Parts 10 and 11 of Schedule 1 to the Regulations appear to be no longer effective following the passage of the NT's *Liquor Act 2019*. Liquor legislation of other states and territories may also have been updated in ways that require consequential changes to the Regulations.
- Whether the purpose of disparate requirements remains current or any harmonisation is required. Different requirements apply for different airports. For example, modifications are made to the Queensland *Liquor Act 1992* by the Regulations for the terminal areas of Gold Coast and Townsville airports, but not other leased federal airports in Queensland.

1.2 What policy options are being considered and what are their likely impacts?

1.2.1 Option 1: Allow the Regulations to sunset without being remade

This option would see Part 2 and Schedule 1 of the Regulations sunset on 1 April 2024 without any replacement.

The modifications to applied state and territory law made by Part 2 and Schedule 1 provide for transitional arrangements (such as recognition of existing authorities to sell liquor) and make other minor or technical adjustments to operation of the laws to suit application as Commonwealth law on airport sites. This option would remove those modifications to state and territory liquor law, which would have a range of effects (for example, those with existing authorities to sell liquor would lose these licences and be required to reapply under the relevant state or territory regime and pay associated fees). Where the modifications provide for a role of the ALC in the regulation and licencing for liquor, the ALC would lose that role. The regulatory framework for liquor on airport sites would mirror arrangements in the rest of the community.

Considering this option is an ordinary part of a sunseting review, and prompts consideration of whether all modifications of state and territory liquor laws continue to be required.

1.2.2 Option 2: Remake the Regulations without substantive changes

This option would see Part 2 and Schedule 1 of the Regulations be remade without substantive changes. This would maintain existing liquor authorities at leased federal airports and continue existing modifications to state and territory liquor laws in their application to leased federal airports.

To remake Part 2 and Schedule 1 of the Regulations without changes would be to continue regulatory arrangements stakeholders are already familiar with, and have operated under since privatisation. This option would also preserve existing authorities to sell liquor (and the rights associated with them) as outlined in the Regulations and ensure current liquor-related operations at airports are not disrupted.

This option could be a missed opportunity to make adjustments to the law, if required. There are opportunities to consider whether all modifications of state and territory law are appropriate, and whether the purpose of disparate requirements remains current or any harmonisation is required. Depending on whether problems are identified as part of this consultation, remaking the Regulations without changes could perpetuate identified problems.

This option would still involve a minimum of necessary technical changes being made, such as to update legislative references, like for NT liquor legislation. This case is a clear indication of need for technical updates to the Regulations – and there may be other similar situations.

1.2.3 Option 3: Remake the Regulations with changes

This option would have Part 2 and Schedule 1 of the Regulations be remade with changes, based on consideration of matters including whether all modifications of state and territory law continue to be required, and whether the purpose of disparate requirements remains current or any harmonisation is required. Like option 2, the Department would also consider necessary technical changes such as updates to legislative references.

To remake Part 2 and Schedule 1 of the Regulations with such changes of a limited nature would maintain existing policy in relation to liquor control at airports outside NSW, and support its efficient and effective implementation. Specific risks and benefits of this option depend on the nature of changes proposed.

The Department encourages respondents to identify what updates to Part 2 and Schedule 1 they believe to be required.

Questions:

1. How appropriate do you think the current regulatory settings are for liquor in leased federal airports outside NSW? What works well? What needs to be fixed?
2. What is your preferred sunseting option (sunseting without remaking, remaking without substantive changes, or remaking with changes)? Why?
3. Are there any modifications of state or territory liquor laws, or other provisions of the Regulations relating to the control of liquor outside NSW (Part 2 or Schedule 1 of the Regulations), that are no longer required? If so, what are they and why?
4. Are there any modifications of state or territory liquor laws, or other provisions, that are out of date or ineffective and so require updating? If so, what are they and why? What is the nature of the update required?
5. What disparate requirements (for example, different requirements that apply to different airports within a state or territory, or to different parts of an airport such as the terminal area only) need harmonisation, if any? What would be the impacts of this harmonisation?

2: Consumer trading hours

2.1 Overview

Part 3 of the Regulations deals with consumer trading hours at leased federal airports. For some, the relevant state or territory law applies. For others (leased federal airports in NSW, QLD, and SA, and Melbourne and Perth Airports), the relevant state law is modified or not applied, to reduce restrictions on trading hours for these airports. This is in recognition that the nature of the service that these airports provide requires more flexible trading hours than were afforded in the relevant state regulations at the time of privatisation. The Regulations also include existing (pre-privatisation) trading authorisations.

