



# **Airports Act 1996**

## **Act No. 42 of 1996 as amended**

This compilation was prepared on 1 March 2004  
taking into account amendments up to Act No. 134 of 2003

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# **An Act about airports**

## **Part 1—Introduction**

### **1 Short title** [see Note 1]

This Act may be cited as the *Airports Act 1996*.

### **2 Commencement** [see Note 1]

This Act commences on the day on which it receives the Royal Assent.

### **3 Objects**

The objects of this Act are as follows:

- (a) to promote the sound development of civil aviation in Australia;
- (b) to establish a system for the regulation of airports that has due regard to the interests of airport users and the general community;
- (c) to promote the efficient and economic development and operation of airports;
- (d) to facilitate the comparison of airport performance in a transparent manner;
- (e) to ensure majority Australian ownership of airports;
- (f) to limit the ownership of airports by airlines;
- (g) to ensure diversity of ownership and control of certain major airports;
- (h) to implement international obligations relating to airports.

#### 4 Simplified outline

The following is a simplified outline of this Act:

- This Act sets up a system for regulating airports.
- A Commonwealth-owned airport can only be leased to a company. The company is called an *airport-lessee company*.
- There will only be one airport-lessee company for each airport and the company will not be allowed to lease another airport.
- An airport-lessee company's sole business will be to run the airport.
- An airport-lessee company can contract out the management of the airport to another company. The other company is called an *airport-management company*.
- This Act uses the term *airport-operator company* to cover both airport-lessee companies and airport-management companies.
- Airport-operator companies are subject to the following ownership restrictions:
  - (a) a 49% limit on foreign ownership;
  - (b) a 5% limit on airline ownership;
  - (c) a 15% limit on cross-ownership for Sydney/Melbourne, Sydney/Brisbane and Sydney/Perth airports.

- For each airport, there will be an airport master plan.
- Major development plans will be required for significant developments at airports.
- Building activities on airport sites will require approval.
- Buildings and structures on airport sites must be certified as complying with the regulations.
- For each airport, there will be an environment strategy.
- The regulations may deal with environmental standards at airport sites.
- An airport-operator company may be required to give accounts and reports to the Australian Competition and Consumer Commission.
- The Australian Competition and Consumer Commission will monitor the quality of airport services and facilities.
- Airport-lessee companies must give written consent before airport sites are varied or closed.
- The regulations may implement certain international agreements relating to airports.

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- The regulations may deal with the control of the following matters at airports:
  - (a) liquor;
  - (b) commercial trading;
  - (c) vehicle movements;
  - (d) gambling;
  - (e) smoking.
- The regulations may control intrusions into prescribed airspace around airports.
- An airport service will be a declared service for the purposes of the access regime set out in Part IIIA of the *Trade Practices Act 1974* unless an access undertaking is given within 12 months after responsibility for the airport is transferred to the private sector.
- The Minister may formulate demand management schemes for airports.
- Airservices Australia will generally oversee the provision of air traffic services and rescue and fire fighting services at airports.

## 5 Definitions

In this Act, unless the contrary intention appears:

**ACCC** means the Australian Competition and Consumer Commission.

**agreement** means any agreement, whether formal or informal and whether express or implied.

***aircraft*** means a machine or craft that can derive support in the atmosphere from the reactions of the air.

***aircraft movement*** means:

- (a) the landing of an aircraft at an airport; or
- (b) the taking off of an aircraft from an airport.

***airline*** means a person who carries on a commercial air transport enterprise that involves offering or operating scheduled or chartered air services.

***airport*** means an airport in Australia.

***airport capacity declaration*** has the meaning given by section 195.

***airport lease***:

- (a) means a lease of the whole or a part of an airport site, where the Commonwealth is the lessor; and
- (b) when used in relation to an airport—means a lease of the whole or a part of the airport site of the airport, where the Commonwealth is the lessor.

***airport-lessee company*** means a company that holds an airport lease.

***airport-management agreement*** has the meaning given by section 33.

***airport-management company*** means a company that is a party to an airport-management agreement with an airport-lessee company.

***airport-operator company*** means an airport-lessee company or an airport-management company.

***airport site*** means a place that is:

- (a) declared by the regulations to be an airport site; and
- (b) a Commonwealth place; and

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- (c) used, or intended to be developed for use, as an airport (whether or not the place is used, or intended to be developed for use, for other purposes).

Note: The boundaries of an airport site are ascertained in accordance with the regulations.

**Australia**, when used in a geographical sense, includes the external Territories.

**Commonwealth place** means:

- (a) a Commonwealth place within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*; or  
(b) a place in a Territory, where the place is owned by the Commonwealth.

**company** means a body corporate.

**constitutional corporation** means a corporation to which paragraph 51(xx) of the Constitution applies.

**core regulated airport** has the meaning given by section 7.

**declared capacity**, in relation to an airport, has the meaning given by section 195.

**demand management scheme** has the meaning given by section 201.

**draft environment strategy** means a draft environment strategy under Division 2 of Part 6.

**draft master plan** means a draft master plan under Division 3 of Part 5.

**engage in conduct** means:

- (a) do an act; or  
(b) omit to perform an act.

**Federal Court** means the Federal Court of Australia.

**final environment strategy** means a final environment strategy under Division 2 of Part 6.

***final master plan*** means a final master plan under Division 3 of Part 5.

***interest***, in relation to an airport lease, means a right or interest, whether legal or equitable, in the airport lease, by whatever term called, and includes an option to acquire such a right or interest in the airport lease, but to avoid doubt, does not include, and is taken never to have included:

- (a) a sublease; or
- (b) a licence; or
- (c) an easement or other incorporeal hereditament; or
- (d) a restrictive covenant.

***international air transport*** means air transport between a place in Australia and a place outside Australia.

***interstate air transport*** includes air transport between a State and a Territory or between 2 Territories.

***joint-user airport*** has the meaning given by section 7B.

***lender***, in relation to a loan security, means the person who is entitled to enforce the security.

***lending money*** includes providing non-equity finance where the provision of the finance may reasonably be regarded as equivalent to lending money.

***loan security*** means a security held solely for the purposes of a moneylending agreement.

***major development plan*** means a major development plan under Division 4 of Part 5.

***moneylending agreement*** means an agreement entered into in good faith in the ordinary course of carrying on a business of lending money, but does not include an agreement dealing with any matter unrelated to the carrying on of that business.

***pair of airport-operator companies*** has the meaning given by section 49.

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**qualified company** means a company that:

- (a) is a constitutional corporation; and
- (b) is incorporated, or taken to be incorporated, under the *Corporations Act 2001*; and
- (c) has a share capital.

**scheme** means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

**significant ANEF levels** means a noise above 30 ANEF levels.

**this Act** includes the regulations.

**unacceptable airline-ownership situation** has the meaning given by section 44.

**unacceptable cross-ownership situation** has the meaning given by section 50.

**unacceptable foreign-ownership situation** has the meaning given by section 40.

Note: The Schedule sets out definitions of expressions used in Part 3 (which deals with ownership restrictions).

## 6 Sydney West Airport

For the purposes of this Act, Sydney West Airport is taken to be an airport at a particular time even if, at that time, it is:

- (a) merely intended to be developed for use as an airport; or
- (b) being developed for use as an airport.

## 7 Meaning of *core regulated airport*

- (1) For the purposes of this Act, each of the following airports is a **core regulated airport**:

- (a) Sydney (Kingsford-Smith) Airport;
  - (b) Sydney West Airport;
  - (c) Melbourne (Tullamarine) Airport;
  - (d) Brisbane Airport;
  - (e) Perth Airport;
  - (f) Adelaide Airport;
  - (g) Coolangatta Airport;
  - (h) Hobart Airport;
  - (i) Launceston Airport;
  - (j) Alice Springs Airport;
  - (k) Canberra Airport;
  - (l) Darwin Airport;
  - (m) Townsville Airport;
  - (n) an airport specified in the regulations, where the site of the airport is a Commonwealth place.
- (2) For the purposes of paragraph (1)(n), the boundaries of the site of an airport are to be ascertained in accordance with the regulations.

#### **7A Transfers and acquisitions by way of the enforcement of a loan security**

- (1) A reference in this Act to a transfer by way of the enforcement of a loan security is a reference to a transfer to the lender by way of the enforcement of the loan security.
- (2) A reference in this Act to an acquisition by way of the enforcement of a loan security is a reference to the acquisition by the lender by way of the enforcement of the loan security.
- (3) This section is enacted for the avoidance of doubt.

#### **7B Meaning of *joint-user airport***

- (1) For the purposes of this Act, each of the following airports is a ***joint-user airport***:
- (a) Darwin Airport;
  - (b) Townsville Airport;

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- (c) an airport specified in the regulations, where the site of the airport is a Commonwealth place.
- (2) For the purposes of this Act, Canberra Airport is a *joint-user airport*. However, the regulations may declare that, for the purposes of this Act, Canberra Airport ceases to be a joint-user airport at a specified time.
- (3) For the purposes of paragraph (1)(c), the boundaries of the site of an airport are to be ascertained in accordance with the regulations.

**8 Crown to be bound**

- (1) This Act binds the Crown in the right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

**9 External Territories**

This Act extends to all the external Territories.

**10 Extra-territorial operation**

This Act extends to acts, omissions, matters and things outside Australia, whether or not in a foreign country.

**10A Application of the *Criminal Code***

Chapter 2 (except Part 2.5) of the *Criminal Code* applies to all offences created by this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Part 2—Leasing and management of airports**

### **Division 1—Simplified outline**

#### **11 Simplified outline**

The following is a simplified outline of this Part:

- Airport leases are subject to the following key rules:
  - (a) the lessee must be a company;
  - (b) the term of the lease must not be longer than 50 years (with or without an option to renew for up to 49 years);
  - (c) the lease must provide for access by interstate and/or international air transport;
  - (d) a company can only lease one airport.
- The airport-lessee companies for Sydney (Kingsford-Smith) Airport and Sydney West Airport must be wholly-owned subsidiaries of the same holding company.
- Airport leases can only be transferred with the Minister's approval.
- The beneficial and legal interests in an airport lease cannot be separated except in the case of the enforcement of a loan security.

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- If a lender acquires a lease, or enters into possession of an airport site, by way of the enforcement of a loan security, the lender must:
  - (a) notify the Minister; and
  - (b) transfer the lease to another company.
- An airport-lessee company has a statutory obligation to use the airport site as an airport.
- An airport-lessee company's sole business will be to run the airport.
- An airport-lessee company can contract out the management of the airport to another company. The other company is called an *airport-management company*. An airport-management company must be approved by the Minister.
- The regulations may prohibit certain subleases and licences relating to airport sites.
- The regulations may deal with the terms of subleases and licences relating to airport sites.
- The regulations may provide that the beneficial and legal interests in subleases and licences relating to airport sites cannot be separated except in the case of the enforcement of a loan security.

## **Division 2—Scope of Part**

### **12 Airports to which Part applies**

- (1) This Part applies to:
  - (a) a core regulated airport; or
  - (b) an airport specified in the regulations, where the site of the airport is a Commonwealth place.
- (2) For the purposes of paragraph (1)(b), the boundaries of the site of an airport are to be ascertained in accordance with the regulations.

## **Division 3—Grant of airport leases**

### **13 Commonwealth may grant airport lease**

The Commonwealth may grant an airport lease under this section.

### **14 Rules about airport leases**

#### *Grant*

- (1) The Commonwealth must not grant an airport lease unless the lease complies with subsection (5).

#### *Variation*

- (2) An airport lease must not be varied unless the varied lease complies with subsection (5).

#### *Transfer*

- (3) The Minister must not approve the transfer of an airport lease unless the transferred lease complies with subsection (5).

#### *Contravention*

- (4) If a purported grant, variation or approval contravenes this section, it is of no effect.

#### *Rules about airport leases*

- (5) An airport lease complies with this subsection if:
  - (a) there is a single lessee; and
  - (b) the lessee is a qualified company; and
  - (c) the term of the lease is not longer than 50 years (with or without an option to renew the lease for up to 49 years); and
  - (d) if the airport is neither a joint-user airport nor Sydney West Airport—the lease provides for the use of the site as an

- airport (whether or not the lease also provides for other uses);  
and
- (e) if the airport is a joint-user airport—the lease provides for the use of the leased area for purposes in connection with the airport (whether or not the lease also provides for other uses);  
and
  - (f) if the airport is Sydney West Airport—the lease provides for the development of the site as an airport or the use of the site as an airport, or both (whether or not the lease also provides for other developments or other uses); and
  - (g) the lease provides for access to the airport by interstate air transport or international air transport, or both (whether or not the lease also provides for other access).

### **15 Termination of airport lease if lessee ceases to be a qualified company**

- (1) This section applies to an airport lease if the lessee is a qualified company.
- (2) If, at a particular time, the lessee ceases to be a qualified company, the lease terminates at that time.

### **16 Person may acquire airport leases for only one airport site**

- (1) The Commonwealth must not grant a lease of the whole or a part of an airport site to a person who already holds an airport lease or an interest in an airport lease, unless each of those leases relates to the same airport site.
- (2) The Minister must not approve the transfer of a lease of the whole or a part of an airport site to a person who already holds an airport lease or an interest in an airport lease, unless each of those leases relates to the same airport site.
- (3) If a purported grant or approval contravenes this section, it is of no effect.

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**17 Simultaneous grant of leases to the same person must relate to the same airport**

- (1) The Commonwealth must not simultaneously grant to the same person 2 or more airport leases, unless those leases relate to the same airport site.
- (2) If purported grants contravene this section, they are of no effect.

**18 Sydney (Kingsford-Smith) Airport and Sydney West Airport to be under common ownership**

*Grant of lease under this Act or under section 22 of the Airports (Transitional) Act*

- (1) The Commonwealth must not grant an airport lease under section 13 of this Act, or under section 22 of the *Airports (Transitional) Act 1996*, for Sydney (Kingsford-Smith) Airport or Sydney West Airport unless each of the airport-lessee companies is a subsidiary of the same company.

*Grant of lease under section 21 of the Airports (Transitional) Act*

- (2) If:
  - (a) an airport lease for Sydney (Kingsford-Smith) Airport is granted to a company under section 21 of the *Airports (Transitional) Act 1996*; or
  - (b) an airport lease for Sydney West Airport is granted to a company under section 21 of the *Airports (Transitional) Act 1996*;

the Commonwealth must take such steps as are necessary to ensure that, in the event of the disposal by the Commonwealth of its shares in either of those companies, each of those companies becomes a subsidiary of the same company.

*Transfer of lease for Sydney (Kingsford-Smith) Airport*

- (3) The Minister must not approve the transfer of an airport lease for Sydney (Kingsford-Smith) Airport unless the transferee and the

airport-lessee company for Sydney West Airport will be subsidiaries of the same company.

*Transfer of lease for Sydney West Airport*

- (4) The Minister must not approve the transfer of an airport lease for Sydney West Airport unless the transferee and the airport-lessee company for Sydney (Kingsford-Smith) Airport will be subsidiaries of the same company.

*Contravention*

- (5) If a purported grant or approval contravenes this section, it is of no effect.

*Termination of leases*

- (6) If, at a particular time when the Commonwealth does not beneficially own all the shares in:
- (a) the airport-lessee company for Sydney (Kingsford-Smith) Airport; and
  - (b) the airport-lessee company for Sydney West Airport;
- an unacceptable leasing situation comes into existence for Sydney (Kingsford-Smith) Airport and Sydney West Airport:
- (c) the airport lease for Sydney (Kingsford-Smith) Airport terminates at that time; and
  - (d) the airport lease for Sydney West Airport terminates at that time.

For this purpose, an *unacceptable leasing situation* exists for Sydney (Kingsford-Smith) Airport and Sydney West Airport if the airport-lessee companies for those airports are not subsidiaries of the same company.

*Subsidiaries*

- (7) For the purposes of this section, a company (the *subsidiary company*) is taken to be a *subsidiary* of another company (the *holding company*) if, and only if, all the shares in the subsidiary company are beneficially owned by the holding company.

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**19 Only one person to hold airport leases for an airport site**

- (1) The Commonwealth must not grant a lease of the whole or a part of an airport site to a person if another person already holds an airport lease for the airport.
- (1A) If there are 2 or more airport leases for the same airport site, the Minister must not approve the transfer of any of those leases unless the Minister is satisfied that, immediately after the transfer of that lease, all of those leases will be held by the same person.
- (2) If a purported grant or approval contravenes this section, it is of no effect.

**20 Simultaneous grant of leases relating to the same airport site to be to the same person**

- (1) The Commonwealth must not simultaneously grant 2 or more leases relating to different parts of the same airport site, unless those grants are to the same person.
- (2) If purported grants contravene this section, they are of no effect.

**20A Airport leases for an airport site to expire on the same day**

If there are, or are to be, 2 or more airport leases for the same airport site, the Commonwealth must ensure that the term of each of those leases expires on the same day.

**21 No grant of lease if Part 3 contravened**

- (1) The Commonwealth must not grant an airport lease to a company if the Minister is satisfied that:
  - (a) an unacceptable foreign-ownership situation in relation to the company would come into existence in the event of the grant;  
or
  - (b) an unacceptable airline-ownership situation in relation to the company would come into existence in the event of the grant;  
or

(c) both:

- (i) the company would become a member of a pair of airport-operator companies in the event of the grant; and
- (ii) an unacceptable cross-ownership situation in relation to the pair would come into existence in the event of the grant.

(2) If a purported grant contravenes this section, it is of no effect.

## **22 Airport lease granted subject to existing interests in the land**

(1) An airport lease is granted under section 13 subject to all existing leases in relation to the land concerned.

(2) The following provisions have effect:

- (a) all obligations and benefits of the Commonwealth under, or connected with, such an existing lease:
  - (i) pass to the airport-lessee company; and
  - (ii) cease to be enforceable by or against the Commonwealth;

whether or not the obligations or benefits touch and concern the land;

- (b) an instrument relating to such an obligation or benefit continues to have effect after the grant of the airport lease as if a reference in the instrument to the Commonwealth or the Federal Airports Corporation were a reference to the company;
- (c) the company becomes the Commonwealth's successor in law, in relation to such an obligation or benefit, immediately after the grant of the airport lease.

Note 1: The lessees of existing leases become lessees of the airport-lessee company.

Note 2: Subsections (1) and (2) relate to the obligations and benefits of the Commonwealth as lessor. Section 17 of the *Airports (Transitional) Act 1996* deals with a case where the Commonwealth is the lessee under an existing lease.

(3) An airport lease is granted under section 13 subject to all other existing interests in the land concerned.

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- (4) Paragraph (2)(b) does not modify any register kept by a land registration official under a law of a State or Territory.
- (5) In this section:
  - instrument* includes a document.

## **Division 4—Restrictions on acquisition and transfer of airport leases**

### **23 Restriction on acquisition of airport lease**

- (1) A person must not acquire an airport lease, or an interest in an airport lease, unless:
  - (a) the person is a qualified company; or
  - (b) the acquisition is by way of the enforcement of a loan security and the person is a constitutional corporation.
- (2) If a purported acquisition contravenes this section, it is of no effect.

### **24 No transfer of airport lease without approval of Minister**

- (1) An airport lease must not be transferred without the written approval of the Minister.
- (2) If a purported transfer contravenes this section, it is of no effect.
- (3) The Minister may only refuse to approve the transfer of an airport lease:
  - (a) on a ground specified in the regulations; or
  - (b) on the grounds set out in subsection 14(3); or
  - (c) the grounds set out in subsection 16(2); or
  - (d) on the grounds set out in subsection 18(3) or (4); or
  - (da) on the grounds set out in subsection 19(1A); or
  - (e) on the grounds set out in section 25.
- (4) This section does not apply to a transfer by way of the enforcement of a loan security.

### **25 No transfer of lease if Part 3 contravened**

The Minister must not approve the transfer of an airport lease to a company if the Minister is satisfied that:

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- (a) an unacceptable foreign-ownership situation in relation to the company would come into existence in the event of the transfer; or
- (b) an unacceptable airline-ownership situation in relation to the company would come into existence in the event of the transfer; or
- (c) both:
  - (i) the company would become a member of a pair of airport-operator companies in the event of the transfer; and
  - (ii) an unacceptable cross-ownership situation in relation to the pair would come into existence in the event of the transfer.

**26 No declaration of trust in respect of airport lease**

- (1) The lessee of an airport lease must not dispose of the lease by way of declaration of trust.
- (2) If a purported disposal contravenes this section, it is of no effect.

**27 Beneficial interest in airport lease must not be transferred independently of legal interest**

- (1) A beneficial interest in an airport lease must not be transferred independently of the legal interest in the lease.
- (2) If a purported transfer contravenes this section, it is of no effect.
- (3) This section does not apply to a transfer by way of the enforcement of a loan security.

**28 Notification of acquisition of lease or of entry into possession—  
enforcement of loan security**

- (1) If:
  - (a) a person acquires an airport lease; and

- (b) the acquisition is by way of the enforcement of a loan security;

the person must, within 7 days after acquiring the lease, give the Minister written notice of the acquisition.

Penalty: 100 penalty units.

- (2) If:

- (a) an airport lease is subject to a loan security; and  
(b) the lender enters into possession of the land to which the lease relates; and  
(c) the entry into possession is by way of the enforcement of the loan security;

the lender must, within 7 days after entering into possession, give the Minister written notice of the entry into possession.

Penalty: 100 penalty units.

## **29 Re-transfer of lease—enforcement of loan security**

### *Re-transfer*

- (1) If:

- (a) a person acquires an airport lease; and  
(b) the acquisition is by way of the enforcement of a loan security;

the person must transfer the lease to a qualified company:

- (c) within 90 days after acquiring the lease; or  
(d) if a longer period is specified in a written notice given to the person by the Minister—within that longer period.

### *Entry into possession*

- (1A) If:

- (a) an airport lease is subject to a loan security; and  
(b) the lender enters into possession of the land to which the lease relates; and

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(c) the entry into possession is by way of the enforcement of the loan security;

the lender must cause the lease to be transferred to a qualified company:

(d) within 90 days after the lender entered into possession; or

(e) if a longer period is specified in a written notice given to the lender by the Minister—within that longer period.

*Offence*

(2) A person commits an offence if:

(a) the person is subject to a requirement to transfer a lease under subsection (1) or (1A); and

(b) the person engages in conduct; and

(c) the person's conduct contravenes the requirement.

Penalty: 400 penalty units.

*Strict liability*

(2A) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Court orders*

(3) If:

(a) a person contravenes subsection (1) or (1A) in relation to an airport lease; and

(b) the Minister applies to the Federal Court for an order terminating the lease;

the court may make such orders as the court considers appropriate for the purpose of terminating the lease.

*Criteria for making order*

(4) In deciding whether to make such an order, the court must have regard to:

- (a) whether the person made reasonable efforts to obtain the Minister's approval for the transfer of the lease to another person; and
- (b) the reasonableness of the Minister's decisions under paragraph (1)(d) or (1A)(e) in relation to the lease; and
- (c) such other matters (if any) as the court considers relevant.

### **30 Termination of airport lease otherwise than under this Act**

This Act does not, by implication, prevent an airport lease from being terminated otherwise than under a provision of this Act.

## **Division 5—Obligation to use airport site as an airport**

### **31 Obligation to use airport site as an airport**

- (1) This section has effect for the purposes of determining whether:
- (a) an airport-operator company for an airport; or
  - (b) a person acting on behalf of an airport-operator company for an airport;
- has a defence to, or an immunity from:
- (c) an action or proceeding in court (whether civil or criminal); or
  - (d) an administrative proceeding; or
  - (e) a proceeding in a tribunal.

#### *Airports other than joint-user airports*

- (2) In the case of an airport other than a joint-user airport, the company has, by force of this subsection, an obligation to use the airport site concerned as an airport.

#### *Joint-user airports*

- (3) In the case of a joint-user airport, the company has, by force of this subsection, an obligation to use the airport site for purposes in connection with the airport.

#### *Licences*

- (4) This section does not free a person from a requirement to hold a licence or permit (however described) under a law of the Commonwealth. For this purpose, ***law of the Commonwealth*** does not include an applied provision within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*.

## **Division 6—Restrictions on lessees**

### **Subdivision A—Airport-operator company must not carry on non-airport business**

#### **32 Airport-operator company must not carry on non-airport business**

*Airports other than joint-user airports*

- (1) An airport-operator company for an airport (other than a joint-user airport) must not carry on substantial trading or financial activities other than:
  - (a) activities relating to the operation and/or development of the airport; or
  - (b) activities incidental to the operation and/or development of the airport; or
  - (c) activities that, under the regulations, are treated as activities incidental to the operation and/or development of the airport.

*Joint-user airports*

- (2) An airport-operator company for a joint-user airport must not carry on substantial trading or financial activities other than:
  - (a) activities connected with the airport; or
  - (b) activities incidental to activities connected with the airport; or
  - (c) activities that, under the regulations, are treated as activities incidental to activities connected with the airport.

*Offence*

- (3) A company commits an offence if:
  - (a) the company is subject to a requirement under subsection (1) or (2); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

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Penalty: 2,000 penalty units.