As part of the sunset review, the current arrangements will be re-examined to determine if they are still appropriate, and if changes in state and territory consumer trading hours since the Regulations were made are likely to accommodate the nature of these airports' operations.

In this paper, where we refer to trading hours, we mean rules about whether a consumer trading business (e.g., a shop or restaurant) can open at a particular time, or on a particular day such as a public holiday.

2.2 What policy options are being considered and what are their likely impacts?

2.2.1 Option 1: Allow the Regulations to sunset

This option would see Part 3 of the Regulations sunset on 1 April 2024, with consumer trading hours to be regulated by applied state or territory laws on all leased federal airports. Existing transitional arrangements would be extinguished.

Allowing Part 3 of the Regulations to sunset would remove current deregulation of consumer trading hours at NSW, QLD and SA leased federal airports, as well as Melbourne and Perth Airports as prescribed in the Regulations. This will standardise consumer trading regulations within jurisdictions. This may remove the competitive edge that some on-airport and off-terminal businesses may have compared to nearby businesses not located on airport land, who must operate entirely under state and territory consumer trading laws. However, this may impose limitations on consumer trading hours (and associated trading opportunities) for terminal businesses where no such limitations have been in place. It may also impact consumers who rely on terminal businesses at unusual hours, due to the nature of airport operations.

Any transfer of regulatory responsibility from the Commonwealth to relevant state and territory authorities would need the agreement of every relevant government. There may need to be transitional arrangements for existing businesses impacted by a change. Sunsetting of the Regulations could potentially complicate this, as the transfer would occur on a set date (1 April 2024) without flexibility or transitional provisions.

Considering this option is an ordinary part of a sunset review, and prompts consideration of whether the existing regulatory arrangements for consumer trading hours are appropriate and fit for purpose.

2.2.2 Option 2: Remake the Regulations without substantive changes

The option to remake Part 3 of the Regulations without changes would see the current arrangements be carried forward in their current state. This would include preserving existing trading authorities and current consumer trading hours regulations, notably at NSW, QLD and SA leased federal airports, as well as Melbourne and Perth airports.

The Regulations recognise that the nature of airport operations at some airports presents the need for additional consumer trading opportunities than what may be afforded by relevant state or territory legislative frameworks. Remaking the regulations without substantive changes would maintain this recognition. It would also preserve existing authorities and provide affected stakeholders with the confidence that current consumer trading arrangements in the Regulations will not change as a result of the sunseting process.

This option could also be a missed opportunity to make adjustments to the law, as required. Possible adjustments are explored under option 3 below. Depending on whether problems are identified as part of this consultation, remaking the Regulations without changes could perpetuate identified problems.

This option would still involve a minimum of necessary technical changes being made, if required. These would maintain the policy intent but rectify minor or technical problems (such as updates to legislative references).

2.2.3 Option 3: Remake the Regulations with changes

This option involves remaking Part 3 of the Regulations with changes. This could involve changes to the existing disapplication or modification of applied state or territory consumer trading hours laws at leased federal airports in NSW, QLD and SA, as well as Melbourne and Perth airports. It could also involve making adjustments to applied consumer trading hours laws at other leased federal airports where relevant state or territory laws apply, if required.

This is an opportunity to consider whether all exemptions to state and territory consumer trading laws continue to be required. Since privatisation, state and territory consumer trading hours have generally become less regulated, with greater flexibility afforded to a wider range of businesses for the hours that they can trade with consumers. Some exemptions could now be redundant. For example, Queensland's *Trading (Allowable Hours) Act 1990* has been amended over time to liberalise consumer trading hours, with an exemption inserted in 2017 to provide exemptions for shops in international airport terminals from trading hours restrictions.

There is a need to consider whether the application of NSW consumer trading laws require adjustment for Western Sydney International (Nancy-Bird Walton) Airport in a similar way as they are for Sydney (Kingsford-Smith) Airport (by providing that trading may occur on public holidays), or whether other legislative arrangements are required. Currently, NSW consumer trading laws would apply to the Western Sydney International (Nancy-Bird Walton) Airport without modification – some businesses on the airport site, including in the terminal, could be subject to trading hours restrictions such as limitations on public holiday trading. This may not be consistent with the intended operation of the airport. Replication of the trading hours exemption for Sydney (Kingsford-Smith) Airport is one option. An alternative may be for exemptions to be provided under NSW law (there is a mechanism in the *Retail Trading Act 2008* that might be able to be used for this purpose, although its practicality would need to be explored). As noted below, it would also be appropriate to consider whether exemptions are required for the whole airport site, or only the terminal area. Necessary legislative arrangements could be settled as part of the sunseting review or over a longer timeframe if required.

It may be relevant to consider the difference between the needs of businesses in the terminal area, compared to the rest of the terminal site. Exemptions to trading hours restrictions could come with some limited economic advantages for businesses located on airport land, and which compete with businesses located off airport land for a similar customer base (this mostly concerns businesses located outside the airport terminal, but still located on airport land). Therefore, the area to which the exemption applies (for example, the whole of the airport site, or a narrower exemption such as for the terminal area) is a matter to take into account when considering changes to the Regulations.

Impacts on arrangements for existing businesses would need to be considered carefully, and transitional arrangements (e.g., 'grandfathering') put in place as necessary.

The Department encourages respondents to identify what updates to Part 3 of the Regulations they believe to be required.

Questions:

6. How appropriate do you think the current regulatory settings are for consumer trading hours in leased federal airports? What works well? What needs to be fixed?
7. What is your preferred sunseting option (sunseting without remaking, remaking without substantive changes, or remaking with changes)? Why?
8. Should the Regulations include any new provisions (e.g., exemptions to consumer trading hours for Western Sydney International (Nancy-Bird Walton) Airport)? What would be the impact on your operations if the provisions were or were not included?
9. If you think it is appropriate for exemptions to continue to apply (or new exemptions to apply) under the Regulations to state or territory consumer trading restrictions, should these apply to the whole of the airport site, or only the terminal area? Why? Would your views be different if any change only impacted new businesses trading on the airport site?
10. Are there any provisions in the Regulations relating to consumer trading hours (e.g., exemptions to state laws) that are no longer required? If so, what are they and why?
11. Are there any provisions in the Regulations relating to consumer trading, that are out of date or ineffective and so require updating? If so, what are they and why? What is the nature of the update required?

3: Landside Vehicle Parking

3.1 Overview

Division 2 of Part 4 of the Regulations controls the operations and parking of vehicles within the landside area of leased federal airports. Previous feedback has indicated that improvements could be made to landside traffic management and that there are enforceability issues with the traffic management regulations within the landside area.

There is currently two ways that a leased federal airport is regulated under this Division, either under the Parking Infringement Notice Scheme (PINS) which is regulated by the Australian Government, or under the operation of state law (local government regulations). A list of the PINS airports and non-PINS airports can be found in **Appendix A** for your information.

Non-PINS airports fall under the authority of their respective state and territory parking or road control framework similar to airports not regulated by the *Airports Act 1996* (Newcastle, Cairns, Avalon airports etc). There may be further review required as Western Sydney International (Nancy-Bird Walton) Airport nears completion, as currently it is not regulated as a PINS airport, which will mean that the landside area of the airport will be regulated by NSW state vehicle control regulation (or local government regulation if applicable).

The sunseting of the Regulations provides an opportunity to determine if the current arrangements remain appropriate, and if any changes could be considered.

3.2 What policy options are being considered and what are their likely impacts?

3.2.1 Option 1: Allow the Regulations to sunset

Allowing this Division of the Regulations to sunset would result in traffic management on the leased federal airports being subject to a mix of Commonwealth and state and territory laws. Certain Commonwealth laws managing traffic on the leased federal airports, such as the *Aviation Transport Security Act 2004*, would still apply alongside the general parking rules of each state and territory jurisdiction.

While this would remove the obligations under the Regulations, it is unlikely to reduce the number of rules that airports and their users would need to follow, as the parking rules in each state and territory are similar in nature to those contained in the Division.

This option could also result in greater regulatory oversight from state and territory government entities and administrative arrangements would need to be established to manage certain aspects such as the treatment of monies collected by non-Commonwealth entities or officials and judicial jurisdiction.