*Strict liability*

- (3A) Strict liability applies to paragraph (3)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Loan securities*

- (4) Subsections (1) and (2) do not apply to an airport-lessee company for an airport if the company acquired its airport lease or airport leases by way of the enforcement of a loan security.

*Validity of transactions*

- (5) A contravention of this section does not affect the validity of any transaction.

**Subdivision B—Airport-management agreements**

**33 Airport-management agreements**

*Approval of airport-management company*

- (1) The airport-lessee company for an airport must not enter into an airport-management agreement in relation to the airport unless the other party to the agreement is both:
- (a) approved in writing by the Minister; and
  - (b) a qualified company.

Note: *Airport-management agreement* is defined by subsection (7).

*Contravention*

- (2) If a purported agreement contravenes subsection (1), it is of no effect.

*Breach of ownership restrictions*

- (3) The Minister must not approve a company under subsection (1) if the Minister is satisfied that:

- (a) an unacceptable foreign-ownership situation in relation to the company would come into existence in the event that the agreement was entered into; or
- (b) an unacceptable airline-ownership situation in relation to the company would come into existence in the event that the agreement was entered into; or
- (c) both:
  - (i) the company would become a member of a pair of airport-operator companies in the event that the agreement was entered into; and
  - (ii) an unacceptable cross-ownership situation in relation to the pair would come into existence in the event that the agreement was entered into.

*Other grounds for refusing approval*

- (4) If subsection (3) does not apply to the approval of a company under subsection (1), the Minister may only refuse to approve the company on a ground specified in the regulations.

*Approval of agreement*

- (4A) The airport-lessee company for an airport must not enter into an airport-management agreement in relation to the airport unless the agreement is approved in writing by the Minister.

Note: *Airport-management agreement* is defined by subsection (7).

*Contravention*

- (4B) If a purported agreement contravenes subsection (4A), it is of no effect.

*Criteria for approval*

- (4C) In making a decision under subsection (4A), the Minister must have regard to:
  - (a) the matters specified in the regulations; and
  - (b) such other matters (if any) as the Minister considers relevant.

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*Approval of variation*

- (4D) An airport-management agreement in relation to the airport must not be varied unless the variation is approved in writing by the Minister.

Note: *Airport-management agreement* is defined by subsection (7).

*Contravention*

- (4E) If a purported variation contravenes subsection (4D), it is of no effect.

*Criteria for approval*

- (4F) In making a decision under subsection (4D), the Minister must have regard to:
- (a) the matters specified in the regulations; and
  - (b) such other matters (if any) as the Minister considers relevant.

*Termination of agreement if contractor ceases to be a qualified company*

- (5) If:
- (a) a qualified company (the *contractor*) enters into an airport-management agreement in relation to an airport; and
  - (b) at a particular time, the contractor ceases to be a qualified company;
- the agreement terminates at that time.

*Other means of termination*

- (6) This section does not, by implication, prevent an agreement from being terminated otherwise than under subsection (5).

*Airport-management agreement*

- (7) For the purposes of this Act, an *airport-management agreement*, in relation to an airport, is an agreement (other than a contract of employment or a prescribed kind of agreement) between:
- (a) the airport-lessee company for the airport; and

- (b) another person;  
under which the other person (either alone or together with the company and/or one or more other persons) is in a position to exercise control over either or both of the following:
  - (c) the operation of the whole or a substantial part of the airport;
  - (d) the direction to be taken in relation to the development of the whole or a substantial part of the airport.

*Economic and commercial substance of agreement*

- (8) In determining whether an agreement is an airport-management agreement, regard must be had to the economic and commercial substance of the agreement.
- (9) Subsection (8) does not, by implication, limit subsection (7).

### **Subdivision C—Subleases and licences**

#### **34 Regulations may prohibit subleases of airport leases**

- (1) The regulations may prohibit specified kinds of subleases of an airport lease.
- (2) A sublease of an airport lease must not be granted or varied in contravention of those regulations.
- (3) If a purported grant or variation contravenes subsection (2), it is of no effect.
- (4) If a sublease is in force at the time (the *imposition time*) when regulations made for the purposes of subsection (1) impose a prohibition in relation to the sublease:
  - (a) the prohibition does not have any effect on the validity of the sublease during the 90-day period beginning at the imposition time; and
  - (b) if, at the end of that 90-day period, the sublease contravenes the prohibition—the sublease is terminated immediately after the end of that period.

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**34A Regulations may prohibit terms from being included in sublease of airport lease**

- (1) The regulations may prohibit specified kinds of terms from being included in subleases of an airport lease.
- (2) A sublease of an airport lease must not be granted or varied in contravention of those regulations.
- (3) If a purported grant or variation contravenes subsection (2), it is of no effect.
- (4) If a sublease is in force at the time (the *imposition time*) when regulations made for the purposes of subsection (1) impose a prohibition in relation to the sublease:
  - (a) the prohibition does not have any effect on the validity of the sublease during the 90-day period beginning at the imposition time; and
  - (b) if, at the end of that 90-day period, the sublease contravenes the prohibition—the sublease is terminated immediately after the end of that period.
- (5) In this section:

*terms* includes conditions.

**34B Regulations may require terms to be included in sublease of airport lease**

- (1) The regulations may require that specified kinds of terms must be included in subleases of an airport lease.
  - (2) A sublease of an airport lease must not be granted or varied in contravention of those regulations.
  - (3) If a purported grant or variation contravenes subsection (2), it is of no effect.
  - (4) If a sublease is in force at the time (the *imposition time*) when regulations made for the purposes of subsection (1) impose a requirement in relation to the sublease:
-

- (a) the requirement does not have any effect on the validity of the sublease during the 90-day period beginning at the imposition time; and
  - (b) if, at the end of that 90-day period, the sublease contravenes the requirement—the sublease is terminated immediately after the end of that period.
- (5) In this section:

*terms* includes conditions.

**34C Regulations may prohibit declaration of trust in respect of sublease of airport lease**

- (1) The regulations may provide that the sublessee of an airport lease must not dispose of the sublease by way of declaration of trust.
- (2) If a purported disposal contravenes those regulations, it is of no effect.

**34D Regulations may provide that a beneficial interest in a sublease of airport lease must not be transferred independently of the legal interest**

- (1) The regulations may provide that a beneficial interest in a sublease of an airport lease must not be transferred independently of the legal interest in the sublease.
- (2) If a purported transfer contravenes those regulations, it is of no effect.
- (3) This section does not apply to a transfer by way of the enforcement of a loan security.

**35 Regulations may prohibit licences relating to airport leases**

- (1) The regulations may prohibit specified kinds of licences relating to an airport lease.
- (2) A licence relating to an airport lease must not be granted or varied in contravention of those regulations.

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- (3) If a purported grant or variation contravenes subsection (2), it is of no effect.
- (4) If a licence is in force at the time (the *imposition time*) when regulations made for the purposes of subsection (1) impose a prohibition in relation to the licence:
  - (a) the prohibition does not have any effect on the validity of the licence during the 90-day period beginning at the imposition time; and
  - (b) if, at the end of that 90-day period, the licence contravenes the prohibition—the licence is terminated immediately after the end of that period.

**35A Regulations may prohibit terms from being included in licence relating to airport lease**

- (1) The regulations may prohibit specified kinds of terms from being included in licences relating to an airport lease.
- (2) A licence relating to an airport lease must not be granted or varied in contravention of those regulations.
- (3) If a purported grant or variation contravenes subsection (2), it is of no effect.
- (4) If a licence is in force at the time (the *imposition time*) when regulations made for the purposes of subsection (1) impose a prohibition in relation to the licence:
  - (a) the prohibition does not have any effect on the validity of the licence during the 90-day period beginning at the imposition time; and
  - (b) if, at the end of that 90-day period, the licence contravenes the prohibition—the licence is terminated immediately after the end of that period.
- (5) In this section:
  - terms* includes conditions.

**35B Regulations may require terms to be included in licence relating to airport lease**

- (1) The regulations may require that specified kinds of terms must be included in licences relating to an airport lease.
- (2) A licence relating to an airport lease must not be granted or varied in contravention of those regulations.
- (3) If a purported grant or variation contravenes subsection (2), it is of no effect.
- (4) If a licence is in force at the time (the *imposition time*) when regulations made for the purposes of subsection (1) impose a requirement in relation to the licence:
  - (a) the requirement does not have any effect on the validity of the licence during the 90-day period beginning at the imposition time; and
  - (b) if, at the end of that 90-day period, the licence contravenes the requirement—the licence is terminated immediately after the end of that period.
- (5) In this section:

*terms* includes conditions.

**35C Regulations may prohibit declaration of trust in respect of licence relating to airport lease**

- (1) The regulations may provide that the holder of a licence relating to an airport lease must not dispose of the licence by way of declaration of trust.
- (2) If a purported disposal contravenes those regulations, it is of no effect.

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**35D Regulations may provide that a beneficial interest in a licence relating to an airport lease must not be transferred independently of the legal interest**

- (1) The regulations may provide that a beneficial interest in a licence relating to an airport lease must not be transferred independently of the legal interest in the licence.
- (2) If a purported transfer contravenes those regulations, it is of no effect.
- (3) This section does not apply to a transfer by way of the enforcement of a loan security.

**35E Termination of sublease or licence otherwise than under this Subdivision**

This Subdivision does not, by implication, prevent a sublease or licence from being terminated otherwise than under this Subdivision.

**35F Compensation—constitutional safety-net**

- (1) If:
  - (a) apart from this section, the operation of this Subdivision would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

**Part 2** Leasing and management of airports

**Division 7** Lands Acquisition Act 1989 not to apply to anything done under this Part

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**Division 7—Lands Acquisition Act 1989 not to apply to anything done under this Part**

**36 *Lands Acquisition Act 1989* not to apply to anything done under this Part**

The *Lands Acquisition Act 1989* does not apply to anything done under this Part.

## **Division 8—Entries in title registers**

### **37 Entries in title registers**

- (1) This section applies if an airport lease is granted under section 13.
- (2) The relevant land registration official may make such entries or notations in or on registers or other documents kept by the official (in electronic form or otherwise) as the official thinks appropriate for the purposes of drawing the attention of persons to the existence of this Act. For this purpose, the relevant *land registration official* is the Registrar of Titles or other proper officer of the State or Territory in which the airport is situated.

## **Part 3—Restrictions on ownership of airport-operator companies**

### **Division 1—Simplified outline**

#### **38 Simplified outline**

The following is a simplified outline of this Part:

- Airport-operator companies are subject to the following ownership restrictions:
  - (a) a 49% limit on foreign ownership;
  - (b) a 5% limit on airline ownership;
  - (c) a 15% limit on cross-ownership for Sydney/Melbourne, Sydney/Brisbane and Sydney/Perth airports.
- Those limits relate to a person's *stake* in a company.
- A person's stake includes the interests of the person's associates.
- There are 4 different types of stake. The main types are:
  - (a) percentage of total paid-up share capital; and
  - (b) percentage of voting power.
- The ownership restrictions will be breached if any type of stake goes over the relevant limit.

- **Stake** and other technical expressions used in this Part are defined by the Schedule.
- The central management and control of an airport-operator company must be exercised at a place in Australia.
- A majority of the directors of an airport-operator company must be Australian citizens and/or Australian residents.
- The regulations may require records to be kept, and information to be given, for purposes relating to the ownership restrictions.

**Part 3** Restrictions on ownership of airport-operator companies

**Division 2** Definitions in Schedule

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**Division 2—Definitions in Schedule**

**39 Definitions in Schedule**

The Schedule sets out definitions of expressions used in this Part.

## **Division 3—49% limit on foreign ownership**

### **40 Meaning of *unacceptable foreign-ownership situation***

For the purposes of this Act, an *unacceptable foreign-ownership situation* exists in relation to an airport-operator company if there is a group of foreign persons who hold, in total, a particular type of stake in the company of more than 49%.

Note 1: A *group* can consist of a single foreign person—see the Schedule.

Note 2: A person's *stake* includes the interests of the person's associates—see the Schedule.

### **41 Acquisitions of shares**

If:

- (a) a person, or 2 or more persons under an arrangement, acquire shares in a company; and
- (b) the acquisition has the result, in relation to an airport-operator company, that:
  - (i) an unacceptable foreign-ownership situation comes into existence in relation to the company; or
  - (ii) if an unacceptable foreign-ownership situation already exists in relation to the company—there is an increase in the total of any type of stake held by any group of foreign persons in the company; and
- (c) the person or persons mentioned in paragraph (a) knew, or were reckless as to whether, the acquisition would have that result;

the person or persons mentioned in paragraph (a) are guilty of an offence punishable on conviction by a fine not exceeding 400 penalty units.

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**42 Compliance by airport-operator company**

- (1) An airport-operator company must take all reasonable steps to ensure that an unacceptable foreign-ownership situation does not exist in relation to the company.
- (2) A company commits an offence if:
  - (a) the company is required to take steps under subsection (1); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 500 penalty units.

**43 Remedial orders**

- (1) If an unacceptable foreign-ownership situation exists in relation to an airport-operator company, the Federal Court may, on application by the Minister or the company, make such orders as the court considers appropriate for the purpose of ensuring that that situation ceases to exist.
- (2) The Federal Court's orders include:
  - (a) an order directing the disposal of shares; or
  - (b) an order restraining the exercise of any rights attached to shares; or
  - (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or
  - (d) an order that any exercise of rights attached to shares be disregarded.
- (3) Subsection (2) does not, by implication, limit subsection (1).
- (4) In addition to the Federal Court's powers under subsections (1) and (2), the court:
  - (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and

- (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.
- (5) The Federal Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (6) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

## **Division 4—5% limit on ownership by airlines**

### **44 Meaning of *unacceptable airline-ownership situation***

For the purposes of this Act, an *unacceptable airline-ownership situation* exists in relation to an airport-operator company and in relation to a particular airline if the airline holds a particular type of stake in the company of more than 5%.

Note: A person's *stake* includes the interests of the person's associates—see the Schedule.

### **45 Acquisitions of shares**

If:

- (a) a person, or 2 or more persons under an arrangement, acquire shares in a company; and
- (b) the acquisition has the result, in relation to an airport-operator company, that:
  - (i) an unacceptable airline-ownership situation comes into existence in relation to the company and in relation to an airline; or
  - (ii) if an unacceptable airline-ownership situation already exists in relation to the company and in relation to an airline—there is an increase in any type of stake held by the airline in the company; and
- (c) the person or persons mentioned in paragraph (a) knew, or were reckless as to whether, the acquisition would have that result;

the person or persons mentioned in paragraph (a) are guilty of an offence punishable on conviction by a fine not exceeding 400 penalty units.

### **46 Compliance by airport-operator company**

- (1) An airport-operator company must take all reasonable steps to ensure that an unacceptable airline-ownership situation does not exist in relation to the company.

- (2) A company commits an offence if:
- (a) the company is required to take steps under subsection (1);  
and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 500 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

#### **47 Remedial orders**

- (1) If an unacceptable airline-ownership situation exists in relation to an airport-operator company, the Federal Court may, on application by the Minister or the company, make such orders as the court considers appropriate for the purpose of ensuring that that situation ceases to exist.
- (2) The Federal Court's orders include:
- (a) an order directing the disposal of shares; or
  - (b) an order restraining the exercise of any rights attached to shares; or
  - (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or
  - (d) an order that any exercise of rights attached to shares be disregarded.
- (3) Subsection (2) does not, by implication, limit subsection (1).
- (4) In addition to the Federal Court's powers under subsections (1) and (2), the court:
- (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
  - (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.

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**Division 4** 5% limit on ownership by airlines

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- (5) The Federal Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (6) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

## **Division 5—Limits on cross-ownership of pairs of airport-operator companies**

### **Subdivision A—Simplified outline**

#### **48 Simplified outline**

The following is a simplified outline of this Division:

- Airport-operator companies for Sydney and Melbourne form a *pair*.
- Airport-operator companies for Sydney and Brisbane form a *pair*.
- Airport-operator companies for Sydney and Perth form a *pair*.
- There is a 15% limit on the cross-ownership of paired companies.
- The Minister may declare a person to have *practical control* of an airport-operator company.
- If the person covered by the declaration has practical control of, or a stake of more than 15% in, each of the members of a pair, the person must take steps to ensure that there is at least one member of the pair where the person does not have:
  - (a) a stake of more than 15%; or
  - (b) practical control.

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**Division 5** Limits on cross-ownership of pairs of airport-operator companies

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**Subdivision B—Pairs of airport-operator companies**

**49 Pairs of airport-operator companies**

For the purposes of this Act, a group of 2 airport-operator companies constitute a *pair of airport-operator companies* if:

- (a) one of the companies is mentioned in a box in the left-hand column of the following table; and
- (b) the other company is mentioned in the corresponding box in the right-hand column of the table.

For the purposes of this Act, the *members* of that pair are those companies.

<b>This company . . .</b>	<b>forms a pair with this company . . .</b>
the airport-lessee company for Melbourne (Tullamarine) Airport	the airport-lessee company for Sydney (Kingsford-Smith) Airport
an airport-management company for Melbourne (Tullamarine) Airport	the airport-lessee company for Sydney (Kingsford-Smith) Airport
the airport-lessee company for Melbourne (Tullamarine) Airport	an airport-management company for Sydney (Kingsford-Smith) Airport
an airport-management company for Melbourne (Tullamarine) Airport	an airport-management company for Sydney (Kingsford-Smith) Airport
the airport-lessee company for Brisbane Airport	the airport-lessee company for Sydney (Kingsford-Smith) Airport
an airport-management company for Brisbane Airport	the airport-lessee company for Sydney (Kingsford-Smith) Airport
the airport-lessee company for Brisbane Airport	an airport-management company for Sydney (Kingsford-Smith) Airport
an airport-management company for Brisbane Airport	an airport-management company for Sydney (Kingsford-Smith) Airport
the airport-lessee company for Melbourne (Tullamarine) Airport	the airport-lessee company for Sydney West Airport
an airport-management company for Melbourne (Tullamarine) Airport	the airport-lessee company for Sydney West Airport
the airport-lessee company for Melbourne (Tullamarine) Airport	an airport-management company for Sydney West Airport

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<b>This company . . .</b>	<b>forms a pair with this company . . .</b>
an airport-management company for Melbourne (Tullamarine) Airport	an airport-management company for Sydney West Airport
the airport-lessee company for Brisbane Airport	the airport-lessee company for Sydney West Airport
an airport-management company for Brisbane Airport	the airport-lessee company for Sydney West Airport
the airport-lessee company for Brisbane Airport	an airport-management company for Sydney West Airport
an airport-management company for Brisbane Airport	an airport-management company for Sydney West Airport
the airport-lessee company for Perth Airport	the airport-lessee company for Sydney (Kingsford-Smith) Airport
an airport-management company for Perth Airport	the airport-lessee company for Sydney (Kingsford-Smith) Airport
the airport-lessee company for Perth Airport	an airport-management company for Sydney (Kingsford-Smith) Airport
an airport-management company for Perth Airport	an airport-management company for Sydney (Kingsford-Smith) Airport
the airport-lessee company for Perth Airport	the airport-lessee company for Sydney West Airport
an airport-management company for Perth Airport	the airport-lessee company for Sydney West Airport
the airport-lessee company for Perth Airport	an airport-management company for Sydney West Airport
an airport-management company for Perth Airport	an airport-management company for Sydney West Airport

### **Subdivision C—15% limit on cross-ownership**

#### **50 Meaning of *unacceptable cross-ownership situation***

For the purposes of this Act, an *unacceptable cross-ownership situation* exists in relation to a pair of airport-operator companies (the *first company* and the *second company*) and in relation to a particular person if:

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- (a) the person holds a particular type of stake in the first company of more than 15%; and
- (b) the person holds any type of stake in the second company of more than 15%.

Note: A person's *stake* includes the interests of the person's associates—see the Schedule.

**51 Acquisitions of shares**

If:

- (a) a person, or 2 or more persons under an arrangement, acquire shares in a company; and
- (b) the acquisition has the result, in relation to a particular pair of airport-operator companies (the *first company* and the *second company*), that:
  - (i) an unacceptable cross-ownership situation comes into existence in relation to the pair and in relation to a person; or
  - (ii) if an unacceptable cross-ownership situation already exists in relation to the pair and in relation to a particular person—there is an increase in any type of stake held by the person in either the first company or the second company; and
- (c) the person or persons mentioned in paragraph (a) knew, or were reckless as to whether, the acquisition would have that result;

the person or persons mentioned in paragraph (a) are guilty of an offence punishable on conviction by a fine not exceeding 400 penalty units.

**52 Compliance by airport-operator companies**

- (1) A member of a pair of airport-operator companies must take all reasonable steps to ensure that an unacceptable cross-ownership situation does not exist in relation to that pair.
- (2) A company commits an offence if:

- (a) the company is required to take steps under subsection (1);  
and
- (b) the company engages in conduct; and
- (c) the company's conduct contravenes the requirement.

Penalty: 500 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **53 Remedial orders**

- (1) If an unacceptable cross-ownership situation exists in relation to a pair of airport-operator companies, the Federal Court may, on application by the Minister or a member of the pair, make such orders as the court considers appropriate for the purpose of ensuring that the situation ceases to exist.
- (2) The Federal Court's orders include:
  - (a) an order directing the disposal of shares; or
  - (b) an order restraining the exercise of any rights attached to shares; or
  - (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or
  - (d) an order that any exercise of rights attached to shares be disregarded.
- (3) Subsection (2) does not, by implication, limit subsection (1).
- (4) In addition to the Federal Court's powers under subsections (1) and (2), the court:
  - (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
  - (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.

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- (5) The Federal Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (6) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

**Subdivision D—Practical control**

**54 Meaning of *control***

In this Subdivision:

*control* includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

**55 Minister may declare person to have practical control of an airport-operator company**

*Declaration*

- (1) If:
  - (a) the Minister is satisfied that:
    - (i) the directors of an airport-operator company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person (either alone or together with associates); or
    - (ii) a person (either alone or together with associates) is in a position to exercise control over an airport-operator company; and
  - (b) the Minister is satisfied that:
    - (i) the person does not have any type of stake in the company; or
    - (ii) if the person has one or more types of stake in the company—each of those stakes is not more than 15%;

the Minister may declare that the person has *practical control* of the airport-operator company for the purposes of this Act.

*Declaration has effect*

- (2) A declaration under this section has effect accordingly.

*Revocation of declaration*

- (3) If:
- (a) a declaration is in force under this section; and
  - (b) the Minister ceases to be satisfied of the matters referred to in paragraphs (1)(a) and (b);
- the Minister must revoke the declaration.

*Gazettal and notification of declaration*

- (4) If a declaration under this section is made or revoked, the Minister must arrange for a copy of the declaration or revocation:
- (a) to be published in the *Gazette*; and
  - (b) to be given to the airport-operator company and the person concerned.

## **56 Requirement to relinquish practical control or reduce stake**

- (1) If a person:
- (a) has practical control of a particular airport-operator company (the *first company*); and
  - (b) the first company is a member of a pair of airport-operator companies; and
  - (c) either of the following subparagraphs applies to the other member of the pair:
    - (i) the person has practical control of the other member;
    - (ii) the person has a particular type of stake in the other member of more than 15%;
- the person must take such steps as are necessary to ensure that there is at least one member of the pair where both of the following paragraphs apply:
- (d) both:

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- (i) the directors of the company are not accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (either alone or together with associates); and
  - (ii) the person (either alone or together with associates) is not in a position to exercise control over the company;
- (e) either:
- (i) the person does not have any type of stake in the company; or
  - (ii) if the person has one or more types of stake in the company—each of those stakes is not more than 15%.

The person must take those steps:

- (f) within 90 days after receiving the copy of the most recent declaration under section 55 relating to the practical control of the first company or the other member of the pair; or
- (g) if the Minister, by written notice given to the person, allows a longer period for compliance—before the end of that longer period.

Note: *Practical control* has the meaning given by section 55.

- (2) A person commits an offence if:
- (a) the person is required to take steps under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 400 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **57 Remedial orders**

- (1) If a person:
- (a) has practical control of a particular airport-operator company (the *first company*); and
  - (b) the first company is a member of a pair of airport-operator companies; and

(c) either of the following subparagraphs applies to the other member of the pair:

- (i) the person has practical control of the other member;
- (ii) the person has a particular type of stake in the other member of more than 15%;

the Federal Court may, on application by the Minister, make such orders as the court considers appropriate to ensure that there is at least one member of the pair where both of the following paragraphs apply:

(d) both:

- (i) the directors of the company are not accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (either alone or together with associates); and
- (ii) the person (either alone or together with associates) is not in a position to exercise control over the company;

(e) either:

- (i) the person does not have any type of stake in the company; or
- (ii) if the person has one or more types of stake in the company—each of those stakes is not more than 15%.

Note: *Practical control* has the meaning given by section 55.

(2) The Federal Court's orders include:

- (a) an order directing the disposal of shares; or
- (b) an order restraining the exercise of any rights attached to shares; or
- (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or
- (d) an order that any exercise of rights attached to shares be disregarded.