By allowing Division 2 of the Regulations to sunset, states and territory governments would assume regulatory oversight of landside vehicle parking at the leased federal airports listed in List 1 of **Appendix A**. State and territory governments already regulate landside vehicle parking at airports listed in List 2 of **Appendix A**, illustrating the capability that states and territories already have in regulating vehicles on leased federal airports.

By allowing Division 2 of the Regulations to sunset, state and territory governments would become the primary regulators of all parking and vehicle operations within the landside area of leased federal airports.

Considering this option is an ordinary part of a sunseting review, and prompts consideration of whether the existing arrangements for landside vehicle control are appropriate and fit for purpose.

3.2.2 Option 2: Remake the Regulations without substantive changes

The option to remake Division 2 of Part 4 of the Regulations without substantial changes would see the current arrangements carried forward in their current state. This would include preserving the existing list of PINS and non-PINS airports and their regulatory frameworks.

The Regulations provide a level of flexibility that means airports have the option to control landside parking in line with the unique and specific operations of their business. This acknowledges the key role airports have in managing both the safety of their visitors and the operational throughput of their business.

Remaking the Division would retain all current authorities and authorisations that are currently in place, this would include authorised persons, signage and standard operating procedures.

This option may still see some minor technical non-substantial amendments to correct either out of date or incorrect content that may be observed.

3.2.3 Option 3: Remake the Regulations with changes

This option would have Division 2 of Part 4 of the Regulations remake with changes, these changes could include updates to reflect changes in the Australian Road Rules, improved enforcement provisions and more streamlined authorisation among others. This option would largely retain the current split of PINS and non-PINS airports but could strengthen the current arrangements available to airports that are using the PINS framework.

The Regulations were drafted in 1996 and since then there has been significant updates to the Australian Road Rules to reflect changes in expectations and safety developments in the community. This option could reflect some of these changes. This option could may also provide the opportunity to expand the vehicle controls that are covered by the Regulations.

This option would likely require significant further consultation to make sure that any amendments are appropriate and reflect best practice vehicle controls nationally.

Questions:

12. Should the PINS framework continue in its current form? Why?
13. What are the benefits (or issues) to your business of the current arrangements at the airport you are located at or you manage? (PINS or non-PINS)
14. What additional changes would make this Regulation work better if it was retained?
15. What benefits (or issues) would there be from the use of state and territory regulations?

4: Airside Vehicles

4.1 Overview

Division 3 and 4 of Part 4 of the Regulations controls the operations and parking of vehicles within the airside area of airports (the airside area is prescribed by the ALC and generally is made up of the non-public aviation side of an airport). Previous feedback has indicated that the airside controls are working roughly as intended and provide a generally consistent national approach at all federally leased airports.

The airside area of an airport has significant regulatory frameworks established under a number of Commonwealth laws, including the *Aviation Transport Security Act 2004*, the *Civil Aviation Act 1988* and the *Customs Act 1901*. Division 3 and 4 of Part 4 of the Regulations provide improved safety and vehicle management alongside these and other airside controls. All leased federal airports are subject to these Divisions.

The sunseting of the Regulations provides an opportunity to determine if the current arrangements remain appropriate, and if any changes should be considered.

4.2 What policy options are being considered and what are their likely impacts?

4.2.1 Option 1: Allow the Regulations to sunset

Allowing Division 3 and 4 of Part 4 of the Regulations to sunset would result in traffic management on the leased federal airports no longer being fully covered by a legislative framework as generally the airside area is not publicly accessible. This could have significant enforceability issues as the ALC would not have an established legislative framework to use when observing non-compliance.

This option would significantly reduce the vehicle control provisions covering the area. Given the sensitive nature of airside operations, the Australian Government would need to maintain other regulatory functions in the airside area.

This option would likely not result in greater regulatory oversight from state and territory government entities and administrative arrangements would need to be established by the ALC to manage non-compliance with their own rules. The ALC may not be able to collect monies for penalties against their own rules.

By allowing these Divisions to sunset there may no longer be a consistent framework for the management of airside vehicles other than obligations under other legislative regimes.

Considering this option is an ordinary part of a sunseting review, and prompts consideration of whether the existing arrangements for airside vehicle control are appropriate and fit for purpose.

4.2.2 Option 2: Remake the Regulations without substantive changes

The option to remake Division 3 and 4 of Part 4 of the Regulations without substantial changes would see the current arrangements carried forward in their current state. This would mean that all leased federal airports would continue being regulated by the Australian Government.