(3) Subsection (2) does not, by implication, limit subsection (1).

(4) In addition to the Federal Court's powers under subsections (1) and (2), the court:

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- (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
  - (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.
- (5) The Federal Court may, before making an order under this section, direct that notice of the Minister's application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (6) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

## **Division 6—Head office of airport-operator company and citizenship/residency of directors of airport-operator company**

### **58 Head office to be in Australia**

- (1) An airport-operator company must ensure that the central management and control of the company is ordinarily exercised at a place in Australia.
- (2) A contravention of subsection (1) is not an offence. However, a contravention of subsection (1) is a ground for obtaining an injunction under Part 15.
- (3) A contravention of subsection (1) does not affect the validity of any transaction.

### **59 Majority of directors must be Australian citizens or Australian residents**

- (1) An airport-operator company must ensure that a majority of its directors are:
  - (a) Australian citizens; or
  - (b) foreign citizens ordinarily resident in Australia.
- (2) A contravention of subsection (1) is not an offence. However, a contravention of subsection (1) is a ground for obtaining an injunction under Part 15.
- (3) A contravention of subsection (1) does not affect the validity of any transaction.

## **Division 7—Record-keeping and giving of information**

### **60 Record-keeping and giving of information**

- (1) The regulations may make provision for and in relation to requiring a person:
  - (a) to keep and retain records, where the records are relevant to an ownership matter; and
  - (b) to give information to the Minister that is relevant to:
    - (i) an ownership matter; or
    - (ii) ascertaining whether Division 6 has been or is being complied with; and
  - (c) to give information to an airport-operator company, where the information is relevant to an ownership matter that concerns the company.

Note: *Ownership matter* is defined by subsection (6).

#### *Statutory declarations*

- (2) The regulations may provide that information given in accordance with a requirement covered by paragraph (1)(b) or (c) must be verified by statutory declaration.

#### *No self-incrimination*

- (3) An individual is not required to give information in accordance with a requirement covered by paragraph (1)(b) or (c) if the information might tend to incriminate the individual or expose the individual to a penalty.

#### *Offence*

- (4) A person commits an offence if:
  - (a) the person is required to keep and retain records and to give information under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 50 penalty units.

*Strict liability*

- (4A) Strict liability applies to paragraph (4)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Regulations may confer discretionary powers on the Minister*

- (5) Regulations made for the purposes of this section may make provision for or in relation to a matter by conferring a power on the Minister. For example, the regulations could provide that the Minister may, by written notice given to an airport-operator company for an airport, require the company to give the Minister, within the period and in the manner specified in the notice, specified information about an ownership matter relating to the company.

*Definition*

- (6) For the purposes of this section, each of the following matters is an **ownership matter**:
- (a) whether a person holds a particular type of stake in an airport-operator company and, if so, the level of that stake;
  - (b) whether the directors of an airport-operator company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person (either alone or together with associates);
  - (c) whether a person (either alone or together with associates) is in a position to exercise control over an airport-operator company.

For this purpose, **control** has the same meaning as in section 54.

**Part 3** Restrictions on ownership of airport-operator companies

**Division 8** Concurrent operation of State/Territory laws

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## **Division 8—Concurrent operation of State/Territory laws**

### **61 Concurrent operation of State/Territory laws**

It is the intention of the Parliament that this Part is not to apply to the exclusion of a law of a State or Territory to the extent that that law is capable of operating concurrently with this Part.

**Division 9—Validity of acts done in contravention of this  
Part**

**62 Validity of acts done in contravention of this Part**

An act is not invalidated by the fact that it constitutes an offence against this Part.

## **Division 10—Acquisition of property**

### **63 Acquisition of property**

- (1) The Federal Court must not make an order under this Part if:
  - (a) the order would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the order would be invalid because of paragraph 51(xxxi) of the Constitution.

- (2) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

## Part 4—Anti-avoidance

### 64 Simplified outline

The following is a simplified outline of this Part:

- This Part deals with schemes designed to avoid:
  - (a) the rules about the leasing and management of airports; and
  - (b) the ownership restrictions that apply to airport-operator companies.

### 65 Anti-avoidance—assets etc.

#### *Acquisition of assets*

- (1) If:
- (a) one or more persons enter into, begin to carry out or carry out a scheme; and
  - (b) it would be concluded that the person, or any of the persons, who entered into, began to carry out or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the application of any provision of Part 2 or 3 in relation to any person or persons (whether or not mentioned in paragraph (a)); and
  - (c) as a result of the scheme or a part of the scheme, a person (the **beneficiary**) acquires any of the following assets:
    - (i) an airport lease or an interest in an airport lease;
    - (ii) a sublease of an airport lease;
    - (iii) a licence relating to an airport lease;
- the Minister may give the beneficiary a written direction to dispose of the asset within a specified time.

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*Acquisition of stake in airport-operator company*

- (2) If:
- (a) one or more persons enter into, begin to carry out or carry out a scheme; and
  - (b) it would be concluded that the person, or any of the persons, who entered into, began to carry out or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the application of any provision of Part 2 or 3 in relation to any person or persons (whether or not mentioned in paragraph (a)); and
  - (c) as a result of the scheme or a part of the scheme, a person (the *stakeholder*) increases the stakeholder's stake in an airport-operator company;

the Minister may give the stakeholder a written direction to cease holding that stake within a specified time.

*Offence*

- (3) A person who intentionally contravenes a direction under subsection (1) or (2) is guilty of an offence punishable on conviction by a fine not exceeding 400 penalty units.

*Definitions*

- (4) In this section:

*increase*, in relation to a stake in a company, includes an increase from a starting point of nil.

*stake*, in relation to a company, has the same meaning as in the Schedule.

**66 Anti-avoidance—airport-management agreements**

- (1) This section applies if:
- (a) one or more persons enter into, begin to carry out or carry out a scheme; and

- (b) it would be concluded that the person, or any of the persons, who entered into, began to carry out or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the application of any provision of Part 2 or 3 in relation to any person or persons (whether or not mentioned in paragraph (a)); and
  - (c) as a result of the scheme or a part of the scheme, a person (the *contractor*) enters into an airport-management agreement with the airport-lessee company for an airport.
- (2) The Minister may, by written notice given to the contractor and the company, terminate the agreement with effect from a specified time.

## **Part 5—Land use, planning and building controls**

### **Division 1—Simplified outline**

#### **67 Simplified outline**

The following is a simplified outline of this Part:

- For each airport, there is to be an airport master plan.
- Major development plans will be required for significant developments at airports.
- Building activities on airport sites will require approval.
- Buildings and structures on airport sites must be certified as complying with the regulations.

## **Division 2—Scope of Part**

### **68 Airports to which Part applies**

- (1) This Part applies to:
  - (a) a core regulated airport; or
  - (b) an airport specified in the regulations;  
if there is an airport lease for the airport.
- (2) For the purposes of subsection (1), the boundaries of an airport are the boundaries of the airport site for the airport.

## Division 3—Airport master plans

### 69 Simplified outline

The following is a simplified outline of this Division:

- For each airport, there is to be a final master plan.
- A final master plan is a draft master plan that has been approved by the Minister.
- A draft master plan is prepared by an airport-lessee company after taking into account public comments.
- A final master plan is relevant to the approval of major developments at the airport.

### 70 Final master plans

For each airport, there is to be a final master plan.

Note: A *final master plan* is a draft master plan that has been approved by the Minister—see section 83.

### 71 Contents of draft or final master plan

- (1) This section specifies the matters that must be set out in each draft or final master plan for an airport.

*Airports other than joint-user airports*

- (2) In the case of an airport other than a joint-user airport, a draft or final master plan must specify:
  - (a) the airport-lessee company's development objectives for the airport; and

- (b) the airport-lessee company's assessment of the future needs of civil aviation users of the airport, and other users of the airport, for services and facilities relating to the airport; and
- (c) the airport-lessee company's proposals for land use and related development of the airport site, where the proposals embrace airside, landside, surface access and land planning/zoning aspects; and
- (d) forecasts relating to noise exposure levels; and
- (e) the airport-lessee company's plans, developed following consultations with the airlines that use the airport and local government bodies in the vicinity of the airport, for managing aircraft noise intrusion in areas forecast to be subject to exposure above the significant ANEF levels; and
- (f) the airport-lessee company's assessment of environmental issues that might reasonably be expected to be associated with the implementation of the plan; and
- (g) the airport-lessee company's plans for dealing with the environmental issues mentioned in paragraph (f) (including plans for ameliorating or preventing environmental impacts); and
- (h) if a draft environment strategy for the airport has been approved—the date of that approval; and
- (j) such other matters (if any) as are specified in the regulations.

Paragraphs (a), (b), (c), (d), (e), (f), (g) and (h) do not, by implication, limit paragraph (j).

Note 1: **Airside** means the part of the airport grounds, and the part of the airport buildings, to which the non-travelling public does not have free access.

Note 2: **Landside** means the part of the airport grounds, and the part of the airport buildings, to which the non-travelling public has free access.

#### *Joint-user airports*

- (3) In the case of a joint-user airport, a draft or final master plan must specify:
  - (a) the airport-lessee company's development objectives for civil use of the airport; and

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- (b) the airport-lessee company's assessment of the future needs of civil aviation users of the airport, and other civil users of the airport, for services and facilities relating to the area of the airport site leased to the company; and
- (c) the airport-lessee company's proposals for land use and related development of the area of the airport site leased to the company, where the proposals embrace:
  - (i) in all cases—landside, surface access and land planning/zoning aspects; and
  - (ii) if the leased area includes one or more runways or taxiways—airside aspects; and
- (d) forecasts relating to the civil use of the airport; and
- (e) the airport-lessee company's plans, developed following consultations with the airlines that use the airport, local government bodies in the vicinity of the airport and the Department of Defence, for managing aircraft noise intrusion in areas forecast to be subject to exposure above the significant ANEF levels; and
- (f) the airport-lessee company's assessment of environmental issues that might reasonably be expected to be associated with the implementation of the plan; and
- (g) the airport-lessee company's plans for dealing with the environmental issues mentioned in paragraph (f) (including plans for ameliorating or preventing environmental impacts); and
- (h) if a draft environment strategy for the airport has been approved—the date of the approval; and
- (j) such other matters (if any) as are specified in the regulations.

Paragraphs (a), (b), (c), (d), (e), (f), (g) and (h) do not, by implication, limit paragraph (j).

Note 1: *Airside* means the part of the airport grounds, and the part of the airport buildings, to which the non-travelling public does not have free access.

Note 2: *Landside* means the part of the airport grounds, and the part of the airport buildings, to which the non-travelling public has free access.

- (4) The regulations may provide that the objectives, assessments, proposals, forecasts and other matters covered by subsection (2) or (3) may relate to either or both of the following:
- (a) the whole of the planning period of the plan;
  - (b) one or more specified 5-year periods that are included in the planning period of the plan.

Note: *Planning period* is defined by section 72.

- (5) The regulations may provide that, in specifying a particular objective, assessment, proposal, forecast or other matter covered by subsection (2) or (3), a draft or final master plan must address such things as are specified in the regulations.
- (6) In specifying a particular objective or proposal covered by paragraph (2)(a) or (c) or (3)(a) or (c), a draft or final master plan must address the extent (if any) of consistency with planning schemes in force under a law of the State or Territory in which the airport is located.
- (7) Subsection (6) does not, by implication, limit subsection (5).
- (8) In developing plans referred to in paragraph (2)(e) and (3)(e), an airport-lessee company must have regard to Australian Standard AS2021—1994 (“Acoustics—Aircraft noise intrusion—Building siting and construction”).
- (9) Subsection (8) does not, by implication, limit the matters to which regard may be had.

## **72 Planning period**

A draft or final master plan must relate to a period of 20 years.  
This period is called the *planning period*.

## **73 Assumption of continuity of lease**

For the purposes of the application of this Division to a draft or final master plan for an airport, it is to be assumed that the airport lease or airport leases held by the airport-lessee company will

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continue in force for the duration of the planning period of the plan.

**74 Plan does not lapse when lease transferred**

A draft or final master plan for an airport does not cease to be in force if the airport lease or airport leases are transferred. In that event, the transferee is taken to have adopted the plan as its own.

**75 Draft master plan to be given to Minister after acquisition or grant of airport lease**

- (1) If:
- (a) a company acquires or is granted an airport lease; and
  - (b) a final master plan for the airport is not in force at the time of the acquisition or grant;
- the company must give the Minister a draft master plan for the airport:
- (c) within 12 months after the acquisition or grant; or
  - (d) if the Minister, by written notice given to the company, allows a longer period—within that longer period.
- (2) A company commits an offence if:
- (a) the company is required to give the Minister a draft master plan under subsection (1); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 250 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**76 New draft master plan to be submitted before expiry of old plan**

- (1) If a final master plan (the *original plan*) is in force for an airport, the airport-lessee company must give the Minister a draft master plan for the airport before the expiry of the original plan. The

planning period for the draft master plan must begin immediately after the expiry of the original plan.

- (2) A company commits an offence if:
- (a) the company is required to give the Minister a draft master plan under subsection (1); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 250 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **77 Duration of final master plan**

- (1) A final master plan remains in force for 5 years. However, if, at the end of that 5 years, a fresh final master plan does not come into force, the original plan remains in force until a fresh plan comes into force.
- (2) Subsection (1) has effect subject to section 78 (which deals with replacement of plans).

### **78 Replacement of final master plan**

- (1) If a final master plan (the *original plan*) for an airport is in force, the airport-lessee company for the airport may give the Minister a draft master plan that is expressed to replace the original plan. When the draft plan becomes a final master plan, the original plan ceases to be in force.
- (2) If a final master plan (the *original plan*) for an airport is in force, the Minister may, by written notice given to the airport-lessee company for the airport, direct the company to give the Minister a draft master plan that is expressed to replace the original plan. The company must comply with the direction:
  - (a) within 180 days after the day on which the notice was given;
  - or

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- (b) if the Minister, by written notice given to the company, allows a longer period—within that longer period.

When the draft plan becomes a final master plan, the original plan ceases to be in force.

- (3) A company commits an offence if:
  - (a) the company is required to give the Minister a draft master plan under subsection (2); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 250 penalty units.

- (4) Strict liability applies to paragraph (3)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**79 Public comment**

- (1) Before giving the Minister a draft master plan for an airport under section 75, 76 or 78, the airport-lessee company for the airport must:
  - (a) cause to be published in a newspaper circulating generally in the State or Territory in which the airport is situated a notice:
    - (i) stating that the company has prepared a preliminary version of the draft plan; and
    - (ii) stating that copies of the preliminary version will be available for inspection and purchase by members of the public during normal office hours throughout the period of 90 days after the publication of the notice; and
    - (iii) specifying the place or places where the copies will be available for inspection and purchase; and
    - (iv) inviting members of the public to give written comments about the preliminary version to the company within 90 days after the publication of the notice; and
  - (b) make copies of the preliminary version available for inspection and purchase by members of the public in accordance with the notice.

- (2) If members of the public have given written comments about the preliminary version in accordance with the notice, the draft plan submitted to the Minister must be accompanied by a written certificate signed on behalf of the company:
  - (a) listing the names of those members of the public; and
  - (b) summarising those comments; and
  - (c) stating that the company has had due regard to those comments in preparing the draft plan; and
  - (d) setting out such other information (if any) about those comments as is specified in the regulations.
- (3) Subsection (2) does not, by implication, limit the matters to which the company may have regard.

## **80 Consultations**

- (1) This section applies if:
  - (a) an airport-lessee company gives the Minister a draft master plan under section 75, 76 or 78; and
  - (b) before the publication under section 79 of a notice about the plan, the company consulted a person covered by any of the following subparagraphs:
    - (i) a State or Territory government;
    - (ii) an authority of a State or Territory;
    - (iii) a local government body;
    - (iv) an airline or other user of the airport concerned;
    - (v) any other person.
- (2) The draft plan submitted to the Minister must be accompanied by a written statement signed on behalf of the company:
  - (a) listing the names of the persons consulted; and
  - (b) summarising the views expressed by the persons consulted.

## **81 Approval of draft by Minister**

- (1) This section applies if an airport-lessee company gives the Minister a draft master plan.

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- (2) The Minister must:
  - (a) approve the plan; or
  - (b) refuse to approve the plan.
- (3) In deciding whether to approve the plan, the Minister must have regard to the following matters:
  - (a) the extent to which carrying out the plan would meet present and future requirements of civil aviation users of the airport, and other users of the airport, for services and facilities relating to the airport concerned;
  - (b) the effect that carrying out the plan would be likely to have on the use of land:
    - (i) within the airport site concerned; and
    - (ii) in areas surrounding the airport;
  - (c) the consultations undertaken in preparing the plan (including the outcome of the consultations);
  - (d) the views of the Civil Aviation Safety Authority and Airservices Australia, in so far as they relate to safety aspects and operational aspects of the plan.
- (4) Subsection (3) does not, by implication, limit the matters to which the Minister may have regard.
- (5) If the Minister neither approves, nor refuses to approve, the plan before the end of the period of 90 days after the day on which the Minister received the draft plan, the Minister is taken, at the end of that period, to have approved the plan under subsection (2).
- (6) As soon as practicable after deciding whether to approve the plan, the Minister must notify the company in writing of the decision.
- (7) If the Minister refuses to approve the plan, the Minister must notify the company in writing of the Minister's reasons for the refusal.
- (8) If the Minister refuses to approve the plan, the Minister may, by written notice given to the company, direct the company to give the Minister a fresh draft master plan. The fresh draft master plan must be given to the Minister:
  - (a) within 180 days after the day on which the direction was given; or

- (b) if the Minister, by written notice given to the company, allows a longer period—within that longer period.
- (9) A company commits an offence if:
  - (a) the company is subject to a direction under subsection (8); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the direction.

Penalty: 250 penalty units.

## **82 Transfer of airport lease during approval process**

- (1) This section applies if:
  - (a) an airport lease is transferred; and
  - (b) before the transfer, a draft master plan had been submitted by the transferor to the Minister; and
  - (c) immediately before the transfer, the Minister had not made a decision whether to approve the draft plan.
- (2) The transferee is taken:
  - (a) to have given the draft plan to the Minister immediately after the transfer; and
  - (b) to have adopted the draft plan as its own;unless, within 60 days after the transfer, the transferee gives the Minister a written undertaking to give the Minister an alternative draft plan.

## **83 Effect of approval**

If the Minister approves a draft master plan, the plan becomes a final master plan. The final master plan comes into force at the time of the approval.

## **84 Minor variation of final master plan**

- (1) This section applies if:
  - (a) a final master plan for an airport is in force; and

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- (b) the airport-lessee company for the airport gives the Minister a draft variation of the plan; and
  - (c) the variation is of a minor nature.
- (2) The Minister must:
  - (a) approve the variation; or
  - (b) refuse to approve the variation.
- (3) If the Minister neither approves, nor refuses to approve, the variation before the end of the period of 90 days after the day on which the Minister received the draft variation, the Minister is taken, at the end of that period, to have approved the variation under subsection (2).
- (4) As soon as practicable after deciding whether to approve the variation, the Minister must notify the company in writing of the decision.
- (5) If the Minister refuses to approve the variation, the Minister must notify the company in writing of the Minister's reasons for the refusal.
- (6) If the Minister approves the variation, the plan is varied accordingly.

**84A Public comment—minor variation**

- (1) Before giving the Minister a draft variation of a final master plan for an airport under subsection 84(1), the airport-lessee company for the airport must:
  - (a) cause to be published in a newspaper circulating generally in the State or Territory in which the airport is situated a notice:
    - (i) stating that the company has prepared a preliminary version of the draft variation; and
    - (ii) stating that copies of the preliminary version will be available for inspection and purchase by members of the public during normal office hours throughout the period of 30 days after the publication of the notice; and
    - (iii) specifying the place or places where the copies will be available for inspection and purchase; and

- (iv) inviting members of the public to give written comments about the preliminary version to the company within 30 days after the publication of the notice; and
  - (b) make copies of the preliminary version available for inspection and purchase by members of the public in accordance with the notice.
- (2) If members of the public have given written comments about the preliminary version in accordance with the notice, the draft variation submitted to the Minister must be accompanied by a written certificate signed on behalf of the company:
- (a) listing the names of those members of the public; and
  - (b) summarising those comments; and
  - (c) stating that the company has had due regard to those comments in preparing the draft variation; and
  - (d) setting out such other information (if any) about those comments as is specified in the regulations.
- (3) Subsection (2) does not, by implication, limit the matters to which the company may have regard.

### **85 Notification of matters that may affect the achievement of final master plan**

- (1) If:
- (a) a final master plan for an airport is in force; and
  - (b) the airport-lessee company for the airport becomes aware that a particular matter may significantly affect the achievement of the plan;
- the company must, within 60 days after it becomes aware of that matter, give the Minister a written notice:
- (c) setting out particulars of the matter; and
  - (d) explaining the effect of the matter on the achievement of the plan.
- (2) A company commits an offence if:
- (a) the company is required to give a written notice under subsection (1); and
  - (b) the company engages in conduct; and

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(c) the company's conduct contravenes the requirement.

Penalty: 100 penalty units.

(3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**86 Publication of final master plan or variation of final master plan**

(1) This section applies if:

- (a) the Minister approves a draft master plan for an airport; or
- (b) the Minister approves a draft variation of a final master plan for an airport.

(2) The airport-lessee company for the airport must:

- (a) cause to be published in a newspaper circulating generally in the State or Territory in which the airport is situated a notice:
  - (i) stating that the plan or variation has been approved; and
  - (ii) stating that copies of the plan or variation will be available for inspection and purchase by members of the public during normal office hours while the plan remains in force; and
  - (iii) specifying the place or places where the plan or variation will be available for inspection and purchase; and
- (b) make the plan or variation available for inspection and purchase by members of the public in accordance with the notice.

The company must comply with this subsection:

- (c) within 90 days after the approval of the plan or variation, as the case requires; or
- (d) if the Minister, by written notice given to the company, allows a longer period—within that longer period.

(3) A company commits an offence if:

- (a) the company is subject to a requirement to publish a notice and make a plan or variation available for inspection under subsection (2); and

- (b) the company engages in conduct; and
- (c) the company's conduct contravenes the requirement.

Penalty: 250 penalty units.

- (4) Strict liability applies to paragraph (3)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **87 Transitional—adoption of FAC documents**

- (1) A draft or final master plan for an airport may make provision for or in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in a document that:
  - (a) relates to the airport; and
  - (b) was prepared for or by the Federal Airports Corporation when the airport was a Federal airport, or a Federal airport development site, within the meaning of the *Federal Airports Corporation Act 1986*.

Note: All draft and final master plans must comply with the content rules set out in sections 71 and 72.

- (2) If subsection (1) applies to a draft master plan, the plan must be accompanied by the document when:
  - (a) the plan is given to the Minister under this Division; or
  - (b) a preliminary version of the plan is made available for inspection and purchase under section 79.
- (3) If subsection (1) applies to a final master plan, the plan must be accompanied by the document when the plan is made available for inspection and purchase under section 86.

## Division 4—Major development plans

### 88 Simplified outline

The following is a simplified outline of this Division:

- A major development plan is required for each major development at an airport.
- A major development plan is prepared by the airport-lessee company taking into account public comments.

### 89 Meaning of *major airport development*

- (1) For the purposes of this Division, a *major airport development* is a development that is carried out at an airport site and that consists of:
- (a) constructing a new runway; or
  - (b) extending the length of a runway; or
  - (c) constructing a new building wholly or principally for use as a passenger terminal, where the building's gross floor space is greater than 500 square metres; or
  - (d) extending a building that is wholly or principally for use as a passenger terminal, where the extension increases the building's gross floor space by more than 10%; or
  - (e) constructing a new building, where:
    - (i) the building is not wholly or principally for use as a passenger terminal; and
    - (ii) the cost of construction exceeds \$10 million or such higher amount as is prescribed; or
  - (f) constructing a new taxiway, where:
    - (i) the construction significantly increases the capacity of the airport to handle movements of passengers, freight or aircraft; and

- (ii) the cost of construction exceeds \$10 million or such higher amount as is prescribed; or
- (g) extending a taxiway, where:
  - (i) the extension significantly increases the capacity of the airport to handle movements of passengers, freight or aircraft; and
  - (ii) the cost of construction exceeds \$10 million or such higher amount as is prescribed; or
- (h) constructing a new road or new vehicular access facility, where:
  - (i) the construction significantly increases the capacity of the airport to handle movements of passengers, freight or aircraft; and
  - (ii) the cost of construction exceeds \$10 million or such higher amount as is prescribed; or
- (j) extending a road or vehicular access facility, where:
  - (i) the extension significantly increases the capacity of the airport to handle movements of passengers, freight or aircraft; and
  - (ii) the cost of construction exceeds \$10 million or such higher amount as is prescribed; or
- (k) constructing a new railway or new rail handling facility, where:
  - (i) the construction significantly increases the capacity of the airport to handle movements of passengers, freight or aircraft; and
  - (ii) the cost of construction exceeds \$10 million or such higher amount as is prescribed; or
- (l) extending a railway or rail handling facility, where:
  - (i) the extension significantly increases the capacity of the airport to handle movements of passengers, freight or aircraft; and
  - (ii) the cost of construction exceeds \$10 million or such higher amount as is prescribed; or
- (m) a development of a kind that is likely to have significant environmental or ecological impact; or

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- (n) if a final environment strategy is in force for the airport—a development which affects an area identified as environmentally significant in the environment strategy; or
  - (o) a development of a kind specified in the regulations.
- (2) Paragraphs (1)(a), (b), (c), (d), (e), (f), (g), (h), (j), (k), (l), (m) and (n) do not, by implication, limit paragraph (1)(o).
- (3) For the purposes of subsection (1), if:
- (a) the parties to a transaction do not deal with each other at arm's length in relation to the transaction; and
  - (b) a cost arising out of that transaction is less than is reasonable; the amount of that cost is taken to be the amount of the cost that would have arisen if the parties had dealt with each other at arm's length.

**90 Major airport development must not be carried out except in accordance with an approved major development plan**

- (1) An airport-lessee company for an airport must not:
- (a) carry out a major airport development relating to the airport; or
  - (b) cause or permit to be carried out a major airport development relating to the airport;
- unless:
- (c) the carrying out of the development is in accordance with a major development plan approved under this Division; or
  - (d) the development is of a kind declared by the regulations to be exempt from this Division.
- (2) If:
- (a) a major airport development plan in relation to an airport is approved under this Division; and
  - (b) the approval is subject to a condition that applies to the airport-lessee company for the airport;
- the company must comply with the condition.

- (3) A company commits an offence if:
- (a) the company is subject to a requirement under subsection (1) or (2); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 2,000 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (1)(c) and (d) (see subsection 13.3(3) of the *Criminal Code*).

- (3A) Strict liability applies to paragraph (3)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) A person (other than an airport-lessee company) must not:
- (a) carry out a major airport development relating to an airport; or
  - (b) cause or permit to be carried out a major airport development relating to an airport;

unless:

- (c) the carrying out of the development is in accordance with a major development plan approved under this Division; or
- (d) the development is of a kind declared by the regulations to be exempt from this Division.

- (5) If:

- (a) a major airport development plan in relation to an airport is approved under this Division; and
- (b) the approval is subject to a condition that applies to a person (other than the airport-lessee company for the airport);

the person must comply with the condition.

- (6) A person commits an offence if:

- (a) the person is subject to a requirement under subsection (4) or (5); and
- (b) the person engages in conduct; and
- (c) the person's conduct contravenes the requirement.

Penalty: 400 penalty units.

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Note: A defendant bears an evidential burden in relation to the matters in paragraphs (4)(c) and (d) (see subsection 13.3(3) of the *Criminal Code*).

(7) Strict liability applies to paragraph (6)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**91 Contents of major development plan**

- (1) A major development plan, or a draft of such a plan, must set out:
- (a) the airport-lessee company's objectives for the development; and
  - (b) the airport-lessee company's assessment of the extent to which the future needs of civil aviation users of the airport, and other users of the airport, will be met by the development; and
  - (c) a detailed outline of the development; and
  - (d) if a final master plan for the airport is in force—whether or not the development is consistent with the final master plan; and
  - (e) if the development could affect noise exposure levels at the airport—the effect that the development would be likely to have on those levels; and
  - (f) the airport-lessee company's plans, developed following consultations with the airlines that use the airport, local government bodies in the vicinity of the airport and—if the airport is a joint user airport—the Department of Defence, for managing aircraft noise intrusion in areas forecast to be subject to exposure above the significant ANEF levels; and
  - (g) an outline of the approvals that the airport-lessee company, or any other person, has sought, is seeking or proposes to seek under Division 5 or Part 12 in respect of elements of the development; and
  - (h) the airport-lessee company's assessment of the environmental impacts that might reasonably be expected to be associated with the development; and
  - (j) the airport-lessee company's plans for dealing with the environmental impacts mentioned in paragraph (h) (including

- plans for ameliorating or preventing environmental impacts);  
and
- (k) if a draft environment strategy has been approved—the date of the approval; and
  - (l) such other matters (if any) as are specified in the regulations.
- (2) Paragraphs (1)(a) to (k) (inclusive) do not, by implication, limit paragraph (1)(l).
  - (3) The regulations may provide that, in specifying a particular objective, assessment, outline or other matter covered by subsection (1), a major development plan, or a draft of such a plan, must address such things as are specified in the regulations.
  - (4) In specifying a particular objective or proposal covered by paragraph (1)(a) or (c), a major development plan, or a draft of such a plan, must address the extent (if any) of consistency with planning schemes in force under a law of the State or Territory in which the airport is located.
  - (5) Subsection (4) does not, by implication, limit subsection (3).
  - (6) In developing plans referred to in paragraph (1)(f), an airport-lessee company must have regard to Australian Standard AS2021—1994 (“Acoustics—Aircraft noise intrusion—Building siting and construction”).
  - (7) Subsection (6) does not, by implication, limit the matters to which regard may be had.

## **92 Public comment**

- (1) Before giving the Minister a draft major development plan, the airport-lessee company concerned must:
  - (a) cause to be published in a newspaper circulating generally in the State or Territory in which the airport is situated a notice:
    - (i) stating that the company has prepared a draft version of the plan; and
    - (ii) stating that copies of the draft version will be available for inspection and purchase by members of the public

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- during normal office hours throughout the period of 90 days after the publication of the notice; and
- (iii) specifying the place or places where the copies will be available for inspection and purchase; and
  - (iv) inviting members of the public to give written comments about the draft version to the company within 90 days after the publication of the notice; and
- (b) make copies of the draft version available for inspection and purchase by members of the public in accordance with the notice.
- (2) If members of the public have given written comments about the draft version in accordance with the notice, the draft plan submitted to the Minister must be accompanied by a written certificate signed on behalf of the company:
- (a) listing the names of those members of the public; and
  - (b) summarising those comments; and
  - (c) stating that the company has had due regard to those comments in preparing the draft plan; and
  - (d) setting out such other information (if any) about those comments as is specified in the regulations.
- (3) Subsection (2) does not, by implication, limit the matters to which the company may have regard.

**93 Consultations**

- (1) This section applies if:
- (a) an airport-lessee company gives the Minister a draft major development plan; and
  - (b) before the publication under section 92 of a notice about the plan, the company consulted a person covered by any of the following subparagraphs:
    - (i) a State or Territory government;
    - (ii) an authority of a State or Territory;
    - (iii) a local government body;
    - (iv) an airline or other user of the airport concerned;
    - (v) any other person.

- (2) The draft major development plan submitted to the Minister must be accompanied by a written statement signed on behalf of the company:
  - (a) listing the names of the persons consulted; and
  - (b) summarising the views expressed by the persons consulted.

#### **94 Approval of major development plan by Minister**

- (1) This section applies if an airport-lessee company gives the Minister a draft major development plan.
- (2) The Minister must:
  - (a) approve the plan; or
  - (b) refuse to approve the plan.
- (3) In deciding whether to approve the plan, the Minister must have regard to the following matters:
  - (a) the extent to which carrying out the plan would meet the future needs of civil aviation users of the airport, and other users of the airport, for services and facilities relating to the airport;
  - (b) the effect that carrying out the plan would be likely to have on the future operating capacity of the airport;
  - (c) the impact that carrying out the plan would be likely to have on the environment;
  - (d) the consultations undertaken in preparing the plan (including the outcome of the consultations);
  - (e) the views of the Civil Aviation Safety Authority and Airservices Australia, in so far as they relate to safety aspects and operational aspects of the plan.
- (4) Subsection (3) does not, by implication, limit the matters to which the Minister may have regard.
- (5) If a final master plan is in force for the airport, the Minister must not approve the draft major development plan unless it is consistent with the final master plan.

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- (6) If the Minister neither approves, nor refuses to approve, the draft major development plan before the end of the period of 90 days after the day on which the Minister received the draft plan, the Minister is taken, at the end of that period, to have approved the plan under subsection (2).
- (6A) However, if the advice of the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* is sought under Subdivision A of Division 4 of Part 11 of that Act in relation to a draft plan, subsection (6) applies as if it referred to the day on which the advice was given, instead of the day the draft plan was received.
- (7) The Minister may approve the draft major development plan subject to one or more conditions.
- (8) As soon as practicable after deciding whether to approve the draft major development plan, the Minister must notify the company in writing of the decision.
- (9) If the Minister refuses to approve the draft major development plan, the Minister must notify the company in writing of the Minister's reasons for the refusal.
- (10) The regulations may provide for fees to be payable in respect of the lodgment of a draft plan under subsection (1).

**95 Minor variation of major development plan**

- (1) This section applies if:
  - (a) a major development plan for an airport has been approved by the Minister; and
  - (b) the airport-lessee company for the airport gives the Minister a draft variation of the plan; and
  - (c) the variation is of a minor nature.
- (2) The Minister must:
  - (a) approve the variation; or
  - (b) refuse to approve the variation.

- (3) If the Minister neither approves, nor refuses to approve, the variation before the end of the period of 90 days after the day on which the Minister received the draft variation, the Minister is taken, at the end of that period, to have approved the variation under subsection (2).
- (3A) However, if the advice of the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* is sought under Subdivision A of Division 4 of Part 11 of that Act in relation to a draft variation, subsection (3) applies as if it referred to the day on which the advice was given, instead of the day the draft variation was received.
- (4) As soon as practicable after deciding whether to approve the variation, the Minister must notify the company in writing of the decision.
- (5) If the Minister refuses to approve the variation, the Minister must notify the company in writing of the Minister's reasons for the refusal.
- (6) If the Minister approves the variation, the plan is varied accordingly.

#### **95A Public comment—minor variation**

- (1) Before giving the Minister a draft variation of a major development plan for an airport under subsection 95(1), the airport-lessee company for the airport must:
  - (a) cause to be published in a newspaper circulating generally in the State or Territory in which the airport is situated a notice:
    - (i) stating that the company has prepared a preliminary version of the draft variation; and
    - (ii) stating that copies of the preliminary version will be available for inspection and purchase by members of the public during normal office hours throughout the period of 30 days after the publication of the notice; and
    - (iii) specifying the place or places where the copies will be available for inspection and purchase; and

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- (iv) inviting members of the public to give written comments about the preliminary version to the company within 30 days after the publication of the notice; and
    - (b) make copies of the preliminary version available for inspection and purchase by members of the public in accordance with the notice.
  - (2) If members of the public have given written comments about the preliminary version in accordance with the notice, the draft variation submitted to the Minister must be accompanied by a written certificate signed on behalf of the company:
    - (a) listing the names of those members of the public; and
    - (b) summarising those comments; and
    - (c) stating that the company has had due regard to those comments in preparing the draft variation; and
    - (d) setting out such other information (if any) about those comments as is specified in the regulations.
  - (3) Subsection (2) does not, by implication, limit the matters to which the company may have regard.

**96 Publication of major development plan or variation of major development plan**

- (1) This section applies if:
  - (a) the Minister approves a draft major development plan for an airport; or
  - (b) the Minister approves a draft variation of a major development plan for an airport.
- (2) The airport-lessee company for the airport must:
  - (a) cause to be published in a newspaper circulating generally in the State or Territory in which the airport is situated a notice:
    - (i) stating that the plan or variation has been approved; and
    - (ii) stating that copies of the plan or variation will be available for inspection and purchase by members of the public during normal office hours for 180 days after the publication of the notice; and

(iii) specifying the place or places where the plan or variation will be available for inspection and purchase; and

(b) make the plan or variation available for inspection and purchase by members of the public in accordance with the notice.

The company must comply with this subsection:

(c) within 90 days after the approval of the plan or variation, as the case may be; or

(d) if the Minister, by written notice given to the company, allows a longer period—within that longer period.

(3) A company commits an offence if:

(a) the company is required to publish a notice and make a plan or variation available for inspection under subsection (2); and

(b) the company engages in conduct; and

(c) the company's conduct contravenes the requirement.

Penalty: 250 penalty units.

(4) Strict liability applies to paragraph (3)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Division 5—Building control**

### **Subdivision A—Simplified outline**

#### **97 Simplified outline**

The following is a simplified outline of this Division:

- Building activities on airport sites require approval. Approvals are given under the regulations.
- Buildings and structures on airport sites must be certified as complying with the regulations. Certificates are issued under the regulations.

### **Subdivision B—Interpretation**

#### **98 Interpretation**

*Building activities*

- (1) For the purposes of this Division, the following activities are building activities:
  - (a) constructing buildings or other structures;
  - (b) altering the structure of buildings or other structures;
  - (c) undertaking, constructing or altering earthworks (whether or not in relation to buildings or other structures);
  - (d) undertaking, constructing or altering engineering works, electrical works or hydraulic works (whether or not in relation to buildings or other structures);
  - (e) demolishing, destroying, dismantling or removing:
    - (i) buildings or other structures; or
    - (ii) earthworks; or
    - (iii) engineering works; or
    - (iv) electrical works; or

(v) hydraulic works.

*Structures*

- (2) For the purposes of this Division, the following are taken to be **structures**:
- (a) bridges;
  - (b) fences;
  - (c) towers and pylons;
  - (d) tents and other temporary structures.

*Earthworks or engineering works*

- (3) For the purposes of this Division, the following are taken to be **earthworks or engineering works**:
- (a) runways, taxiways and aprons;
  - (b) surface carparks;
  - (c) retaining walls;
  - (d) dams;
  - (e) roads;
  - (f) railways;
  - (g) pipelines;
  - (h) tunnels.

## **Subdivision C—Building approvals**

### **99 Building activities not to be carried out without approval**

*Contravention by an airport-lessee company*

- (1) An airport-lessee company for an airport must not:
- (a) carry out a building activity on the airport site; or
  - (b) cause or permit to be carried out on the airport site a building activity;
- unless:

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- (c) carrying out the activity is in accordance with an approval granted under regulations made for the purposes of this Subdivision; or
- (d) all of the following conditions are satisfied:
  - (i) the activity is of a kind declared by the regulations to be exempt from this Subdivision;
  - (ii) in a case where a final master plan is in force for the airport—the activity is consistent with the plan;
  - (iii) in a case where the building activity is an element of a major airport development (within the meaning of Division 4) and a major development plan is in force for that development—the activity is consistent with the plan.

*Offence*

- (2) A company commits an offence if:
  - (a) the company is subject to a requirement under subsection (1); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 250 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (1)(c) and (d) (see subsection 13.3(3) of the *Criminal Code*).

- (2A) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Contravention by a person other than an airport-lessee company*

- (3) A person other than an airport-lessee company must not:
  - (a) carry out a building activity on an airport site; or
  - (b) cause or permit to be carried out on an airport site a building activity;unless:

- (c) carrying out the activity is in accordance with an approval granted under regulations made for the purposes of this Subdivision; or
- (d) all of the following conditions are satisfied:
  - (i) the activity is of a kind declared by the regulations to be exempt from this Subdivision;
  - (ii) in a case where a final master plan is in force for the airport—the activity is consistent with the plan;
  - (iii) in a case where the building activity is an element of a major airport development (within the meaning of Division 4) and a major development plan is in force for that development—the activity is consistent with the plan.

*Offence*

- (4) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (3); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (3)(c) and (d) (see subsection 13.3(3) of the *Criminal Code*).

- (5) Strict liability applies to paragraph (4)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **100 Regulations about building approvals**

- (1) The regulations may make provision for and in relation to the following:
  - (a) the grant of approvals authorising building activities to be carried out on airport sites;
  - (b) conditions of such approvals;
  - (c) revocation, variation or surrender of such approvals;

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- (d) fees in respect of applications for such approvals;
  - (e) in a case where an airport lease is transferred—the transfer of such an approval to the transferee.
- (2) Regulations made for the purposes of subsection (1) may make provision for or in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in:
- (a) the Building Code of Australia; or
  - (b) the Building Code of Australia as it applies in a particular State or Territory; or
  - (c) a law of a State or Territory; or
  - (d) a standard proposed or approved by the Standards Association of Australia; or
  - (e) a standard made by, or by an authority of, the United States of America; or
  - (f) a standard made by, or by an authority of, a member state of the European Union;
- as in force or existing from time to time.
- (3) A condition prescribed under paragraph (1)(b) may relate to the carrying out of one or more inspections.
- (4) Subsection (3) does not, by implication, limit the operation of paragraph (1)(b).
- (5) The regulations may provide that approvals must not be granted in respect of particular kinds of building activity.

**101 Building approval to be consistent with final master plan and major development plan**

- (1) This section applies to an approval of a building activity, where the approval is granted under regulations made for the purposes of this Subdivision.
- (2) If a final master plan is in force for the airport concerned, the approval must not be granted unless it is consistent with the plan.
- (3) If:

- (a) the building activity is an element of a major airport development (within the meaning of Division 4); and
  - (b) a major development plan is in force for that development;
- the approval must not be granted unless it is consistent with the plan.

### **102 Offence of contravening conditions**

- (1) A person commits an offence if:
  - (a) the person has been granted approval under the regulations for the purposes of this Subdivision; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a condition of the approval.

Penalty: 50 penalty units.

- (2) Strict liability applies to paragraph (1)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **103 Remedial directions**

- (1) If:
    - (a) a building activity is carried out on an airport site; and
    - (b) subsection (4) does not apply to the activity; and
    - (c) either:
      - (i) the activity was not authorised by an approval granted under the regulations; or
      - (ii) if such an approval was granted in relation to the activity—a condition of the approval was contravened;
- an authorised person may give another person a written direction requiring the other person:
- (d) to stop work on; or
  - (e) to carry out remedial work on; or
  - (f) to demolish, dismantle or remove;
- the building, structure, earthworks, engineering works, electrical works or hydraulic works concerned.

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- (2) An authorised person must not give another person a direction under this section unless the other person is:
- (a) an airport-operator company for the airport concerned; or
  - (b) a person who carried out the building activity concerned; or
  - (c) a person who arranged for the carrying out of the building activity concerned.
- (3) A person commits an offence if:
- (a) the person is subject to a direction under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 50 penalty units.

- (4) This subsection applies to a building activity if all of the following conditions are satisfied:
- (a) the activity is of a kind declared by the regulations to be exempt from this Subdivision;
  - (b) in a case where a final master plan is in force for the airport—the activity is consistent with the plan;
  - (c) in a case where the building activity is an element of a major airport development (within the meaning of Division 4) and a major development plan is in force for that development—the activity is consistent with the plan.
- (5) In this section:
- authorised person* means:
- (a) the Secretary to the Department; or
  - (b) a person authorised in writing by the Secretary to the Department for the purposes of this section.

**Subdivision D—Certificates of compliance**

**104 Certificates of compliance**

In this Subdivision:

*certificate of compliance* has the meaning given by section 107.

### **105 Eligible alterations**

For the purposes of this Subdivision, the following are *eligible alterations*:

- (a) alterations of the structure of a building or other structure;
- (b) alterations of earthworks, engineering works, electrical works or hydraulic works (whether or not in relation to buildings or other structures).

### **106 Requirement for certificate of compliance**

(1) An airport-lessee company for an airport must not:

- (a) occupy or use a building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration on the airport site; or
- (b) cause or permit a building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration on the airport site to be occupied or used;

unless:

- (c) a certificate of compliance for the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires, is in force under regulations made for the purposes of this Subdivision; or
- (d) if the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case may be, was completed before the time when an airport lease for the airport was granted under the *Airports (Transitional) Act 1996*—a certificate of fitness for occupancy or use or a similar document was issued before that time in respect of the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires, by:
  - (i) the Commonwealth, a State or a Territory; or
  - (ii) an authority of the Commonwealth, a State or a Territory; or
  - (iii) a local government body; or

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- (e) the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires, is of a kind declared by the regulations to be exempt from this Subdivision.
- (2) Paragraphs (1)(c) and (d) do not, by implication, limit paragraph (1)(e).
- (3) A company that contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 250 penalty units.  
Note: A defendant bears an evidential burden in relation to the matters in paragraphs (1)(c), (d) and (e) (see subsection 13.3(3) of the *Criminal Code*).
- (4) A person who is the sub-lessee of an airport lease for an airport must not:
  - (a) occupy or use a building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration on the airport site; or
  - (b) cause or permit a building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration on the airport site to be occupied or used;unless:
  - (c) a certificate of compliance for the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires, is in force under regulations made for the purposes of this Subdivision; or
  - (d) if the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case may be, was completed before the time when an airport lease for the airport was granted under the *Airports (Transitional) Act 1996*—a certificate of fitness for occupancy or use or a similar document was issued before that time in respect of the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires, by:
    - (i) the Commonwealth, a State or a Territory; or

- (ii) an authority of the Commonwealth, a State or a Territory; or
  - (iii) a local government body; or
  - (e) the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires, is of a kind declared by the regulations to be exempt from this Subdivision.
- (5) Paragraphs (4)(c) and (d) do not, by implication, limit paragraph (4)(e).
- (6) A person who contravenes subsection (4) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.
- Note: A defendant bears an evidential burden in relation to the matters in paragraphs (4)(c), (d) and (e) (see subsection 13.3(3) of the *Criminal Code*).

### **107 Regulations about certificates of compliance**

- (1) The regulations may make provision for and in relation to the following:
- (a) the issue of certificates (to be known as ***certificates of compliance***) stating that a building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration is to be treated as complying with the regulations;
  - (b) conditions of certificates of compliance;
  - (c) revocation, variation or surrender of certificates of compliance;
  - (d) fees in respect of applications for certificates of compliance;
  - (e) in a case where an airport lease is transferred—the transfer of a certificate of compliance to the transferee.
- (2) Regulations made for the purposes of subsection (1) may make provision for or in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in:
- (a) the Building Code of Australia; or

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- (b) the Building Code of Australia as it applies in a particular State or Territory; or
  - (c) a law of a State or Territory; or
  - (d) a standard proposed or approved by the Standards Association of Australia; or
  - (e) a standard made by, or by an authority of, the United States of America; or
  - (f) a standard made by, or by an authority of, a member state of the European Union;
- as in force or existing from time to time.
- (3) A condition prescribed under paragraph (1)(b) may relate to the carrying out of one or more inspections.
  - (4) Subsection (3) does not, by implication, limit the operation of paragraph (1)(b).
  - (5) The regulations may provide that certificates of compliance must not be issued for particular kinds of buildings, structures, earthworks, engineering works, electrical works, hydraulic works or eligible alterations.

**108 Offence of contravening conditions**

A person commits an offence if:

- (a) the person has been issued with a certificate of compliance under regulations made for the purposes of this Subdivision; and
- (b) the person engages in conduct, whether before or after the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration concerned is first occupied or used; and
- (c) the person's conduct contravenes a condition of the certificate.

Penalty: 50 penalty units.

## **109 Remedial directions**

(1) If:

- (a) a building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration at an airport site is occupied or used; and
- (b) the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration is not of a kind declared by the regulations to be exempt from this Subdivision; and
- (c) either:
  - (i) a certificate of compliance issued under regulations made for the purposes of this Subdivision is not in force in relation to the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires; or
  - (ii) if such a certificate is in force in relation to the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires—a condition of the certificate is contravened;

an authorised person may give another person a written direction requiring the other person:

- (d) to cease to occupy or use; or
- (e) to carry out remedial work on; or
- (f) to demolish, dismantle or remove;

the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration concerned.

(2) An authorised person must not give another person a direction under this section unless the other person is:

- (a) an airport-operator company for the airport concerned; or
- (b) a person who is occupying or using, or is proposing to occupy or use, the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration concerned; or
- (c) a person who has caused or permitted, or is proposing to cause or permit, the building, structure, earthworks,

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engineering works, electrical works, hydraulic works or eligible alteration concerned to be occupied or used.

- (3) A person commits an offence if:
- (a) the person is subject to a direction under this section; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 50 penalty units.

- (4) In this section:

*authorised person* means:

- (a) the Secretary to the Department; or
- (b) a person authorised in writing by the Secretary to the Department for the purposes of this section.

**110 Transitional—buildings and structures in existence when airport lease first granted**

- (1) This section applies to a building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration on an airport site that was completed before the time when an airport lease for the airport was granted under the *Airports (Transitional) Act 1996*.
- (2) Sections 106, 108 and 109 do not apply in relation to the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires, throughout the 180-day period beginning when the lease is granted.

## **Division 6—Miscellaneous**

### **111 Infringement notices**

- (1) The regulations may make provision enabling a person who is alleged to have committed an offence against this Part to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must equal one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

### **112 Exclusion of State/Territory laws**

- (1) It is the intention of the Parliament that this Part is to apply to the exclusion of a law of a State or Territory.
- (2) In particular, it is the intention of the Parliament that this Part is to apply to the exclusion of a law of a State or Territory relating to:
  - (a) land use planning; or
  - (b) the regulation of building activities (within the meaning of Division 5).