The Regulations provide a level of flexibility that means airports have the option to control airside vehicles in line with their Airside Vehicle Control Handbook. This acknowledges the key role airports have in managing both the safety of their visitors and the operational throughput of their business.

Remaking these Divisions would retain all current authorities and authorisations that are currently in place, this would include authorised persons, signage and the Airside Vehicle Control Handbook.

This option may still see some minor technical non-substantial amendments to correct either out of date or incorrect content that may be observed.

4.2.3 Option 3: Remake the Regulations with changes

This option would have Divisions 3 and 4 of Part 4 of the Regulations remade with changes, these changes could include updates to reflect updates in the Australian Road Rules, improved enforcement provisions and more streamlined authorisation among others.

The Regulations were drafted in 1996 and since then there has been significant updates to the Australian Road Rules to reflect changes in expectations and safety developments in the community. This option could reflect some of these changes. This option could also provide the opportunity to expand the vehicle controls that are covered by the Regulations.

This option would likely require significant further consultation to make sure that any amendments are appropriate and reflect best practice vehicle controls nationally.

Questions:

16. Should airside vehicle controls be nationally consistent? Why?
17. Would there be an impact in your operations if the airside vehicle control Regulations were allowed to sunset?
18. What additional changes would make this Regulation work better if it was retained?

5: Gambling

5.1 Overview

Part 5 of the Regulations currently prohibits gambling at leased federal airports, with limited exceptions based on existing gambling authorities (e.g., for the sale of lottery tickets at Melbourne Airport and operation of gaming machines at Parafield Airport). These sites are regulated by the Commonwealth and the respective airport lessee companies. This section seeks to explore potential alternatives and improvements.

5.2 What policy options are being considered and what are their likely impacts?

5.2.1 Option 1: Allow the Regulations to sunset

Under this option, Part 5 of the Regulations would sunset and not be replaced, which would result in gambling activities being regulated under the relevant laws of each state and territory. This would result in the removal of the blanket prohibition on gambling that currently exists for the leased federal airports. It would also mean any existing authorities for gambling (those at Parafield Airport and Melbourne Airport) would be extinguished, and those operators could be required to reapply for permissions for those gambling activities under state law.

This option would ensure that gambling on leased federal airports is regulated in a manner that is consistent with the community expectations of the state or territory they reside in. These gambling activities would be managed by state and territory governments who are specialists in regulating these activities – bringing valuable expertise in managing the complex regulatory matters raised by gambling. The lifting of the ban would likely see a substantial increase in gambling activities permitted on leased federal airports, which would have a range of associated community impacts, including possible health and wellbeing impacts.

Any transfer of regulatory responsibility from the Commonwealth to state and territory gambling regulators (as this option would involve) would need to be made with the agreement of every relevant government. Sunsetting of the Regulations would complicate this, as the transfer would occur on a set date (1 April 2024) without flexibility, and without any transitional provisions, and potentially without the requisite agreement from states and territories.

Considering this option is an ordinary part of a sunset review, and prompts consideration of whether the existing prohibition on gambling at leased federal airports, with the exception of the existing authorities at Parafield Airport and Melbourne Airport, is appropriate and fit for purpose.

5.2.2 Option 2: Remake the Regulations without substantive changes

Under this option Part 5 of the Regulations would be remade in their current form. ALCs and licensed gambling operators would continue to operate under regulations they are familiar with. The regulatory burden would remain the same, with gambling activities prohibited, except specific activities on Parafield and Melbourne Airports under existing authorities. To remake the Regulations without substantive changes could be to miss an opportunity for reforms outlined under option 3.

5.2.3 Option 3: Remake the Regulations with changes

This option would have Part 5 of the Regulations be remade with changes, based on consideration of matters including:

- the adequacy of current Regulation of current gambling activities under existing authorities at Parafield Airport and Melbourne Airport
- the appropriateness of a continuing ban on gambling activities at leased federal airports
- whether there are any provisions under Part 5 that are no longer required, or need to be updated.

To remake Part 2 and Schedule 1 of the Regulations with such changes could have various impacts for different regulated entities and other stakeholders. Specific risks and benefits of this option depend on the nature of changes proposed.

One change that could be considered is to maintain the gambling prohibition, and provide for state oversight of gambling activities under existing authorities. The Commonwealth would need to engage with relevant state authorities and licence holders to settle transitional arrangements, as necessary and as supported by the state authorities, for the regulation of those entities.

Like the sunseting option, this would enable gambling activities that occur on leased federal airports to be regulated in a way that reflects community expectations. These gambling activities would be managed by state and territory governments who are specialists in regulating these activities – bringing valuable expertise in managing the complex regulatory matters raised by gambling. The ban for any other gambling activities could be maintained.

Questions:

19. How appropriate do you think the current regulatory settings are for gambling in leased federal airports? What works well? What needs to be fixed?
20. What is your preferred sunseting option (sunseting without remaking, remaking without substantive changes, or remaking with changes)? Why?
21. Would you support the lifting of the gambling prohibition? What impacts would an increase in gambling activities on leased federal airports have?
22. Would you support the transfer of regulatory responsibilities for gambling activities under existing authorities to the relevant South Australian and Victorian government authorities?
23. Are there any provisions relating to the control of gambling (Part 5 of the Regulations), that are no longer required? If so, what are they and why?
24. Are there any provisions relating to the control of gambling (Part 5 of the Regulations), that are out of date or ineffective and so require updating? If so, what are they and why? What is the nature of the update required?

6: Smoking

6.1 Overview

Part 6 of the Regulations controls smoking at all leased federal airports except Mount Isa and Tennant Creek airports. Currently this allows the ALC for a leased federal airport to decide areas that are designated as no-smoking areas. Authorised persons are able to issue an infringement notice to a person who contravenes a no-smoking area requirement.

The sunset of the Regulations provides an opportunity to review whether the current control of smoking regulations is fit for purpose. Prior feedback has indicated there could be gaps for airside operators, and that the Regulations could benefit from better enforceability provisions.

6.2 What policy options are being considered and what are their likely impacts?

6.2.1 Option 1: Allow the Regulations to sunset

Under this option Part 6 of the Regulations would be allowed to sunset and allow relevant state and territory governments to regulate smoking on leased federal airports.

This option would see Part 6 of the Regulations be allowed to sunset. This would enable relevant state and territory smoking regulations to be applied as Commonwealth law at leased federal airports through the *Commonwealth Places (Application of Laws) Act 1970*.

In general, the smoking rules at the leased federal airports can be consistent with the rules of each state and territory jurisdiction if the ALC creates consistent no-smoking areas (that is there is no blanket prohibition on smoking indoors such as within licensed venues and restaurants), there is a general alignment of the rules between the various state and territory government frameworks (e.g., smoking is generally prohibited in enclosed public spaces).

Since the Regulations were drafted, expectations and behaviours of the community have changed in relation to smoking. Even if the obligations were removed the change in community norms and behaviours would likely not see a significant change in people's behaviours or level of compliance.

Sunsetting the Regulations would also mean that smoking would be regulated by a more appropriate and modern legislative framework. This could include a more responsive regulatory framework that reflects changes in the way that people choose to smoke, such as vaping and secondary smoking restrictions.

It is expected that airport users would experience minimal change in smoking rules if Part 6 were allowed to sunset. Similar to arrangements that exist for private airports, administrative processes would need to be established to allow the operators of leased federal leased airports to enforce relevant smoking rules.

6.2.2 Option 2: Remake the Regulations without substantive changes

Under this option Part 6 of the Regulations would be remade as they currently exist. The current Regulations are well known to airports and their users generally obey the obligations without knowing the limitations. This option is expected to provide a continued stable operating environment.

The Regulations provide a level of flexibility that means ALCs have the option to control where a no-smoking area should be located that is appropriate for the operations of the airport. This acknowledges the key role airports have in managing the safety of their visitors while still giving clarity to those who smoke.

If unchanged, there may be regulatory confusion amongst those who smoke and those who enforce smoking regulations in shared precincts that are both on the airport site and off-airport.

6.2.3 Option 3: Remake the Regulations with changes

Under this option Part 6 of the Regulations would be remade with changes to more appropriately reflect the modern smoking regulations on leased federal airports.

Under this option Part 6 of the Regulations would be remade to more closely reflect changes in laws which govern smoking in Australia. The current provisions allowing ALCs to manage the smoking would remain, as would the ability of the Secretary of the Department to appoint authorised persons to manage smoking activities on the airports.

Under this option amendments could include reflecting more modern legislative frameworks. This could include obligations that reflects changes in the way that people choose to smoke, such as 'vaping' and secondary smoking restrictions.