## **Part 6—Environmental management**

### **Division 1—Simplified outline**

#### **113 Simplified outline**

The following is a simplified outline of this Part:

- For each airport, there is to be a final environment strategy.
- A final environment strategy is a draft environment strategy that has been approved by the Minister.
- A draft environment strategy is prepared by an airport-lessee company after taking into account public comments.
- It is an offence to cause environmental harm at an airport site.
- The regulations may deal with environmental standards at airport sites.

## **Division 2—Environment strategies**

### **114 Airports to which Division applies**

- (1) This Division applies to:
  - (a) a core regulated airport; or
  - (b) an airport specified in the regulations;if there is an airport lease for the airport.
- (2) For the purposes of subsection (1), the boundaries of an airport are the boundaries of the airport site for the airport.

### **115 Final environment strategies**

For each airport, there is to be a final environment strategy.

Note: A *final environment strategy* is a draft environment strategy that has been approved by the Minister—see section 128.

### **116 Contents of draft or final environment strategy**

- (1) This section specifies the matters that must be set out in each draft or final environment strategy for an airport.

*Airports other than joint-user airports*

- (2) In the case of an airport other than a joint-user airport, a draft or final environment strategy must specify:
  - (a) the airport-lessee company's objectives for the environmental management of the airport; and
  - (b) the areas if any within the airport site which the airport-lessee company, in consultation with State or Territory and Federal conservation bodies, identifies are environmentally significant; and
  - (c) the sources of environmental impact associated with airport operations; and

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- (d) the studies, reviews and monitoring to be carried out by the airport-lessee company in connection with the environmental impact associated with airport operations; and
- (e) the time frames for completion of those studies and reviews and for reporting on that monitoring; and
- (f) the specific measures to be carried out by the airport-lessee company for the purposes of preventing, controlling or reducing the environmental impact associated with airport operations; and
- (g) the time frames for completion of those specific measures; and
- (h) details of the consultations undertaken in preparing the strategy (including the outcome of the consultations); and
- (j) such other matters (if any) as are specified in the regulations.

Paragraphs (a) to (h) (inclusive) do not, by implication, limit paragraph (j).

*Joint-user airports*

- (3) In the case of a joint-user airport, a draft or final environment strategy must specify:
  - (a) the airport-lessee company's objectives for the environmental management of the area of the airport site leased to the company; and
  - (b) the areas if any within the airport site which the airport-lessee company, in consultation with State or Territory and Federal conservation bodies, identifies are environmentally significant; and
  - (c) the sources of environmental impact associated with civil aviation operations at the airport; and
  - (d) the studies, reviews and monitoring to be carried out by the airport-lessee company in connection with the environmental impact associated with civil aviation operations at the airport; and
  - (e) the time frames for completion of those studies and reviews and for reporting on that monitoring; and
  - (f) the specific measures to be carried out by the airport-lessee company for the purposes of preventing, controlling or

reducing the environmental impact associated with civil aviation operations at the airport; and

(g) the time frames for completion of those specific measures; and

(h) details of the consultations undertaken in preparing the strategy (including the outcome of the consultations); and

(j) such other matters (if any) as are specified in the regulations.

Paragraphs (a) to (h) (inclusive) do not, by implication, limit paragraph (j).

- (4) The regulations may provide that the matters covered by subsection (2) or (3) may relate to either or both of the following:
- (a) the whole of the strategy period for the strategy;
  - (b) one or more specified 12-month periods included in the strategy period for the strategy.

Note: *Strategy period* is defined by section 117.

- (5) The regulations may provide that, in specifying a particular matter covered by subsection (2) or (3), a draft or final environment strategy must address such things as are specified in the regulations.

### **117 Strategy period**

A draft or final environment strategy must relate to a period of 5 years. This period is called the *strategy period*.

### **118 Assumption of continuity of lease**

For the purposes of the application of this Division to a draft or final environment strategy for an airport, it is to be assumed that the airport lease or airport leases held by the airport-lessee company will continue in force for the duration of the strategy period for the strategy.

### **119 Strategy does not lapse when lease transferred**

A draft or final environment strategy for an airport does not cease to be in force if the airport lease or airport leases are transferred. In

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that event, the transferee is taken to have adopted the strategy as its own.

**120 Draft environment strategy to be given to Minister after acquisition or grant of airport lease**

- (1) If:
- (a) a company acquires or is granted an airport lease; and
  - (b) a final environment strategy for the airport is not in force at the time of the acquisition or grant;
- the company must give the Minister a draft environment strategy for the airport:
- (c) within 12 months after the acquisition or grant; or
  - (d) if the Minister, by written notice given to the company, allows a longer period—within that longer period.
- (2) A company commits an offence if:
- (a) the company is required to give the Minister a draft environment strategy under subsection (1); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 250 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**121 New draft environment strategy to be submitted before expiry of old strategy**

- (1) If a final environment strategy (the *original strategy*) is in force for an airport, the airport-lessee company must give the Minister a draft environment strategy for the airport before the expiry of the original strategy. The strategy period for the draft strategy must begin immediately after the expiry of the original strategy.
- (2) A company commits an offence if:
- (a) the company is required to give the Minister a draft environment strategy under subsection (1); and

- (b) the company engages in conduct; and
- (c) the company's conduct contravenes the requirement.

Penalty: 250 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **122 Duration of final environment strategy**

- (1) A final environment strategy remains in force for 5 years. However, if, at the end of that 5 years, a fresh final environment strategy does not come into force, the original strategy remains in force until a fresh strategy comes into force.
- (2) Subsection (1) has effect subject to section 123 (which deals with replacement of strategies).

## **123 Replacement of final environment strategy**

- (1) If a final environment strategy (the *original strategy*) for an airport is in force, the airport-lessee company for the airport may give the Minister a draft environment strategy that is expressed to replace the original strategy. When the draft strategy becomes a final environment strategy, the original strategy ceases to be in force.
- (2) If a final environment strategy (the *original strategy*) for an airport is in force, the Minister may, by written notice given to the airport-lessee company for the airport, direct the company to give the Minister a draft environment strategy that is expressed to replace the original strategy. The company must comply with the direction:
  - (a) within 180 days after the day on which the notice was given;  
or
  - (b) if the Minister, by written notice given to the company, allows a longer period—within that longer period.When the draft strategy becomes a final environment strategy, the original strategy ceases to be in force.
- (3) A company commits an offence if:

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- (a) the company is subject to a direction under subsection (2);  
and
- (b) the company engages in conduct; and
- (c) the company's conduct contravenes the direction.

Penalty: 250 penalty units.

**124 Public comment**

- (1) Before giving the Minister a draft environment strategy for an airport under section 120, 121 or 123, the airport-lessee company for the airport must:
  - (a) cause to be published in a newspaper circulating generally in the State or Territory in which the airport is situated a notice:
    - (i) stating that the company has prepared a preliminary version of the draft strategy; and
    - (ii) stating that copies of the preliminary version will be available for inspection and purchase by members of the public during normal office hours throughout the period of 90 days after the publication of the notice; and
    - (iii) specifying the place or places where the copies will be available for inspection and purchase; and
    - (iv) inviting members of the public to give written comments about the preliminary version to the company within 90 days after the publication of the notice; and
  - (b) make copies of the preliminary version available for inspection and purchase by members of the public in accordance with the notice.
- (2) If members of the public have given written comments about the preliminary version in accordance with the notice, the draft strategy submitted to the Minister must be accompanied by a written certificate signed on behalf of the company:
  - (a) listing the names of those members of the public; and
  - (b) summarising those comments; and
  - (c) stating that the company has had due regard to those comments in preparing the draft strategy; and

- (d) setting out such other information (if any) about those comments as is specified in the regulations.
- (3) Subsection (2) does not, by implication, limit the matters to which the company may have regard.

### **125 Consultations**

- (1) This section applies if:
  - (a) an airport-lessee company gives the Minister a draft environment strategy under section 120, 121 or 123; and
  - (b) before the publication under section 124 of a notice about the strategy, the company consulted a person covered by any of the following subparagraphs:
    - (i) a State or Territory government;
    - (ii) an authority of a State or Territory;
    - (iii) a local government body;
    - (iv) an airline or other user of the airport concerned;
    - (v) any other person.
- (2) The draft strategy submitted to the Minister must be accompanied by a written statement signed on behalf of the company:
  - (a) listing the names of the persons consulted; and
  - (b) summarising the views expressed by the persons consulted.

### **126 Approval of draft by Minister**

- (1) This section applies if an airport-lessee company gives the Minister a draft environment strategy.
- (2) The Minister must:
  - (a) approve the strategy; or
  - (b) refuse to approve the strategy.
- (3) In deciding whether to approve the strategy, the Minister must have regard to the following matters:

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- (a) the effect that carrying out the strategy would be likely to have on the standard of air quality, water quality and soil quality;
  - (b) the effect that the carrying out of the strategy would be likely to have on:
    - (i) biota or habitat; or
    - (ii) natural or heritage values; or
    - (iii) sites of significance to Aboriginal or Torres Strait Islander people;
  - (c) the effect that carrying out the strategy would be likely to have on noise exposure levels;
  - (d) details of the consultations undertaken in preparing the strategy (including the outcome of the consultations).
- (4) Subsection (3) does not, by implication, limit the matters to which the Minister may have regard.
- (5) If the Minister neither approves, nor refuses to approve, the strategy before the end of the period of 90 days after the day on which the Minister received the draft strategy, the Minister is taken, at the end of that period, to have approved the strategy under subsection (2).
- (6) As soon as practicable after deciding whether to approve the strategy, the Minister must notify the company in writing of the decision.
- (7) If the Minister refuses to approve the strategy, the Minister must notify the company in writing of the Minister's reasons for the refusal.
- (8) If the Minister refuses to approve the strategy, the Minister may, by written notice given to the company, direct the company to give the Minister a fresh draft environment strategy. The fresh draft environment strategy must be given to the Minister:
- (a) within 180 days after the day on which the direction was given; or
  - (b) if the Minister, by written notice given to the company, allows a longer period—within that longer period.

- (9) A company commits an offence if:
- (a) the company is subject to a direction under subsection (8);  
and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the direction.

Penalty: 250 penalty units.

### **127 Transfer of airport lease during approval process**

- (1) This section applies if:
- (a) an airport lease is transferred; and
  - (b) before the transfer, a draft environment strategy had been submitted by the transferor to the Minister; and
  - (c) immediately before the transfer, the Minister had not made a decision whether to approve the draft strategy.
- (2) The transferee is taken:
- (a) to have given the draft strategy to the Minister immediately after the transfer; and
  - (b) to have adopted the draft strategy as its own;
- unless, within 60 days after the transfer, the transferee gives the Minister a written undertaking to give the Minister an alternative draft strategy.

### **128 Effect of approval**

If the Minister approves a draft environment strategy, the strategy becomes a final environment strategy. The final strategy comes into force at the time of the approval.

### **129 Minor variation of final environment strategy**

- (1) This section applies if:
- (a) a final environment strategy for an airport is in force; and
  - (b) the airport-lessee company for the airport gives the Minister a draft variation of the strategy; and
  - (c) the variation is of a minor nature.

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- (2) The Minister must:
  - (a) approve the variation; or
  - (b) refuse to approve the variation.
- (3) If the Minister neither approves, nor refuses to approve, the variation before the end of the period of 90 days after the day on which the Minister received the draft variation, the Minister is taken, at the end of that period, to have approved the variation under subsection (2).
- (4) As soon as practicable after deciding whether to approve the variation, the Minister must notify the company in writing of the decision.
- (5) If the Minister refuses to approve the variation, the Minister must notify the company in writing of the Minister's reasons for the refusal.
- (6) If the Minister approves the variation, the strategy is varied accordingly.

**130 Compliance with final environment strategy**

- (1) If a final environment strategy is in force for an airport, the airport-lessee company for the airport must take all reasonable steps to ensure that the strategy is complied with.
- (1A) If a final environment strategy is in force for an airport, a person (other than the airport-lessee company for the airport) who carries on activities at the airport must take all reasonable steps to ensure that the strategy is complied with.
- (2) A contravention of subsection (1) or (1A) is not an offence. However, a contravention of subsection (1) or (1A) is a ground for obtaining an injunction under Part 15.
- (3) A contravention of subsection (1) or (1A) does not affect the validity of any transaction.

- (4) In addition to its effect apart from this subsection, subsection (1A) also has the effect it would have if its application were, by express provision, confined to constitutional corporations.

### **131 Publication of final environment strategy or variation of final environment strategy**

- (1) This section applies if:
- (a) the Minister approves a draft environment strategy for an airport; or
  - (b) the Minister approves a draft variation of a final environment strategy for an airport.
- (2) The airport-lessee company for the airport must:
- (a) cause to be published in a newspaper circulating generally in the State or Territory in which the airport is situated a notice:
    - (i) stating that the strategy or variation has been approved; and
    - (ii) stating that copies of the strategy or variation will be available for inspection and purchase by members of the public during normal office hours while the strategy remains in force; and
    - (iii) specifying the place or places where the strategy or variation will be available for inspection and purchase; and
  - (b) make the strategy or variation available for inspection and purchase by members of the public in accordance with the notice.

The company must comply with this subsection:

- (c) within 90 days after the approval of the strategy or variation, as the case requires; or
  - (d) if the Minister, by written notice given to the company, allows a longer period—within that longer period.
- (3) A company commits an offence if:
- (a) the company is required to publish a notice and make a strategy or variation available for inspection and purchase by members of the public under subsection (2); and

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- (b) the company engages in conduct; and
- (c) the company's conduct contravenes the requirement.

Penalty: 250 penalty units.

- (4) Strict liability applies to paragraph (3)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Division 3—Environmental standards at airports**

### **131A Airports to which Division applies**

- (1) This Division applies to:
  - (a) a core regulated airport; or
  - (b) an airport specified in the regulations;  
if there is an airport lease for the airport.
- (2) For the purposes of subsection (1), the boundaries of an airport are the boundaries of the airport site for the airport.

### **131B Offence resulting in serious environmental harm**

- (1) A person commits an offence if the person engages in conduct that directly or indirectly results in environmental pollution that affects an area that consists of, or is included in, an airport site if the pollution harms, or has the potential to harm, the environment and:
  - (a) both:
    - (i) a final environment strategy is in force for the airport concerned; and
    - (ii) the area is identified in the strategy as environmentally significant; or
  - (b) the effect of the pollution is, or has the potential to be:
    - (i) of high impact; and
    - (ii) irreversible; or
  - (c) the pollution results, or has the potential to result, in substantial harm to public health or to public safety; or
  - (d) the pollution results, or has the potential to result, in substantial damage to property.

Penalty: 500 penalty units.

- (3) Subsection (1) applies to an act or omission of a person, even if the act or omission was not the sole cause of the pollution concerned.
- (4) This section does not, by implication, limit section 132 or 133.

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- (5) A reference in this section to *environmental pollution* includes a reference to air, water or soil pollution, but does not include a reference to noise pollution.

**131C Offence resulting in material environmental harm**

- (1) A person commits an offence if the person engages in conduct that directly or indirectly results in environmental pollution that affects an area that consists of, or is included in, an airport site if the pollution harms, or has the potential to harm, the environment and:
- (a) the effect of the pollution is, or has the potential to be, of significant impact; or
  - (b) the pollution results, or has the potential to result, in harm to public health or to public safety; or
  - (c) the pollution results, or has the potential to result, in damage to property (other than minor damage).

Penalty: 200 penalty units.

- (3) Subsection (1) applies to an act or omission of a person, even if the act or omission was not the sole cause of the pollution concerned.
- (4) This section does not, by implication, limit section 132 or 133.
- (5) A reference in this section to *environmental pollution* includes a reference to air, water or soil pollution, but does not include a reference to noise pollution.

**131D Offence resulting in environmental nuisance**

- (1) A person commits an offence if the person engages in conduct that directly or indirectly results in environmental pollution that affects an area that consists of, or is included in, an airport site and:
- (a) the pollution takes the form of smoke, dust or odour; or
  - (b) the effect of the pollution is:
    - (i) of low impact; and
    - (ii) transient; or

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- (c) the effect of the pollution interferes unreasonably, or has the potential to interfere unreasonably, with the enjoyment of the area by a person occupying, or lawfully using, the area.

Penalty: 50 penalty units.

- (3) Subsection (1) applies to conduct of a person, even if the conduct was not the sole cause of the pollution concerned.
- (4) This section does not, by implication, limit section 132 or 133.
- (5) A reference in this section to *environmental pollution* includes a reference to air, water or soil pollution, but does not include a reference to noise pollution.

**131E Alternative verdicts—offence against section 131B or 131C**

- (1) If a court acquits a person of an offence against section 131B but is satisfied beyond reasonable doubt of facts that prove that the person is guilty of an offence against section 131C or 131D, the court may convict the person of the offence against section 131C or 131D.
- (2) If a court acquits a person of an offence against section 131C but is satisfied beyond reasonable doubt of facts that prove that the person is guilty of an offence against section 131D, the court may convict the person of the offence against section 131D.

**132 Regulations about environmental standards at airports**

- (1) The regulations may make standards and impose requirements that are to be complied with in relation to, or in relation to the prevention or minimisation of:
  - (a) environmental pollution (including air, water or soil pollution) generated at airport sites; or
  - (b) impacts on biota or habitat; or
  - (c) interference with sites of heritage value; or
  - (d) interference with sites of significance to Aboriginal or Torres Strait Islander people; or

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- (e) the emission of noise generated at airport sites (other than noise generated by aircraft in flight); or
  - (f) the disposal or storage of waste at airport sites.
- (2) If a person contravenes a particular provision of regulations made for the purposes of subsection (1), the person is guilty of an offence punishable on conviction by a fine not exceeding the number of penalty units (not exceeding 250 penalty units) that is declared by those regulations to be the maximum number of penalty units for a contravention of that provision.
- (2A) Strict liability applies to the element of an offence against subsection (2) that regulations were made for the purposes of subsection (1).
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (3) Regulations made for the purposes of subsection (1) may make provision for or in relation to a matter by conferring a power on the Minister.
- (3A) Regulations made for the purposes of subsection (1) may make provision for or in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in a standard proposed or approved by the Standards Association of Australia, being a standard as in force or existing from time to time.
- (3B) Regulations made for the purposes of subsection (1) may make provision for or in relation to fees in respect of applications made in relation to any matter under the regulations.
- (4) Section 133 does not, by implication, limit subsection (1) of this section.

**133 Regulations about monitoring, and remedying breaches of, environmental standards at airports**

- (1) The regulations may make provision for and in relation to:

- (a) monitoring, cleaning up, remedying or rectifying environmental pollution (including air, water or soil pollution) generated at airport sites; or
  - (aa) monitoring, mitigating, remedying or rectifying contraventions of section 131B, 131C or 131D; or
  - (b) monitoring, mitigating, remedying or rectifying contraventions of section 132 regulations relating to impacts on biota or habitat; or
  - (c) monitoring, mitigating, remedying or rectifying contraventions of section 132 regulations relating to interference with sites of heritage value; or
  - (d) monitoring, mitigating, remedying or rectifying contraventions of section 132 regulations relating to interference with sites of significance to indigenous people; or
  - (e) monitoring, mitigating, remedying or rectifying the emission of noise generated at airport sites (other than noise generated by aircraft in flight); or
  - (f) monitoring, mitigating, remedying or rectifying contraventions of section 132 regulations relating to the disposal or storage of waste at airport sites.
- (2) Regulations made for the purposes of subsection (1) may prescribe penalties not exceeding 50 penalty units for offences against those regulations.
- (3) Regulations made for the purposes of subsection (1) may make provision for or in relation to a matter by conferring a power on the Minister.
- (3A) Regulations made for the purposes of subsection (1) may make provision for or in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in a standard proposed or approved by the Standards Association of Australia, being a standard as in force or existing from time to time.
- (3B) To avoid doubt, regulations made for the purposes of paragraph (1)(a) may make provision for and in relation to the monitoring, cleaning up, remedying or rectifying, after the
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regulations take effect, of environmental pollution, even if the environmental pollution was generated:

- (a) before the commencement of this subsection; or
- (b) before the regulations took effect.

(3C) Regulations made for the purposes of subsection (1) may make provision for or in relation to fees in respect of applications made in relation to any matter under the regulations.

(4) Section 132 does not, by implication, limit subsection (1) of this section.

**134 Remediating breaches of environmental standards—recovery of expenses by airport-operator company**

(1) If:

- (a) a person has contravened:
  - (i) section 131B, 131C or 131D; or
  - (ii) regulations made for the purposes of section 132 or 133;and
- (b) an airport-operator company for the airport has incurred expenses or other liabilities in relation to cleaning up, remedying or rectifying the act or omission constituting the contravention;

the person is liable to pay to the company an amount equal to so much of those expenses or liabilities as is reasonable.

(2) An amount payable under subsection (1) may be recovered, as a debt due to the company by the person, by action in a court of competent jurisdiction.

(3) An action under subsection (1) must be instituted within 3 years after the act or omission occurred or within such longer period as the court allows.

(4) Subsection (1) does not limit, restrict or otherwise affect any right or remedy the company would have if this section had not been enacted.

### **135 Remediating breaches of environmental standards—recovery of expenses by the Commonwealth**

- (1) If:
  - (a) a person has contravened:
    - (i) section 131B, 131C or 131D; or
    - (ii) regulations made for the purposes of section 132 or 133;  
and
  - (b) the Commonwealth has incurred expenses or other liabilities in relation to cleaning up, remediating or rectifying the act or omission constituting the contravention;the person is liable to pay to the Commonwealth an amount equal to so much of those expenses or liabilities as is reasonable.
- (2) An amount payable under subsection (1) may be recovered, as a debt due to the Commonwealth by the person, by action in a court of competent jurisdiction.
- (3) An action under subsection (1) must be instituted within 3 years after the act or omission occurred or within such longer period as the court allows.
- (4) Subsection (1) does not limit, restrict or otherwise affect any right or remedy the Commonwealth would have if this section had not been enacted.

### **136 Operation of State/Territory laws**

- (1) Subject to this section, it is the intention of the Parliament that this Division is not to apply to the exclusion of a law of a State or Territory to the extent that that law is capable of operating concurrently with this Division.
- (2) The regulations may declare that a specified law of a State or Territory has no effect in relation to a specified airport to the extent to which the law makes provision for and in relation to a matter referred to in section 131B, 131C or 131D or paragraph 132(1)(a), (b), (c), (d), (e) or (f) or 133(1)(a), (aa), (b), (c), (d), (e) or (f).

Note: A law may be specified by name, by inclusion in a specified class or in any other way.

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**137 Severability**

- (1) This section applies to the following provisions:
  - (a) section 131B, 131C or 131D;
  - (b) regulations made for the purposes of section 132 or 133.
- (2) In addition to their effect apart from this section, those provisions also have the effect they would have if their application was, by express provision, confined to acts or omissions of constitutional corporations.

## **Division 4—Infringement notices**

### **138 Infringement notices**

- (1) The regulations may make provision enabling a person who is alleged to have committed an offence against:
  - (a) this Part; or
  - (b) regulations made for the purposes of section 133; to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must equal one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

## **Part 7—Accounts and reports of airport-operator companies**

### **Division 1—Simplified outline**

#### **139 Simplified outline**

The following is a simplified outline of this Part:

- An airport-operator company may be required to prepare audited accounts and give those accounts to the ACCC.
- The regulations may require an airport-operator company for an airport to give the ACCC written reports about the airport.
- The regulations may require an airport-operator company to keep records relating to the preparation of those accounts and reports.

## **Division 2—Scope of Part**

### **140 Airports to which Part applies**

- (1) This Part applies to an airport-operator company for:
  - (a) a core regulated airport; or
  - (b) an airport specified in the regulations;  
if there is an airport lease for the airport.
- (2) For the purposes of subsection (1), the boundaries of an airport are the boundaries of the airport site for the airport.

## Division 3—Accounts

### 141 Preparation and retention of accounts

- (1) This section applies to a company if the company was an airport-operator company throughout the whole or a part of a financial year.

#### *Preparation of accounts*

- (2) The company must, in respect of the whole or part, as the case may be, of the financial year, prepare such accounts and statements as are specified in, or ascertained in accordance with, the regulations. However, this rule does not apply if the regulations declare that the company is exempt from this section.

#### *Regulations may deal with the preparation of accounts*

- (3) The regulations may make provision for and in relation to the preparation of accounts and statements covered by subsection (2). If the regulations make such provision, the accounts and statements covered by subsection (2) must be prepared in accordance with the regulations. This subsection does not, by implication, limit subsection (2).

#### *Accounts to be signed*

- (4) The accounts and statements prepared in accordance with subsection (2) must be signed by at least 2 directors of the company.

#### *Retention of accounts for 5 years*

- (5) The company must retain the accounts and statements prepared in accordance with subsection (2) for 5 years after the end of the period to which they relate.

*Offence*

- (6) A company commits an offence if:
- (a) the company is subject to a requirement under this section;  
and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 100 penalty units.

*Strict liability*

- (6A) Strict liability applies to paragraph (6)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Incorporation of AASB accounting standards*

- (7) Regulations made for the purposes of this section may make provision for or in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in an AASB accounting standard as in force or existing from time to time. For this purpose, an **AASB accounting standard** is an accounting standard made by the Australian Accounting Standards Board under section 334 of the *Corporations Act 2001*.

**142 Audit of accounts**

- (1) This section applies if a company prepares accounts and statements in respect of a period (the **accounting period**) in accordance with this Division.

*Audit by approved auditor*

- (2) The accounts and statements must be audited by an approved auditor.

Note: **Approved auditor** is defined by section 144.

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*Company to arrange for audit*

- (3) The company must make such arrangements as are necessary to enable the audit of those accounts and statements in accordance with this Division.

*Offence*

- (4) A company commits an offence if:
- (a) the company is required to make arrangements under subsection (3); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 100 penalty units.

*Strict liability*

- (4A) Strict liability applies to paragraph (4)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Auditor's certificate*

- (5) The auditor must, for the purposes of this Division, give the company a certificate relating to the accounts and statements. The certificate must be given within the prescribed period after the accounting period. The certificate must be in the prescribed form.

*Offence*

- (6) A person commits an offence if:
- (a) the person is required to give a company a certificate under subsection (5); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 50 penalty units.

*Strict liability*

- (7) Strict liability applies to paragraph (6)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **143 Lodgment of accounts with the ACCC**

- (1) This section applies if a company prepares accounts and statements in respect of a period (the *accounting period*) in accordance with this Division.
- (2) The company must, within the prescribed period after the accounting period, give the ACCC:
  - (a) those accounts and statements; and
  - (b) the certificate given to the company by an approved auditor under section 142 in respect of the accounting period.

Note: *Approved auditor* is defined by section 144.

#### *Offence*

- (3) A company commits an offence if:
  - (a) the company is subject to a requirement under this section; and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 100 penalty units.

#### *Strict liability*

- (4) Strict liability applies to paragraph (3)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **143A Publication of accounts and statements**

- (1) The ACCC may publish accounts and statements given to the ACCC under section 143.
- (2) The ACCC may charge fees for the supply of accounts and statements published under subsection (1).

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**144 Approved auditor**

For the purposes of this Division, an *approved auditor* is a person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the *Corporations Act 2001*.

## **Division 4—Airport reports**

### **145 Airport reports**

- (1) The regulations may make provision for and in relation to requiring an airport-operator company for an airport to give the ACCC written reports about the airport.

*Offence*

- (2) A company commits an offence if:
  - (a) the company is subject to a requirement under the regulations to give the ACCC written reports about the airport; and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 50 penalty units.

- (2A) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Regulations may confer discretionary powers on the ACCC*

- (3) Regulations made for the purposes of this section may make provision for or in relation to a matter by conferring a power on the ACCC. For example, the regulations could provide that the ACCC may, by written notice given to an airport-operator company for an airport, require the company to give the ACCC, within the period and in the manner specified in the notice, a written report about specified matters relating to the airport.

### **145A Publication of airport reports**

- (1) The ACCC may publish reports given to the ACCC in accordance with a requirement covered by subsection 145(1).
- (2) The ACCC may charge fees for the supply of reports published under subsection (1).

## **Division 5—Record-keeping**

### **146 Record-keeping**

- (1) The regulations may make provision for and in relation to requiring a company to keep and retain records, where the records are relevant to the preparation of:
  - (a) the accounts and statements of the company mentioned in section 141; or
  - (b) the reports of the company mentioned in section 145.
- (2) A company commits an offence if:
  - (a) the company is subject to a requirement under the regulations to keep and retain records; and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 50 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Division 6—Protection of documents given to the ACCC**

### **147 Protection of documents given to the ACCC**

- (1) This section applies if a document is given to the ACCC:
- (a) under section 143; or
  - (b) in accordance with a requirement covered by subsection 145(1).

- (2) Sections 95ZN and 95ZP of the *Trade Practices Act 1974* have effect as if the document had been given to the ACCC under section 95ZK of that Act.

Note: Sections 95ZN and 95ZP of the *Trade Practices Act 1974* protect the confidentiality of information given to the ACCC.

- (3) Section 95ZP of the *Trade Practices Act 1974* has effect as if the functions conferred on the ACCC by section 143A and 145A of this Act were conferred instead by a provision of that Act.

Note: This allows the ACCC to publish accounts and statements given to the ACCC under section 143 and to publish reports given to the ACCC in accordance with a requirement covered by subsection 145(1).

**Part 7** Accounts and reports of airport-operator companies

**Division 7** Part supplements the Trade Practices Act 1974

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## **Division 7—Part supplements the Trade Practices Act 1974**

### **148 Part supplements the *Trade Practices Act 1974***

This Part does not, by implication, limit the powers conferred on the ACCC by the *Trade Practices Act 1974*.

## **Division 8—Concurrent operation of State/Territory laws**

### **149 Concurrent operation of State/Territory laws**

It is the intention of the Parliament that this Part is not to apply to the exclusion of a law of a State or Territory to the extent that that law is capable of operating concurrently with this Part.

## **Part 8—Quality of service monitoring and reporting**

### **Division 1—Simplified outline**

#### **150 Simplified outline**

The following is a simplified outline of this Part:

- The regulations may specify performance indicators to be used in monitoring and evaluating the quality of airport services and facilities.
- The ACCC is to monitor and evaluate the quality of airport services and facilities.
- The regulations may require information about quality of service matters to be given to the ACCC.
- The ACCC may publish reports about quality of service matters.

## **Division 2—Scope of Part**

### **151 Airports to which Part applies**

- (1) This Part applies to:
  - (a) a core regulated airport; or
  - (b) an airport specified in the regulations;  
if there is an airport lease for the airport.
- (2) For the purposes of subsection (1), the boundaries of an airport are the boundaries of the airport site for the airport.

### **152 Airport services and facilities**

This Part applies to an airport service or facility if the service or facility is provided:

- (a) by an airport-operator company; or
- (b) by a person other than an airport-operator company under an agreement with an airport-operator company.

## **Division 3—Performance indicators**

### **153 Performance indicators**

The regulations may specify, or specify methods of ascertaining, performance indicators to be used in monitoring and evaluating the quality of airport services and facilities for the purposes of this Part.

### **154 Examples of performance indicators**

The following are examples of performance indicators that could be prescribed under section 153:

- (a) indicators relating to congestion of aeronautical facilities, terminal facilities or ground access systems;
- (b) indicators relating to the standard of runways, taxiways and apron facilities;
- (c) indicators relating to the standard of passenger services;
- (d) indicators relating to the standard of freight services.

## **Division 4—ACCC to monitor quality of service**

### **155 Monitoring by the ACCC**

- (1) In addition to any functions conferred on the ACCC by other laws, the ACCC has the function of monitoring and evaluating the quality of airport services and facilities against:
  - (a) the performance indicators prescribed under section 153; and
  - (b) such other criteria as the ACCC determines in writing.
- (2) The ACCC must give a free copy of a determination under paragraph (1)(b) to any person who asks for a copy.

## **Division 5—Record-keeping and giving of information**

### **156 Record-keeping and giving of information**

- (1) The regulations may make provision for and in relation to requiring a person:
  - (a) to keep and retain records, where the records are relevant to a quality of service matter; and
  - (b) to give information to the ACCC that is relevant to a quality of service matter.

Note: *Quality of service matter* is defined by subsection (7).

#### *Limits on obligations*

- (2) Regulations made for the purposes of this section must not impose an obligation on a person unless:
  - (a) the person is an airport-operator company; or
  - (b) the person provides airport services or facilities under an agreement with an airport-operator company; or
  - (c) the person is an aircraft operator and uses airport services or facilities in connection with aircraft operations carried on by the person.

#### *Statutory declarations*

- (3) The regulations may provide that information given in accordance with a requirement covered by paragraph (1)(b) must be verified by statutory declaration.

#### *No self-incrimination*

- (4) An individual is not required to give information in accordance with a requirement covered by paragraph (1)(b) if the information might tend to incriminate the individual or expose the individual to a penalty.

*Offence*

- (5) A company commits an offence if:
- (a) the company is subject to a requirement under the regulations to keep and retain records and give information to the ACCC; and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 50 penalty units.

*Strict liability*

- (5A) Strict liability applies to paragraph (5)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Regulations may confer discretionary powers on the ACCC*

- (6) Regulations made for the purposes of this section may make provision for or in relation to a matter by conferring a power on the ACCC. For example, the regulations could provide that the ACCC may, by written notice given to an airport-operator company, require the company to give the ACCC, within the period and in the manner specified in the notice, specified information that is relevant to a quality of service matter.

*Quality of service matter*

- (7) For the purposes of this section, a matter is a **quality of service matter** if it is relevant to the monitoring or evaluation of the quality of airport services or facilities against performance indicators prescribed under section 153.

**Division 6—ACCC may publish quality of service information**

**157 Publication of quality of service information**

- (1) The ACCC may publish reports relating to the monitoring or evaluation of the quality of airport services and facilities against:
  - (a) performance indicators prescribed under section 153; and
  - (b) other criteria determined by the ACCC under section 155.
- (2) The ACCC may charge fees for the supply of reports published under subsection (1).

## **Division 7—Protection of information given to the ACCC**

### **158 Protection of information given to the ACCC**

- (1) This section applies if information is given to the ACCC in accordance with a requirement covered by paragraph 156(1)(b).
- (2) Sections 95ZN and 95ZP of the *Trade Practices Act 1974* have effect as if the information had been given in accordance with section 95ZK of that Act.

Note: Sections 95ZN and 95ZP of the *Trade Practices Act 1974* protect the confidentiality of information given to the ACCC.

- (3) Section 95ZP of the *Trade Practices Act 1974* has effect as if the functions conferred on the ACCC by section 157 of this Act were conferred instead by a provision of that Act.

Note: This allows the ACCC to publish section 157 reports.

**Part 8** Quality of service monitoring and reporting

**Division 8** Part supplements the Trade Practices Act 1974

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## **Division 8—Part supplements the Trade Practices Act 1974**

### **159 Part supplements the *Trade Practices Act 1974***

This Part does not, by implication, limit the powers conferred on the ACCC by the *Trade Practices Act 1974*.

## **Part 9—Variation and closure of airport sites**

### **160 Simplified outline**

The following is a simplified outline of this Part:

- Airport-lessee companies must give written consent before airport sites are varied or closed.
- An airport-lessee company may surrender its airport lease to the Commonwealth, either unconditionally or on such terms and conditions as are agreed between the company and the Commonwealth.
- An airport lease may be varied by reducing the leased area.

### **161 Variation of airport sites—consent of lessee**

- (1) If there is an airport lease relating to an airport site for an airport , the Governor-General must not make any regulations varying the site unless the lessee has given written consent to the making of those regulations.

### **162 Closure of airport sites**

- (1) If there is an airport lease relating to an airport site, the Governor-General must not make any regulations repealing the declaration of the site as an airport site unless the lessee has given written consent to the making of those regulations.
- (2) If there is a lease of the whole or a part of an airport site, the Commonwealth must not take any action that would have the effect of creating an absolute prohibition of the use of the site as an airport unless the lessee has given written consent to the taking of that action.

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**163 Surrender of airport leases**

- (1) If there is a lease of the whole or a part of an airport site, the lessee may surrender the lease to the Commonwealth.
- (2) The surrender may be:
  - (a) unconditional; or
  - (b) subject to such terms and conditions as are agreed between the lessee and the Commonwealth.
- (3) The terms and conditions may require the Commonwealth to grant the lessee a new airport lease relating to the same airport and require the lessee to pay or give the Commonwealth consideration for the new airport lease. The new lease may be expressed to take effect when regulations varying the airport site take effect.
- (4) Subsection (3) does not, by implication, limit subsection (2).

**163A Variation of airport lease—reducing leased area**

- (1) If the holder of an airport lease requests the Minister to vary the lease by reducing the leased area as specified in the request, the Minister may, by notice published in the *Gazette*, determine that the lease is varied in accordance with the request. The determination has effect accordingly.
- (2) This Act does not prevent the Commonwealth from paying consideration to the holder of the airport lease for the variation.
- (3) The relevant land registration official may make such entries or notations in or on registers or other documents kept by the official (in electronic form or otherwise) as the official thinks appropriate for drawing the attention of persons to the variation. For this purpose, the relevant *land registration official* is the Registrar of Titles or other proper officer of the State or Territory in which the airport is situated.
- (4) This section does not, by implication, prevent the variation of an airport lease otherwise than under this section.

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- (5) This section does not, by implication, limit the operation of section 163.

## Part 10—Implementation of international agreements relating to airports

### 164 Simplified outline

The following is a simplified outline of this Part:

- The regulations may implement certain international agreements relating to airports.

### 165 Designated international agreements

In this Part:

*another country* includes a region:

- (a) that is part of a foreign country; or
- (b) that is under the protection of a foreign country; or
- (c) for whose international relations a foreign country is responsible.

*designated international agreement* means:

- (a) the Convention on International Civil Aviation concluded at Chicago on 7 December 1944, as amended by the Protocols referred to in subsection 3A(2) of the *Air Navigation Act 1920*; or
- (b) an Annex to that Convention, where the Annex was adopted in accordance with that Convention; or
- (c) an agreement or arrangement between:
  - (i) Australia, or an entity or organisation nominated or otherwise similarly authorised by Australia to enter into the agreement or arrangement; and
  - (ii) another country;

under which the carriage by air of passengers or freight, or both passengers and freight, between Australia and the other country is permitted.

### **166 Regulations may give effect to designated international agreements**

- (1) The regulations may provide for and in relation to requiring the operator of an airport to act in a manner consistent with Australia's obligations under:
  - (a) a designated international agreement; and
  - (b) an amendment of such an agreement;in so far as the agreement, or any part of the agreement, is intended to affect the operation of airports that are open to access by international air transport.
- (2) Regulations made for the purposes of this section must not come into operation before:
  - (a) the agreement enters into force, or comes into effect, for Australia; or
  - (b) the amendment enters into force, or comes into effect, for Australia;as the case requires.

### **167 Compliance by airport operators with regulations**

- (1) An operator of an airport commits an offence if:
  - (a) the operator is subject to a requirement under the regulations made for the purposes of section 166 and the regulations declare that this section applies to that provision; and
  - (b) the operator engages in conduct; and
  - (c) the operator's conduct contravenes the requirement.

Penalty: 250 penalty units.

- (2) Strict liability applies to paragraph (1)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Part 11—Control of certain on-airport activities**

### **168 Simplified outline**

The following is a simplified outline of this Part:

- The regulations may deal with the control of the following matters at airports:
  - (a) liquor;
  - (b) commercial trading;
  - (c) vehicle movements;
  - (d) gambling;
  - (e) smoking.
- If no regulations are in force about a particular matter, the relevant State/Territory laws will generally apply.

### **169 Airports to which Part applies**

- (1) This Part applies to:
  - (a) a core regulated airport; or
  - (b) an airport specified in the regulations;if there is an airport lease for the airport.
- (2) For the purposes of subsection (1), the boundaries of an airport are the boundaries of the airport site for the airport.

**170 Control of liquor**

- (1) The regulations may make provision for and in relation to prohibiting or regulating the sale, supply, disposal or possession of liquor at a specified airport.
- (2) In this section:

*liquor* means wine, spirits, ale, beer or any liquid containing alcohol ordinarily used, or fit for use, as a beverage.

**171 Control of commercial trading**

- (1) The regulations may make provision for and in relation to:
  - (a) prohibiting or regulating the supply of goods or services at a specified airport; or
  - (b) authorising the supply of goods or services at a specified airport;if the goods or services are acquired by an individual as a consumer (within the meaning of section 4B of the *Trade Practices Act 1974*).
- (2) In this section:

*goods* has the same meaning as in the *Trade Practices Act 1974*.

*services* has the same meaning as in the *Trade Practices Act 1974*, but does not include:

- (a) air transport services; or
- (b) services relating to aircraft.

*supply* has the same meaning as in the *Trade Practices Act 1974*.

**172 Control of vehicle movements**

- (1) The regulations may:
  - (a) make provision for and in relation to prohibiting or regulating the parking or use of vehicles within a specified airport; and
  - (b) provide for signs and road markings for those purposes.

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(2) In this section:

*vehicle* includes:

- (a) a trailer, caravan or portion of an articulated vehicle; or
- (b) an object that was designed or adapted for use as a vehicle but is incapable of being so used because:
  - (i) one or more parts have been removed from it; or
  - (ii) it is in a wrecked or damaged condition.

**173 Control of gambling**

(1) The regulations may make provision for and in relation to prohibiting or regulating gambling activities at a specified airport.

(2) In this section:

*gambling activity* includes a game of chance and a lottery (whether involving the use of a machine or otherwise).

**174 Control of smoking**

The regulations may make provision for and in relation to prohibiting or regulating smoking at a specified airport.

**175 Enforcement**

Regulations made for the purposes of this Part may prescribe penalties not exceeding 50 penalty units for offences against those regulations.

**176 Infringement notices**

- (1) The regulations may make provision enabling a person who is alleged to have committed an offence against regulations made for the purposes of this Part to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must equal one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

**177 Operation of State/Territory laws**

- (1) Subject to this section, it is the intention of the Parliament that this Part is not to apply to the exclusion of a law of a State or Territory to the extent that that law is capable of operating concurrently with this Part.
- (2) The regulations may declare that a specified law of a State or Territory has no effect at a specified airport to the extent to which the law makes provision for and in relation to a matter referred to in section 170, 171, 172, 173 or 174.

Note: A law may be specified by name, by inclusion in a specified class or in any other way.

**178 Submissions**

- (1) This section applies to regulations made for the purposes of this Part.
- (2) At least 30 days before regulations relating to a particular airport are made, the Minister must give each airport-operator company for the airport a notice:
  - (a) stating that there is a proposal to make those regulations; and
  - (b) inviting the company to give the Minister a submission about the proposed regulations within 30 days after receiving the notice.
- (3) If a company gives the Minister a written submission in accordance with the notice, the Minister must have due regard to the submission in dealing with the proposal.
- (4) Subsection (3) does not, by implication, limit the matters to which the Minister may have regard.

## **Part 12—Protection of airspace around airports**

### **Division 1—Simplified outline**

#### **179 Simplified outline**

The following is a simplified outline of this Part:

- The regulations may declare airspace to be *prescribed airspace* if it is in the interests of the safety, efficiency or regularity of air transport operations into or out of an airport for the airspace to be protected.
- Activities that result in intrusions into prescribed airspace are called *controlled activities*.
- Controlled activities require approval.
- Approvals are given under the regulations.

## **Division 2—Scope of Part**

### **180 Airports to which Part applies**

- (1) This Part applies to:
  - (a) a core regulated airport, where the site of the airport is a Commonwealth place; or
  - (b) an airport specified in the regulations, where the site of the airport is a Commonwealth place; or
  - (c) an airport specified in the regulations, where the site of the airport is not a Commonwealth place.
- (2) For the purposes of subsection (1), the boundaries of the site of an airport are to be ascertained in accordance with the regulations.

## **Division 3—Prescribed airspace**

### **181 Prescribed airspace**

- (1) For the purposes of this Part, a *prescribed airspace* is an airspace specified in, or ascertained in accordance with, the regulations, where it is in the interests of the safety, efficiency or regularity of existing or future air transport operations into or out of an airport for the airspace to be protected under this Part.
- (2) Regulations made for the purposes of subsection (1) may make provision for or in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in the Aeronautical Information Publication as in force or existing from time to time.
- (3) A reference in this section to the *Aeronautical Information Publication* is a reference to the Aeronautical Information Publication published by Airservices Australia in accordance with the Air Services Regulations.

## **Division 4—Protection of prescribed airspace**

### **182 Controlled activities**

For the purposes of this Division, the following activities are *controlled activities* in relation to a prescribed airspace:

- (a) constructing a building, or other structure, that intrudes into the prescribed airspace;
- (b) altering a building or other structure so as to cause the building or structure to intrude into the prescribed airspace;
- (c) any other activity that causes a thing attached to, or in physical contact with, the ground to intrude into the prescribed airspace.
- (d) operating a source of artificial light, where:
  - (i) the intensity of the light emitted exceeds the level ascertained in accordance with the regulations; and
  - (ii) the light is capable of blinding or confusing pilots of aircraft operating in the prescribed airspace;
- (e) operating prescribed plant, or a prescribed facility, that reflects sunlight, where:
  - (i) the intensity of the reflected sunlight exceeds the level ascertained in accordance with the regulations; and
  - (ii) the reflected sunlight is capable of blinding pilots of aircraft operating in the prescribed airspace;
- (f) an activity that results in air turbulence, where:
  - (i) the level of the turbulence exceeds the level ascertained in accordance with the regulations; and
  - (ii) the turbulence is capable of affecting the normal flight of aircraft operating in the prescribed airspace;
- (g) an activity that results in the emission of smoke, dust or other particulate matter, where:
  - (i) the emission exceeds the level ascertained in accordance with the regulations; and

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- (ii) the smoke, dust or particulate matter is capable of affecting the ability of aircraft to operate in the prescribed airspace in accordance with Visual Flight Rules;
- (h) an activity that results in the emission of steam or other gas, where:
  - (i) the emission exceeds the level ascertained in accordance with the regulations; and
  - (ii) the steam or gas is capable of affecting the ability of aircraft to operate in the prescribed airspace in accordance with Visual Flight Rules.

Note: *Prescribed airspace* is defined by section 181.

- (2) Regulations must not be made for the purposes of paragraph (1)(d), (e), (f), (g) or (h) unless it is in the interests of the safety, efficiency or regularity of existing or future air transport operations to do so.
- (3) Paragraphs (1)(d), (e), (f), (g) and (h) do not apply to:
  - (a) an ordinary domestic or household activity; or
  - (b) anything arising out of the operation of an aircraft.
- (4) In this section:

*Chicago Convention* means the Convention on International Civil Aviation concluded at Chicago on 7 December 1944, as amended by the Protocols referred to in subsection 3A(2) of the *Air Navigation Act 1920*.

*Visual Flight Rules* means Visual Flight Rules set out in Annex 2 to the Chicago Convention.

**183 Controlled activities not to be carried out without approval**

- (1) A person must not:
  - (a) carry out a controlled activity in relation to prescribed airspace; or
  - (b) cause to be carried out a controlled activity in relation to prescribed airspace;unless:

- (c) carrying out the activity is in accordance with an approval granted under regulations made for the purposes of this Division; or
- (d) the activity is declared by the regulations to be exempt from this Division.

Note: *Controlled activity* is defined by section 182.

- (2) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 250 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (1)(c) and (d) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **184 Regulations about approvals**

- (1) The regulations may make provision for and in relation to the following:
  - (a) the grant of approvals authorising controlled activities to be carried out in relation to prescribed airspace;
  - (b) conditions of such approvals;
  - (c) revocation, variation or surrender of such approvals;
  - (d) fees in respect of applications for such approvals.
- (2) The regulations may provide that approvals must not be granted in respect of particular kinds of controlled activities.

### **185 Offence of contravening conditions**

- (1) A person commits an offence if:
  - (a) the person has been granted an approval under regulations made for the purposes of this Division; and

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- (b) the person engages in conduct, whether before or after completion of the controlled activity concerned; and
- (c) the person's conduct contravenes a condition of the approval.

Penalty: 250 penalty units.

- (2) Strict liability applies to paragraph (1)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**186 Notification of proposals to carry out controlled activities**

- (1) The regulations may make provision for and in relation to requiring a person to give information to the operator of an airport, where the information is relevant to a proposal to carry out a controlled activity in relation to prescribed airspace connected with the airport.

*Offence*

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under the regulations to give information to the operator of an airport; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 50 penalty units.

*Strict liability*

- (2A) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Regulations may confer discretionary powers on the Minister*

- (3) Regulations made for the purposes of this section may make provision for or in relation to a matter by conferring a power on the Minister. For example, the regulations could provide that the Minister may, by written notice given to a person, require the person to give to the airport-lessee company for an airport, within the period and in the manner specified in the notice, specified

information about proposals to carry out controlled activities in relation to prescribed airspace connected with the airport.

## **187 Remedial orders**

### *Unauthorised structures*

- (1) If:
- (a) a controlled activity referred to in paragraph 182(1)(a), (b) or (c) is carried out in relation to prescribed airspace; and
  - (b) the activity is not declared by the regulations to be exempt from this Division; and
  - (c) either:
    - (i) the activity was not authorised by an approval granted under the regulations; or
    - (ii) if such an approval was granted in relation to the activity—a condition of the approval was contravened;
- the Federal Court may, on application by the Minister, make an order requiring a person:
- (d) to carry out remedial work on; or
  - (e) to mark and/or light; or
  - (f) to reduce the height of; or
  - (g) to demolish, dismantle or remove;
- the building, structure or thing concerned.

### *Interference with safety, efficiency or regularity of air transport operations*

- (2) If the Federal Court is satisfied that it is in the interests of the safety, efficiency or regularity of existing or future air transport operations into or out of a particular airport to do so, the court may, on application by the Minister, make an order requiring a person:
- (a) to carry out remedial work on; or
  - (b) to mark and/or light; or
  - (c) to reduce the height of; or
  - (d) to demolish, dismantle or remove;
- a building, structure or object that intrudes into prescribed airspace.