This option would have the effect of updating the Regulations to reflect changes in community attitudes, such as explicitly restricting smoking within the terminal and restaurants for example. It would mean that Regulations continue to provide clarity on what laws apply on the leased federal airports while reflecting the use of more modern smoking rules that have been enacted by state and territory governments.

Questions:

25. Do the current smoking regulations adequately control smoking on the airports?
26. Are the penalties appropriate for contravention of smoking rules?
27. What additional changes would make this Regulation work better if it was retained?
28. Would state and territory governments need to make changes to their frameworks if this Regulation were to sunset?

7: Infringement Notices

7.1 Overview

Part 7 of the Regulations prescribes an infringement notice framework that covers all offences within the Regulations. The Part gives the power to authorised persons, for each offence provision, to issue an infringement notice for each offence. The Part outlines how an infringement notice can be served, what the notice must contain and what happens when a notice penalty is paid. It also provides for evidentiary matters, prosecution and liability.

The infringement notice scheme is intentionally broad to cover the diverse penalties that are within the Regulations, this does mean that some penalty provisions may not be as flexible as others. The infringement notice scheme was drafted prior to the establishment of modern general infringement frameworks such as Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*. This means that there are some improvements to the framework that can be made to provide more clarity to authorised persons and people who are issued an infringement notice under these Regulations.

Making significant amendments to the infringement notice scheme may require changes to the *Airports Act 1996*. This is likely to be outside the timeframe and immediate scope of the sunseting project, but the review will inform future reforms to the regulatory framework.

7.2 What policy options are being considered and what are their likely impacts?

7.2.1 Option 1: Allow the Regulations to sunset

Under this option Part 7 of the Regulations would be allowed to sunset, resulting in authorised persons no longer being able to issue the infringement notices contained in the various other parts of the Regulations. This would also result in the removal of the administrative process for the infringement notice offences, including when an infringement notice can be issued, how the notice would be issued and the allowed period.

While the provisions relating to the offences would continue, the cessation of Part 7 removes the ability to enforce those offences without going to court.

Considering this option is an ordinary part of a sunseting review, and prompts consideration of whether the existing arrangements for smoking are appropriate and fit for purpose. This option may be more viable in a future situation where Part 7 could be replaced by a more modern compliance and enforcement framework in the Act.

7.2.2 Option 2: Remake the Regulations without substantive changes

Under this option Part 7 of the Regulations would be remake without changes, providing a continued Australian Government compliance structure for penalties in these Regulations. This ensures ALCs, airport users, enterprises and stakeholders continue to operate under familiar regulations.

The objective of Part 7 of the Regulations is to enable the enforcement of the various infringement notice offences in the Regulations. Any changes to it should reflect changes to the substance of the other Parts of the Regulations or the overall infringement framework under the Act which is being considered as part of this review.

7.2.3 Option 3: Remake the Regulations with changes

Under this option Part 7 of the Regulations would not be allowed to sunset and would instead be remade with changes to ensure the Regulations remain fit-for-purpose and reduce unnecessary regulatory burden. These changes would reflect any other proposed changes to on-airport activities included in this paper.

Minor amendments to allow for a more responsive infringement notice scheme could improve the framework without making significant changes. Any significant changes could be considered in line with a more modern compliance and enforcement framework in the Act, and could streamline obligations and reduce regulatory burden for industry and airport users.

Appendix A – Leased federal airports – PINS status

The following table lists each leased federal airport, and whether it is covered by a Parking Infringement Notice Scheme (see section 3 on landside vehicle parking for more details).

PINS Airports	Non-PINS Airports
Sydney Airport	Sydney West Airport
Melbourne Airport	Adelaide Airport
Brisbane Airport	Alice Springs Airport
Perth Airport	Canberra Airport
Hobart International Airport	Darwin International Airport
Gold Coast Airport	Archerfield Airport
Townsville Airport	Bankstown Airport
Launceston Airport	Camden Airport
	Essendon Fields Airport
	Jandakot Airport
	Moorabbin Airport
	Mount Isa Airport
	Parafield Airport
	Tennant Creek Airport

Appendix B – Privacy statement

Any personal information supplied in your submission is collected by the department, in accordance with the Privacy Act 1988 (the Privacy Act). Personal information may be needed by the department 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.