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*Ancillary orders*

- (3) In addition to the Federal Court's powers under subsections (1) and (2), the court:
- (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
  - (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.

*Notice of application*

- (4) The Federal Court may, before making an order under this section, direct that notice of the Minister's application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.

*Variation etc.*

- (5) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

*Definition*

- (6) In this section:
- object* includes a tree or other natural obstacle.

**188 Compensation—constitutional safety-net**

- (1) If:
- (a) apart from this section, the operation of this Part would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;
- the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.

- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

### **189 Severability**

In addition to its effect apart from this section, this Part also has the effect it would have if each reference in this Part to air transport operations were, by express provision, confined to:

- (a) interstate air transport operations; and
- (b) international air transport operations; and
- (c) air transport operations carried on by constitutional corporations; and
- (d) air transport operations carried on by the Commonwealth or by an authority or instrumentality of the Commonwealth; and
- (e) air transport operations carried on for a purpose related to the defence of Australia; and
- (f) air transport operations in a Territory; and
- (g) other air transport operations, where it is in the interests of the safety, efficiency or regularity of, or it is otherwise incidental to, air transport operations covered by paragraphs (a), (b), (c), (d), (e) and (f) for those other air transport operations to be within the scope of this Part.

**Part 12** Protection of airspace around airports

**Division 5** Part supplements regulations under the Civil Aviation Act 1988

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**Division 5—Part supplements regulations under the Civil Aviation Act 1988**

**190** Part supplements regulations under the *Civil Aviation Act 1988*

This Part has effect in addition to, and not instead of, regulations under the *Civil Aviation Act 1988*.

## **Part 13—Access to airports and demand management at airports**

### **Division 1—Simplified outline**

#### **191 Simplified outline**

The following is a simplified outline of this Part:

- An airport service will be a declared service for the purposes of the access regime set out in Part IIIA of the *Trade Practices Act 1974* unless an access undertaking is given within 12 months after responsibility for the airport is transferred to the private sector.
- This Part enables the Minister to formulate a demand management scheme for an airport.
- The 3 main types of demand management schemes are:
  - (a) category exclusion schemes;
  - (b) slot allocation schemes;
  - (c) movement limitation schemes.
- A demand management scheme is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- Before formulating a demand management scheme, the Minister must declare that the airport is subject to statutory demand management.

**Part 13** Access to airports and demand management at airports

**Division 1** Simplified outline

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- Before declaring that an airport is subject to statutory demand management, the Minister must make a declaration about the capacity of the airport to handle aircraft movements.
- A declaration subjecting an airport to statutory demand management is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**Division 2—Application of the access regime in Part IIIA  
of the Trade Practices Act 1974**

**193 Part IIIA of the *Trade Practices Act 1974* to be subject to the  
demand management provisions of this Part**

Part IIIA of the *Trade Practices Act 1974* has effect subject to  
Divisions 3 to 10 of this Part.

## **Division 3—Scope of demand management provisions**

### **194 Scope of demand management provisions**

*Airports within scope of demand management provisions*

- (1) Divisions 4 to 10 (inclusive) apply to:
- (a) a core regulated airport, other than Sydney (Kingsford-Smith) Airport; or
  - (b) an airport specified in the regulations;
- if there is an airport lease for the airport.

Note: Demand management in relation to Sydney (Kingsford-Smith) Airport is dealt with in the *Sydney Airport Demand Management Act 1997*.

- (1A) For the purposes of subsection (1), the boundaries of an airport are the boundaries of the airport site for the airport.

*Aircraft movements within scope of demand management provisions*

- (2) Divisions 4 to 10 (inclusive) apply to an aircraft movement if the movement involves the use of a runway.

## **Division 4—Airport capacity declarations**

### **195 Airport capacity declarations**

- (1) The Minister may make a written declaration setting out the capacity (the *declared capacity*) that, in the Minister's opinion, represents a reasonable estimate of the capacity of a specified airport. The declaration is called an *airport capacity declaration*.
- (2) The declared capacity is to be expressed in terms of the maximum number of aircraft movements that the airport is capable of handling during one or more specified intervals of time (whether recurring or otherwise).
- (3) A copy of the declaration is to be published in the *Gazette*.

### **196 Public comment**

- (1) Before making an airport capacity declaration for an airport, the Minister must:
  - (a) cause to be published in a newspaper circulating generally in the State or Territory in which the airport is situated a notice:
    - (i) stating that the Minister has prepared a draft version of the declaration; and
    - (ii) stating that the draft version of the declaration was prepared on the basis of an assessment of the capacity of the airport; and
    - (iii) stating that copies of the draft version and of the assessment will be available for inspection and purchase by members of the public during normal office hours throughout the period of 45 days after the publication of the notice; and
    - (iv) specifying the place or places where the copies will be available for inspection and purchase; and
    - (v) inviting members of the public to give written comments about the draft version and the assessment to

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the Minister within 45 days after publication of the notice; and

- (b) make copies of the draft version and the assessment available for inspection and purchase by members of the public in accordance with the notice.
- (2) If members of the public have given written comments about the draft version or the assessment in accordance with the notice, the Minister must have due regard to those comments in making the declaration.
- (3) Subsection (2) does not, by implication, limit the matters to which the Minister may have regard.

Note: If an airport capacity declaration is varied, the variation must be dealt with under this section in the same manner as an original declaration—see subsection 33(3) of the *Acts Interpretation Act 1901*.

**197 Submissions**

- (1) Before the publication of a notice under section 196 relating to an airport capacity declaration for an airport, the Minister must cause to be published in the *Gazette* a notice:
    - (a) stating that the Minister is considering making an airport capacity declaration for the airport; and
    - (b) inviting persons covered by any of the following subparagraphs to give the Minister a capacity submission within 30 days after the publication of the notice:
      - (i) an airport-operator company for the airport;
      - (ii) an aircraft operator who uses the airport;
      - (iii) Airservices Australia;
      - (iv) the Civil Aviation Safety Authority.
- For this purpose, a *capacity submission* is a submission about the capacity of the airport.
- (2) If a person gives the Minister a written submission in accordance with the notice, the Minister must have due regard to the submission in making the declaration.

- (3) Subsection (2) does not, by implication, limit the matters to which the Minister may have regard.

Note: If an airport capacity declaration is varied, the variation must be dealt with under this section in the same manner as an original declaration—see subsection 33(3) of the *Acts Interpretation Act 1901*.

## **Division 5—Declarations subjecting airports to statutory demand management**

### **198 Declarations subjecting airports to statutory demand management**

- (1) This section applies to an airport if an airport capacity declaration is in force for the airport.
- (2) The Minister may, by notice published in the *Gazette*, declare that the airport is subject to statutory demand management under this Part.
- (3) If an airport capacity declaration for an airport is revoked, any declaration under this section that relates to the airport is taken to be revoked.
- (4) A declaration under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **199 Criteria for making declaration**

- (1) In deciding whether to make a declaration under section 198 about an airport, the Minister must have regard to the following matters:
  - (a) whether demand for the handling of aircraft movements at the airport exceeds, or is likely to exceed, the declared capacity of the airport;
  - (b) the effectiveness of any existing or proposed arrangements for self-management or self-regulation of demand for the handling of aircraft movements at the airport;
  - (c) the impact of the airport-lessee company's existing or proposed pricing arrangements on demand for the handling of aircraft movements at the airport;
  - (d) the extent, or likely extent, of congestion at the airport;
  - (e) existing or proposed laws or other controls relating to environmental matters (including noise matters);
  - (f) Australia's international obligations.

- (2) Subsection (1) does not, by implication, limit the matters to which the Minister may have regard.

## **200 Submissions**

- (1) Before making a declaration under section 198 about an airport, the Minister must cause to be published in the *Gazette* a notice:
- (a) stating that the Minister is considering making a declaration under section 198 about the airport; and
  - (b) inviting persons covered by any of the following subparagraphs to give the Minister a submission about the proposed declaration within 30 days after the publication of the notice:
    - (i) an airport-operator company for the airport;
    - (ii) a person specified in the regulations for the purposes of the application of this subparagraph to the airport, being a person who represents the interests of all of the aircraft operators who use the airport to operate scheduled air services;
    - (iii) Airservices Australia;
    - (iv) the Civil Aviation Safety Authority.
- (2) If a person gives the Minister a written submission in accordance with the notice, the Minister must have due regard to the submission in making the declaration.
- (3) Subsection (2) does not, by implication, limit the matters to which the Minister may have regard.

Note: If a declaration is varied, the variation must be dealt with under this section in the same manner as an original declaration—see subsection 33(3) of the *Acts Interpretation Act 1901*.

## **Division 6—Demand management schemes**

### **201 Demand management schemes**

- (1) This section applies to an airport if a declaration under section 198 is in force for the airport.

Note: Under section 198, the Minister may declare that an airport is subject to statutory demand management.

- (2) The Minister may, by written instrument, formulate a scheme for the management of demand for the handling of aircraft movements at the airport. Such a scheme is to be known as a ***demand management scheme***.
- (3) If a declaration under section 198 relating to an airport is revoked, any instrument under this section that relates to the airport is taken to be revoked.
- (4) An instrument under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **202 Submissions**

- (1) Before making an instrument under section 201 relating to an airport, the Minister must cause to be published in the *Gazette* a notice:
- (a) stating that the Minister is considering making an instrument under section 201 relating to the airport; and
  - (b) inviting persons covered by any of the following subparagraphs to give the Minister a submission about the proposed instrument within 30 days after the publication of the notice:
    - (i) an airport-operator company for the airport;
    - (ii) a person specified in the regulations for the purposes of the application of this subparagraph to the airport, being a person who represents the interests of all of the aircraft operators who use the airport to operate scheduled air services;

- (iii) Airservices Australia;
  - (iv) the Civil Aviation Safety Authority.
- (2) If a person gives the Minister a written submission in accordance with the notice, the Minister must have due regard to the submission in making the instrument.
- (3) Subsection (2) does not, by implication, limit the matters to which the Minister may have regard.

Note: If an instrument is varied, the variation must be dealt with under this section in the same manner as an original instrument—see subsection 33(3) of the *Acts Interpretation Act 1901*.

### 203 Types of schemes

For the purposes of this Part, there are 4 types of schemes for the management of demand for the handling of aircraft movements at an airport:

- (a) category exclusion schemes (see section 204);
- (b) slot allocation schemes (see section 205);
- (c) movement limitation schemes (see section 206);
- (d) schemes not covered by paragraph (a), (b) or (c).

### 204 Category exclusion schemes

- (1) For the purposes of this Part, a *category exclusion scheme* is a scheme that has the effect of prohibiting specified categories of aircraft movements at an airport (except in cases relating to emergencies or safety matters).
- (2) The prohibitions may apply:
- (a) at all times; or
  - (b) only during one or more specified intervals of time (whether recurring or otherwise).

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**205 Slot allocation schemes**

- (1) For the purposes of this Part, a *slot allocation scheme* is a scheme of a kind known in the civil aviation industry as a scheme for the allocation of take-off and landing slots at an airport.
- (2) A slot allocation scheme for an airport may provide for the Minister to authorise a person to be the *slot co-ordinator* for the airport.
- (3) A slot allocation scheme for an airport may confer powers and functions on the slot co-ordinator for the airport.

**206 Movement limitation schemes**

For the purposes of this Part, a *movement limitation scheme* is a scheme that:

- (a) limits the total number of aircraft movements that may be handled at an airport during one or more specified intervals of time (whether recurring or otherwise); or
- (b) limits the total number of aircraft movements belonging to a specified category that may be handled at an airport during one or more specified intervals of time (whether recurring or otherwise).

**207 Concurrent schemes**

This Part does not prevent 2 or more schemes from applying to the same airport at the same time.

## **Division 7—Compliance with demand management schemes**

### **208 Compliance with demand management schemes**

A person commits an offence if:

- (a) the person is subject to a provision of a demand management scheme and the scheme declares that this section applies to that provision; and
- (b) the person engages in conduct; and
- (c) the person's conduct contravenes the provision.

Penalty: 250 penalty units.

### **209 Infringement notices**

- (1) The regulations may make provision enabling a person who is alleged to have committed an offence against section 208 to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must equal one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

**Part 13** Access to airports and demand management at airports

**Division 8** Part supplements Sydney Airport Curfew Act and Air Navigation Regulations

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## **Division 8—Part supplements Sydney Airport Curfew Act and Air Navigation Regulations**

### **210 Part supplements Sydney Airport Curfew Act**

This Part has effect in addition to, and not instead of, the *Sydney Airport Curfew Act 1995*.

### **211 Part supplements Air Navigation Regulations**

This Part has effect in addition to, and not instead of, regulations under the *Air Navigation Act 1920*.

## **Division 9—Intervals of time**

### **212 Recurring intervals of time**

For the purposes of this Part, the following periods are examples of recurring intervals of time:

- (a) a calendar year;
- (b) a week;
- (c) a day;
- (d) a day (a *business day*) that is not a Saturday, a Sunday or a public holiday;
- (e) a 60-minute period that begins at 8 am on a business day;
- (f) Christmas day.

### **213 Specification of 2 or more intervals of time**

- (1) 2 or more intervals of time (whether recurring or otherwise) may be specified in an airport capacity declaration or a demand management scheme even if one or more of those intervals is included in any other of those intervals.
- (2) The following is an example of the operation of subsection (1):  
An airport capacity declaration for the XYZ airport is expressed in the following terms:
  - (a) the airport is capable of handling a maximum of 186,150 aircraft movements each calendar year that is not a leap year, and 186,660 aircraft movements each leap year;
  - (b) the airport is capable of handling a maximum of 510 aircraft movements each day;
  - (c) the airport is capable of handling a maximum of 30 aircraft movements each 60-minute period beginning at 8 am on a day that is not a Saturday, a Sunday or a public holiday.

## **Division 10—Severability**

### **214 Severability**

In addition to their effect apart from this section, Divisions 3 to 9 (inclusive) also have the effect they would have if each reference in those Divisions to a scheme for the management of demand for the handling of aircraft movements at an airport were, by express provision, confined to a scheme for the management of demand for the handling of any or all of the following:

- (a) aircraft movements at an airport, where the movements are in the course of interstate air transport operations;
- (b) aircraft movements at an airport, where the movements are in the course of international air transport operations;
- (c) aircraft movements at an airport, where the aircraft are operated by constitutional corporations;
- (d) aircraft movements at an airport, where the aircraft are operated by the Commonwealth or by an authority or instrumentality of the Commonwealth;
- (e) aircraft movements at an airport, where the movements are for a purpose related to the defence of Australia;
- (f) aircraft movements at an airport in a Territory;
- (g) other aircraft movements at an airport, where it is in the interests of the safety, efficiency or regularity of, or it is otherwise incidental to:
  - (i) interstate air transport operations; or
  - (ii) international air transport operations; or
  - (iii) air transport operations carried on by constitutional corporations; or
  - (iv) air transport operations carried on by the Commonwealth or by an authority or instrumentality of the Commonwealth; or
  - (v) air transport operations carried on for a purpose related to the defence of Australia; or
  - (vi) air transport operations in a Territory;

for those other aircraft movements to be dealt with by the scheme.

## **Part 14—Air traffic services and rescue and fire fighting services**

### **215 Simplified outline**

The following is a simplified outline of this Part:

- Airservices Australia will generally oversee the provision of air traffic services, and rescue and fire fighting services, at airports.

### **216 Air traffic services, and rescue and fire fighting services, not to be provided without approval**

- (1) An airport-lessee company for an airport must not:
    - (a) provide either of the following services in relation to the airport:
      - (i) the operation and/or maintenance of air traffic control and/or navigation technical facilities;
      - (ii) rescue and fire fighting services; or
    - (b) cause or permit either of the following services to be provided in relation to the airport:
      - (i) the operation and/or maintenance of air traffic control and/or navigation technical facilities;
      - (ii) rescue and fire fighting services;
- unless:
- (c) in any case—the services are provided by Airservices Australia; or
  - (d) in any case—the services are provided in accordance with an arrangement between:
    - (i) Airservices Australia and a third person; or
    - (ii) Airservices Australia and the company; or

- (e) in the case of rescue and fire fighting services—the services are provided in accordance with an arrangement approved in writing by the Minister for the purposes of this section.
- (2) A company commits an offence if:
- (a) the company is subject to a requirement under subsection (1); and
  - (b) the company engages in conduct; and
  - (c) the company's conduct contravenes the requirement.

Penalty: 250 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (1)(c), (d) and (e) (see subsection 13.3(3) of the *Criminal Code*).

- (2A) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) The reference in paragraph (1)(d) to an arrangement includes a reference to an arrangement relating to the provision of additional services in an emergency.

## Part 15—Injunctions

### 217 Simplified outline

The following is a simplified outline of this Part:

- The Federal Court may grant injunctions relating to contraventions of this Act or of a demand management scheme.

### 218 Injunctions

#### *Restraining injunctions*

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of this Act or of a demand management scheme, the Federal Court may, on the application of the Minister, grant an injunction:
  - (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.
- (2) If:
  - (a) a person has engaged, is engaging or is proposing to engage in any conduct in contravention of section 41 or 45; and
  - (b) in the case of a contravention of section 41—the contravention relates to the existence of an unacceptable foreign-ownership situation in relation to an airport-operator company; and
  - (c) in the case of a contravention of section 45—the contravention relates to the existence of an unacceptable airline-ownership situation in relation to an airport-operator company;the Federal Court may, on the application of the company, grant an injunction:

- (d) restraining the person from engaging in the conduct; and
  - (e) if, in the court's opinion, it is desirable to do so—requiring the person to do something.
- (3) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of section 51, the Federal Court may, on the application of a member of the pair of companies referred to in that section, grant an injunction:
- (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

*Performance injunctions*

- (4) If:
- (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  - (b) the refusal or failure was, is or would be a contravention of this Act or of a demand management scheme;
- the Federal Court may, on the application of the Minister, grant an injunction requiring the person to do that act or thing.
- (5) If:
- (a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  - (b) the refusal or failure was, is or would be a contravention of subsection 60(4) that relates to a requirement covered by paragraph 60(1)(c) to give information to an airport-operator company;
- the Federal Court may, on the application of the company, grant an injunction requiring the person to do that act or thing.

## **219 Interim injunctions**

*Grant of interim injunction*

- (1) If an application is made to the court for an injunction under section 218, the court may, before considering the application,

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grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that section.

*No undertakings as to damages*

- (2) The court is not to require an applicant for an injunction under section 218, as a condition of granting an interim injunction, to give any undertakings as to damages.

**220 Discharge etc. of injunctions**

The court may discharge or vary an injunction granted under this Part.

**221 Certain limits on granting injunctions not to apply**

*Restraining injunctions*

- (1) The power of the court under this Part to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
  - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

*Performance injunctions*

- (2) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised:
  - (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court

that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

- (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

### **222 Other powers of the court unaffected**

The powers conferred on the court under this Part are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

## Part 16—Prosecutions

### 223 Simplified outline

The following is a simplified outline of this Part:

- |  |
|--|
| <ul style="list-style-type: none"><li>• This Part deals with the proof of offences that involve employees, agents etc.</li></ul> |
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### 224 Prosecutions of corporations

#### *State of mind*

- (1) If, in proceedings for an offence against this Act in respect of conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that:
  - (a) a director, employee or agent of the corporation engaged in that conduct; and
  - (b) the director, employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and
  - (c) the director, employee or agent had that state of mind.

#### *Conduct*

- (2) If:
  - (a) conduct is engaged in on behalf of a corporation by a director, employee or agent of the corporation; and
  - (b) the conduct is within the scope of his or her actual or apparent authority;the conduct is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in by the corporation unless the corporation establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

*Extended meaning of state of mind*

- (3) A reference in subsection (1) to the *state of mind* of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

*Extended meaning of director*

- (4) A reference in this section to a *director* of a corporation includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

*Extended meaning of engaging in conduct*

- (5) A reference in this section to *engaging in conduct* includes a reference to failing or refusing to engage in conduct.

*Extended meaning of offence against this Act*

- (6) A reference in this section to an *offence against this Act* includes a reference to:
- (a) an offence created by section 6 of the *Crimes Act 1914* that relates to this Act; and
  - (b) an offence against section 11.1, 11.4 or 11.5 of the *Criminal Code* that relates to this Act.

**225 Prosecutions of persons other than corporations***State of mind*

- (1) If, in proceedings for an offence against this Act in respect of conduct engaged in by a person other than a corporation, it is necessary to establish the state of mind of the person, it is sufficient to show that:

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- (a) the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
- (b) the employee or agent had that state of mind.

*Conduct*

- (2) If:
  - (a) conduct is engaged in on behalf of a person other than a corporation by an employee or agent of the person; and
  - (b) the conduct is within the employee's or agent's actual or apparent authority;the conduct is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in by the person unless the person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

*Limitation on imprisonment*

- (3) Despite any other provision of this Act, if:
  - (a) a person is convicted of an offence; and
  - (b) the person would not have been convicted of the offence if subsections (1) and (2) had not been in force;the person is not liable to be punished by imprisonment for that offence.

*Extended meaning of state of mind*

- (4) A reference in this section to the *state of mind* of a person includes a reference to:
  - (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

*Extended meaning of engaging in conduct*

- (5) A reference in this section to *engaging in conduct* includes a reference to failing or refusing to engage in conduct.

*Extended meaning of offence against this Act*

- (6) A reference in this section to an *offence against this Act* includes a reference to an offence created by section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914* that relates to this Act.

## Part 17—Incorrect records

### 226 Simplified outline

The following is a simplified outline of this Part:

- It is an offence to keep an incorrect record in connection with the operation of this Act.

### 228 Incorrect records

- (1) A person must not, in purported compliance with a requirement covered by paragraph 60(1)(a), subsection 146(1) or paragraph 156(1)(a), make a record of any matter or thing in such a way that it does not correctly record the matter or thing.
- (2) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: Imprisonment for 6 months.

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### 230 Incorrect accounts and statements

- (1) A company must not, in purported compliance with section 141, prepare any accounts or statements in such a way that they do not correctly record and explain the matters or things to which they relate.
- (2) A company commits an offence if:

- (a) the company is subject to a requirement under subsection (1);  
and
- (b) the company engages in conduct; and
- (c) the company's conduct contravenes the requirement.

Penalty: 150 penalty units.

- (3) Strict liability applies to paragraph (2)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **231 False or misleading audit certificates**

A person commits an offence if:

- (a) the person gives a certificate in relation to a company's accounts and statements and that company is an airport operator company; and
- (b) the person does so reckless as to whether the certificate:
  - (i) is false or misleading in a material particular; or
  - (ii) omits any matter or thing without which the certificate is misleading in a material particular.

Penalty: Imprisonment for 6 months.

## Part 18—Monitoring powers

### 232 Simplified outline

The following is a simplified outline of this Part:

- This Part authorises leased airports to be monitored for the purposes of ascertaining whether Part 5 or 6 has been complied with.
- Parts 5 and 6 deal with land use, planning, building control and environmental management.

### 233 Authorised officers

- (1) The Minister may make a written determination that a specified person is an *authorised officer* for the purposes of this Part. The determination has effect accordingly.

Note: A person may be specified by name, by inclusion in a specified class or in any other way.

- (2) The Minister may make a written determination that a specified authorised officer does not have such of the powers conferred on an authorised officer by this Part as are specified in the determination. The determination has effect accordingly.

Note: A person may be specified by name, by inclusion in a specified class or in any other way.

- (3) The Minister may make a written determination that the powers conferred on a specified authorised officer by this Part are subject to such limitations as are specified in the determination. The determination has effect accordingly.

Note: A person may be specified by name, by inclusion in a specified class or in any other way.

- (4) If the Minister makes a determination under subsection (2) or (3) about a named individual, the Minister must give the individual a copy of the determination.
- (5) The Minister may issue a written certificate stating any or all of the following:
- (a) that a specified person was at a specified time, or was at all times during a specified period, an authorised officer for the purposes of this Part;
  - (b) that at a specified time, or at all times during a specified period, a specified person had such of the powers conferred on an authorised officer by this Part as are specified in the certificate;
  - (c) that a specified time, or at all times during a specified period, the powers conferred on a specified person by this Part were subject to such limitations as are specified in the certificate.
- Note: A person may be specified by name, by inclusion in a specified class or in any other way.
- (6) In any proceedings relating to this Act, a certificate under subsection (5) is prima facie evidence of the matters in the certificate.
- (7) A document purporting to be a certificate under subsection (5) must, unless the contrary is established, be taken to be a certificate and to have been properly given.

### **234 Identity cards**

- (1) The Secretary to the Department may cause to be issued to each authorised officer an identity card.
- (2) An identity card must:
- (a) be in a form approved in writing by the Secretary to the Department; and
  - (b) incorporate a recent photograph of the person.
- (3) A person who ceases to be an authorised officer must, as soon as practicable after so ceasing, return his or her identity card to the Secretary to the Department.

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- (4) A person commits an offence if:
- (a) the person is required to return his or her identity card under subsection (3); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 5 penalty units.

- (5) Subsection (4) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) Strict liability applies to paragraph (4)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**235 Searches to monitor compliance with Part 5 or 6—occupier consents**

- (1) Subject to this section, an authorised officer may, to the extent that it is reasonably necessary for the purpose of ascertaining whether Part 5 or 6 has been or is being complied with, enter any airport premises and exercise monitoring powers at any time during the day or night.

Note 1: *Airport premises* is defined by section 239.

Note 2: *Monitoring powers* is defined by section 238.

- (2) An authorised officer may not, under subsection (1), enter any airport premises unless the occupier of the airport premises has consented to the entry.
- (3) An authorised officer is not entitled to exercise any powers under subsection (1) in relation to airport premises if:
- (a) the occupier of the airport premises has required the authorised officer to produce his or her identity card for inspection by the occupier; and
  - (b) the authorised officer fails to comply with the requirement.

- (4) Before obtaining the consent of a person for the purposes of this section, the authorised officer must inform the person that he or she may refuse to give consent.
- (5) An entry by an authorised officer by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

### **236 Monitoring warrants**

- (1) An authorised officer may apply to a magistrate for a warrant under this section in relation to particular airport premises.

Note: *Airport premises* is defined by section 239.

- (2) Subject to subsection (3), the magistrate may issue the warrant if satisfied, by information on oath or affirmation, that it is reasonably necessary that the authorised officer should have access to the airport premises for the purpose of finding out whether Part 5 or 6 has been or is being complied with.
- (3) The magistrate must not issue the warrant unless the authorised officer or someone else has given the magistrate, either orally (on oath or affirmation) or by affidavit, any further information the magistrate may require about the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:
  - (a) authorise any authorised officer named in the warrant, with such assistance and by such force as is necessary and reasonable, from time to time while the warrant remains in force, to enter the airport premises and exercise monitoring powers; and
  - (b) state whether an entry under the warrant is authorised to be made at any time of the day or night or during specified hours of the day or night; and
  - (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
  - (d) state the purpose for which the warrant is issued.

Note: *Monitoring powers* is defined by section 238.

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**237 Power to require persons to answer questions etc.**

- (1) If an authorised officer is on or in airport premises because the occupier of the airport premises consented to the officer's entry, the officer may ask the occupier to:
  - (a) answer any questions put by the authorised officer; and
  - (b) produce any documents requested by the authorised officer.
- (2) An authorised officer who is on or in airport premises that he or she has entered under a warrant may require any person on or in the airport premises:
  - (a) to answer any questions put by the authorised officer; and
  - (b) to provide any documents requested by the authorised officer.
- (3) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: Imprisonment for 6 months.

- (3A) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3A) (see subsection 13.3(3) of the *Criminal Code*).

- (3B) Strict liability applies to paragraph (3)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) It is a reasonable excuse for a person to refuse or fail to answer a question or produce a document on the ground that to do so would tend to incriminate the person.

**238 Monitoring powers**

- (1) A reference in this Part to *monitoring powers* is a reference:
  - (a) in relation to airport premises—to the following powers:

- (i) to search the airport premises;
  - (ii) to take photographs (including a video recording), or make sketches, of the airport premises or any substance or thing at the airport premises;
  - (iii) to inspect, examine and take samples of, any substance or thing on or in the airport premises;
  - (iv) to take extracts from, or make copies of, any document on the airport premises;
  - (v) to take measurements, make surveys or take levels at airport premises and, for those purposes, to dig trenches, break up the soil or set up any post, stake or mark at the airport premises;
  - (vi) to take onto the airport premises any equipment or material reasonably necessary for the purpose of exercising a power under subparagraph (i), (ii), (iii), (iv) or (v); and
- (b) in relation to certain documents on airport premises—to the powers described in subsections (2) and (3).
- (2) An authorised officer has power to operate equipment at the airport premises to see whether:
- (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is at the airport premises; and
    - (ii) can be used with or is associated with the equipment; contains information that is relevant to determining whether there has been compliance with Part 5 or 6.
- (3) If the authorised officer, after operating equipment at the airport premises, finds that the equipment, or that a disk, tape or other storage device at the airport premises, contains information of that kind, he or she has power:
- (a) to operate the equipment or other facilities to put the information in documentary form and copy the documents so produced; or
  - (b) if the information can be transferred to a disk, tape or other storage device that:
    - (i) is brought to the airport premises; or

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- (ii) is at the airport premises and the use of which for the purpose has been agreed to in writing by the occupier of the airport premises;
- to operate the equipment or other facilities to copy the information to the storage device and remove the storage device from the airport premises.

**239 Airport premises**

A reference in this Part to *airport premises* is a reference to:

- (a) an airport site, if there is an airport lease for the airport; or
  - (b) a building or other structure on such a site;
- and includes a part of any such premises.

**240 References to Part 5 or 6**

A reference in this Part to *Part 5 or 6* includes a reference to regulations made for the purposes of Part 5 or 6.

## Part 19—Miscellaneous

### 241 Simplified outline

The following is a simplified outline of this Part:

- Certain decisions under this Act can be reviewed by the Administrative Appeals Tribunal.
- The Minister is required to table statements about certain decisions under this Act
- The Minister may delegate his or her powers under this Act.
- Certain offences against Part 2, 3 or 4 are indictable offences.
- Parts 3 to 8 (inclusive) do not apply to an airport-operator company unless the company is a constitutional corporation.
- This Act does not, by implication, limit the application of the *Trade Practices Act 1974*. However, section 50 of that Act does not prevent the common ownership of Sydney (Kingsford-Smith) and Sydney West Airports.
- An airport-operator company may relocate an abandoned aircraft within the airport site.
- Provision is made for access to airports for defence-related purposes and for emergency or disaster relief.
- The Governor-General may make regulations for the purposes of this Act.

**242 Review of decisions by Administrative Appeals Tribunal**

- (1) Applications may be made to the Administrative Appeals Tribunal for review of decisions made by the Minister under this Act.
- (2) Subsection (1) does not apply to the following decisions:
  - (a) a decision under Division 3 of Part 2 (which deals with the grant of airport leases);
  - (b) a decision to approve, or to refuse to approve, the transfer of an airport lease;
  - (c) a decision to approve, or to refuse to approve, a company, an agreement or a variation, under section 33 (which deals with airport-management agreements);
  - (d) a decision under section 55 (which deals with the practical control of airport-operator companies);
  - (e) a decision under Part 13 (which deals with access to airports and demand management schemes for airports);
  - (f) a decision under paragraph 216(1)(e) (which deals with arrangements relating to rescue and fire fighting services);
  - (g) a decision to apply, or to refuse to apply, to the Federal Court for an order or injunction;
  - (ga) a decision under section 233 (which deals with authorised officers for the purposes of exercising monitoring powers);
  - (h) a decision under section 244 to delegate, or to refuse to delegate, a power.

*Notification of right of review*

- (3) If the Minister:
  - (a) makes a decision of a kind covered by subsection (1); and
  - (b) gives to the person or persons whose interests are affected by the decision written notice of the making of the decision;that notice is to include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision.

*Validity of decision*

- (4) A failure to comply with subsection (3) does not affect the validity of a decision.

*Definition*

- (5) In this section:

**decision** has the same meaning as in *the Administrative Appeals Tribunal Act 1975*.

**this Act** does not include the regulations.

*Regulations may provide for review of decisions by Administrative Appeals Tribunal*

- (6) This section does not, by implication, prevent the regulations from providing that applications may be made to the Administrative Appeals Tribunal for review of decisions made in the exercise of powers conferred by the regulations.

**243 Tabling of Ministerial statements about certain decisions**

- (1) This section applies to the following decisions under this Act:
- (a) a decision to grant an airport lease under section 13;
  - (b) a decision to approve, or to refuse to approve, the transfer of an airport lease;
  - (c) a decision to approve, or to refuse to approve, a company, an agreement or a variation, under section 33 (which deals with airport-management agreements);
  - (d) a decision to make a declaration under section 55 (which deals with the practical control of airport-operator companies);
  - (e) a decision to make a determination, declaration or other instrument under Part 13 (which deals with access to airports and demand management schemes for airports).

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- (2) If a decision is made, the Minister must:
  - (a) prepare a statement about the decision; and
  - (b) cause a copy of the statement to be laid before each House of the Parliament within 15 sittings days of that House after the decision was made.
- (3) The Minister is not required to comply with subsection (2) to the extent to which compliance could reasonably be expected to prejudice substantially the commercial interests of a person.

**244 Delegation**

- (1) The Minister may, by writing, delegate to:
  - (a) the Secretary to the Department; or
  - (b) an SES employee or acting SES employee whether or not in the Department;all or any of the Minister's powers under this Act or under a demand management scheme.

**245 Indictable offences**

An offence against any of the following provisions is an indictable offence:

- (a) Part 2;
- (b) Division 3, 4 or 5 of Part 3;
- (c) Part 4.

**246 Constitutional corporations**

Parts 3 to 8 (inclusive) do not apply to an airport-operator company unless the company is a constitutional corporation.

**247 Severability**

In addition to its effect apart from this section, this Act also has the effect it would have if each reference in this Act (other than in the definition of *Commonwealth place* in section 5) to a Commonwealth place were a reference to a place owned by the Commonwealth.

**248 Application of the *Trade Practices Act 1974***

- (1) This Act does not, by implication, limit the application of the *Trade Practices Act 1974*.
- (2) For the purposes of section 50 of the *Trade Practices Act 1974*, if:
  - (a) a person directly or indirectly acquires shares in either or both of the following:
    - (i) the airport-lessee company for Sydney (Kingsford-Smith) Airport;
    - (ii) the airport-lessee company for Sydney West Airport;and
  - (b) the acquisition has the effect that those companies become subsidiaries of another company;that effect, when considered in isolation from any other effect of the acquisition, does not, and is not likely to, substantially lessen competition in any market.
- (3) For the purposes of subsection (2), a company (the *subsidiary company*) is taken to be a *subsidiary* of another company (the *holding company*) if, and only if, all the shares in the subsidiary company are beneficially owned by the holding company.

**249 Relocation of abandoned aircraft etc.**

- (1) If:
  - (a) an aircraft at an airport site is interfering, or is likely to interfere, with the operation of the airport; and

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- (b) the aircraft is in a state of disrepair or is apparently abandoned;  
an airport-operator company for the airport may, with the approval of the Secretary to the Department, cause the aircraft to be moved to another part of the airport, so long as that movement is carried out with reasonable care.
- (2) A person is not liable to an action or other proceeding, whether civil or criminal, for or in relation to an act done in accordance with subsection (1).
- (3) The Secretary may, by writing, delegate to an SES employee or acting SES employee in the Department all or any of the Secretary's powers under this section.
- (4) This section has effect in addition to, and not instead of, regulations under the *Air Services Act 1995*.
- (5) Subsection (1) does not limit, restrict or otherwise affect any right or remedy the company would have if this section had not been enacted.
- (6) In addition to its effect apart from this section, this section has the effect it would have if each reference to an airport-operator company were, by express provision, confined to an airport-operator company that is a constitutional corporation.
- (7) In this section:
- aircraft* includes an object that was designed or adapted for use as an aircraft but is incapable of being so used because:
- (a) one or more parts have been removed from it; or  
(b) it is in a wrecked or damaged condition.

**250 Access to airports for defence-related purposes and for emergency or disaster relief**

- (1) The Minister may, by written notice given to an airport-operator company for an airport:
- (a) require that access be given to specified kinds of airport services for specified kinds of defence-related purposes; or

- (b) require that priority of access be given to specified kinds of airport services for specified kinds of defence-related purposes.
- (2) The manner in which that access, or priority of access, is to be given is to be set out in the notice.
- (3) Subject to section 251, the terms and conditions on which that access, or priority of access, is to be given are to be set out in the notice.
- (4) A company must comply with a notice given to it under subsection (1).
- (5) A contravention of subsection (4) is not an offence. However, a contravention of subsection (4) is a ground for obtaining an injunction under Part 15.
- (6) In addition to other methods of giving a notice to a company, a notice under subsection (1) may be given to a company by facsimile transmission.
- (7) In addition to its effect apart from this section, this section has the effect it would have if each reference to an airport-operator company were, by express provision, confined to an airport-operator company that is a constitutional corporation.
- (8) In this section:

***airport service*** means a service provided at an airport, where the service is necessary for the purposes of operating and/or maintaining civil aviation services at the airport, and includes the use of facilities at the airport for those purposes.

***defence-related purposes*** means a purpose related to any of the following:

- (a) the defence of Australia;
- (b) the operation of the Australian Defence Force in connection with the defence of Australia;

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- (c) the operation of an aircraft owned by the armed forces of a foreign country, where that operation is in accordance with an arrangement approved by the Australian Defence Force;
- (d) the management of an emergency or a disaster (whether natural or otherwise), where that management involves the Australian Defence Force.

**251 Compensation for access to airports for defence-related purposes and for emergency or disaster relief**

*Designated agency in relation to a notice*

- (1) A notice under subsection 250(1) must specify a Commonwealth agency as the designated agency in relation to the notice.
- (2) If a notice under subsection 250(1) relates to any of the following purposes:
  - (a) the defence of Australia;
  - (b) the operation of the Australian Defence Force in connection with the defence of Australia;
  - (c) the operation of an aircraft owned by the armed forces of a foreign country, where the operation is in accordance with an arrangement approved by the Australian Defence Force;the notice must specify the Department of Defence as the designated agency in relation to the notice.
- (3) If a notice under subsection 250(1) relates to the management of an emergency or a disaster (whether natural or otherwise), the notice may specify:
  - (a) the Department of Defence; or
  - (b) any other Commonwealth agency that is involved in the management of the emergency or disaster;as the designated agency in relation to the notice.

*Liability for loss or damage*

- (4) If:
  - (a) a notice under subsection 250(1) is given to an airport-operator company for an airport; and

(b) a person covered by one of the following subparagraphs suffers loss or damage in consequence of the giving of access, or the giving of priority of access, in accordance with the notice:

- (i) an airport-operator company for the airport;
- (ii) a person who is a lessee of the airport-lessee company for the airport;
- (iii) a person who holds a licence relating to an airport lease for the airport;

the Commonwealth is liable to pay to the person an amount equal to the loss or damage.

(5) If:

- (a) the person; and
- (b) the head of the designated agency in relation to the notice (on behalf of the Commonwealth);

do not agree on the amount of loss or damage mentioned in subsection (4), the person may recover the amount of the loss or damage by action against the Commonwealth in a court of competent jurisdiction.

- (6) In determining the amount of any loss or damage mentioned in subsection (4), regard must be had to anything done in mitigation of the loss or damage (including any remedial work).
- (7) A payment under subsection (4) or (5) is to be made out of amounts appropriated by the Parliament for the purposes of the designated agency in relation to the notice.

*Compensation—constitutional safety-net*

(8) If:

- (a) apart from this section, the operation of section 250 would result in the acquisition of property from a person otherwise than on just terms; and
- (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;

the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.

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- (9) If the Commonwealth and the person do not agree on the amount of the compensation mentioned in subsection (8), the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

*Section 70 of the Defence Act 1903*

- (10) This section has effect despite anything in section 70 of the *Defence Act 1903*.

*Definitions*

- (11) In this section:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***Commonwealth agency*** means:

- (a) a Department; or
- (b) an agency or instrumentality of the Commonwealth.

***designated agency***, in relation to a notice, means the Commonwealth agency specified in the notice as the designated agency in relation to the notice.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

## 252 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**253 Repeals**

The following Acts are repealed:

*Airports (Business Concessions) Act 1959*

*Airports (Surface Traffic) Act 1960.*

## Schedule—Ownership definitions

### 1 Object

The object of this Schedule is to define terms used in Part 3 (which deals with ownership restrictions).

### 2 Definitions

In Part 3 and this Schedule, unless the contrary intention appears:

**acquisition** includes an agreement to acquire, but does not include:

- (a) an acquisition by will or by devolution by operation of law;  
or
- (b) an acquisition by way of enforcement of a loan security.

**aggregate substantial interest**, in relation to a trust estate, has the meaning given by clause 13.

**arrangement** has the meaning given by clause 4.

**associate** has the meaning given by clause 5.

**constituent document**, in relation to a company, means:

- (a) the memorandum and articles of association of the company;  
or
- (b) any rules or other documents constituting the company or governing its activities.

**direct control interest** has the meaning given by clause 12.

**director** includes any person occupying the position of director of a company, by whatever name called.

**discretionary trust** means a trust where:

- (a) a person (who may include the trustee) is empowered (either unconditionally or on the fulfilment of a condition) to exercise any power of appointment or other discretion; and

- (b) the exercise of the power or discretion, or the failure to exercise the power or discretion, has the effect of determining, to any extent, either or both of the following:
  - (i) the identities of those who may benefit under the trust;
  - (ii) how beneficiaries are to benefit, as between themselves, under the trust.

***foreign citizen*** means an individual who is not an Australian citizen.

***foreign company*** means a company incorporated outside Australia.

***foreign government body*** means:

- (a) a foreign State (within the meaning of the *Foreign States Immunities Act 1985*); or
- (b) a separate entity of such a foreign State (within the meaning of that Act).

***foreign person*** means:

- (a) a foreign citizen not ordinarily resident in Australia; or
- (b) a foreign government body; or
- (c) a company where:
  - (i) a foreign citizen not ordinarily resident in Australia; or
  - (ii) a foreign government body; or
  - (iii) a foreign company;holds a particular type of stake in the company of not less than 15%; or
- (d) a company where a group of 2 or more persons, each of whom is:
  - (i) a foreign citizen not ordinarily resident in Australia; or
  - (ii) a foreign government body; or
  - (iii) a foreign company;holds, in total, a particular type of stake in the company of not less than 40%; or
- (e) the trustee of a trust estate in which:
  - (i) a foreign citizen not ordinarily resident in Australia; or
  - (ii) a foreign government body; or

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- (iii) a foreign company;  
holds a substantial interest; or
- (f) the trustee of a trust estate in which 2 or more persons, each of whom is:
  - (i) a foreign citizen not ordinarily resident in Australia; or
  - (ii) a foreign government body; or
  - (iii) a foreign company;hold an aggregate substantial interest.

**group** includes:

- (a) one person alone; or
- (b) a number of persons, even if they are not in any way associated with each other or acting together.

**increase**, in relation to a stake in a company, includes an increase from a starting point of nil.

**interest in a share** has the meaning given by clause 8.

**officer**, in relation to a company, includes:

- (a) a director, secretary or employee of the company; or
- (b) a receiver and manager of any part of the undertaking of the company appointed under a power contained in any instrument; or
- (c) a liquidator of the company appointed in a voluntary winding-up.

**ordinarily resident in Australia** has the meaning given by clause 3.

**ownership provisions** means Part 3 and this Schedule.

**power to appoint a director of a company** has a meaning affected by clause 6.

**practical control**, in relation to an airport-operator company, has the meaning given by section 55.

**relative**, in relation to a person, means:

- (a) the person's spouse; or

- (b) another person who, although not legally married to the person, lives with the person on a bona fide domestic basis as the husband or wife of the person; or
- (c) a parent or remoter lineal ancestor of the person; or
- (d) a son, daughter or remoter issue of the person; or
- (e) a brother or sister of the person.

**share**, in relation to a company, means a share in the share capital of the company, and includes:

- (a) stock into which any or all of the share capital of the company has been converted; or
- (b) an interest in such a share or in such stock.

**stake**, in relation to a company, has the meaning given by clause 11.

**substantial interest**, in relation to a trust estate, has the meaning given by clause 13.

**voting power** has the meaning given by clause 10.

### **3 When foreign citizens are ordinarily resident in Australia**

For the purposes of the ownership provisions, a foreign citizen is **ordinarily resident in Australia** at a particular time if, and only if:

- (a) the foreign citizen has been in Australia during 200 or more days in the period of 12 months immediately preceding that time; and
- (b) at that time, one of the following subparagraphs applies:
  - (i) the foreign citizen is in Australia and has permission to remain in Australia indefinitely;
  - (ii) the individual is not in Australia but has a right to re-enter Australia and, on re-entry, to be granted permission to remain in Australia indefinitely;
  - (iii) the individual is in Australia, is a New Zealand citizen, holds a New Zealand passport and has a special category visa under section 32 of the *Migration Act 1958*;

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- (iv) the individual is not in Australia, is a New Zealand citizen, holds a New Zealand passport and, on re-entry to Australia, would have the right to be granted a special category visa under section 32 of the *Migration Act 1958*.

#### 4 Entering into an agreement or arrangement

- (1) For the purposes of the ownership provisions, a person is taken to have proposed to enter into an agreement or arrangement if the person takes part in, or proposes to take part in, negotiations with a view to entering into the agreement or arrangement.
- (2) A reference in the ownership provisions to ***entering into an agreement or arrangement*** includes a reference to altering or varying an agreement or arrangement.
- (3) A reference in the ownership provisions to ***entering into an arrangement*** is a reference to entering into any formal or informal scheme, arrangement or understanding, whether expressly or by implication and, without limiting the generality of the foregoing, includes a reference to:
  - (a) entering into an agreement; or
  - (b) creating a trust, whether express or implied; or
  - (c) entering into a transaction;and a reference in the ownership provisions to an arrangement is to be construed accordingly.
- (4) A reference in the ownership provisions to an ***arrangement*** does not include a reference to a moneylending agreement.

#### 5 Associates

- (1) For the purposes of the ownership provisions, the following persons are ***associates*** of a person:
  - (a) a relative of the person;
  - (b) a partner of the person;
  - (c) a company of which the person is an officer;
  - (d) if the person is a company—an officer of the company;

- (e) an employee or employer of the person;
  - (f) an officer of a company of which the person is an officer;
  - (g) an employee of an individual of whom the person is an employee;
  - (h) the trustee of a discretionary trust where the person or another person who is an associate of the person by virtue of another paragraph of this subclause benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust, either directly or through any interposed companies, partnerships or trusts;
  - (i) a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person;
  - (j) a company where the person is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the company;
  - (k) a company in which the person has, apart from this paragraph, a particular type of stake of not less than 15%;
  - (l) if the person is a company—a person who holds, apart from this paragraph, a particular type of stake in the company of not less than 15%;
  - (m) a person who is, because of this subclause, an associate of any other person who is an associate of the person (including a person who is an associate of the person by any other application or applications of this paragraph).
- (2) If a person (the **first person**) enters, or proposes to enter, into an arrangement with another person (the **second person**) that relates to any of the following matters:
- (a) the first person and the second person being in a position, by acting together, to control any of the voting power in a company;
  - (b) the power of the first person and the second person, by acting together, to appoint or remove a director of a company;
  - (c) the situation where one or more of the directors of a company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions,

Clause 6

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instructions or wishes of the first person and the second person acting together;  
then, the second person is taken to be an associate of the first person for the purposes of the application of a provision of the ownership provisions in relation to the matter concerned.

**6 Power to appoint director**

- (1) A reference in the ownership provisions to a *power to appoint a director* includes a reference to such a power whether exercisable with or without the consent or concurrence of any other person.
- (2) For the purposes of the ownership provisions, a person is taken to have the power to appoint a director if:
  - (a) the person has the power (whether exercisable with or without the consent or concurrence of any other person) to veto such an appointment; or
  - (b) a person's appointment as a director of the company follows necessarily from that person being a director or other officer of the first-mentioned person.

**7 Meaning of entitled to acquire**

For the purposes of the ownership provisions, a person is *entitled to acquire* anything if the person is absolutely or contingently entitled to acquire it, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

**8 Meaning of interest in a share** [see Note 2]

- (1) Subject to this clause, a person holds an *interest in a share* if the person has any legal or equitable interest in the share.
- (2) A person is taken to hold an interest in a share if:
  - (a) the person has entered into a contract to purchase the share; or
  - (b) the person has a right (otherwise than because of having an interest under a trust) to have the share transferred to the

person or to the person's order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or

- (c) the person has a right to acquire the share, or an interest in the share, under an option (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or
  - (d) the person is otherwise entitled to acquire the share or an interest in the share; or
  - (e) the person is entitled (otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company or of a class of its members) to exercise or control the exercise of a right attached to the share.
- (3) Subclause (2) does not, by implication, limit subclause (1).
- (4) A person is taken to hold an interest in a share even if the person holds the interest in the share jointly with another person.
- (5) For the purpose of determining whether a person holds an interest in a share, it is immaterial that the interest cannot be related to a particular share.
- (6) An interest in a share is not to be disregarded only because of:
- (a) its remoteness; or
  - (b) the manner in which it arose; or
  - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

## **9 Certain interests in shares to be disregarded**

- (1) For the purposes of the ownership provisions, the following interests must be disregarded:
- (a) an interest in a share held by a person whose ordinary business includes the lending of money if the person holds the interest as a loan security;

Clause 10

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- (b) an interest in a share held by a person, being an interest held by the person because the person holds a prescribed office;
  - (c) an interest of a prescribed kind in a share, being an interest held by such persons as are prescribed;
  - (d) an interest in a share held by the Commonwealth.
- (2) For the purposes of the ownership provisions, if:
- (a) a person holds an interest in a share as a loan security; and
  - (b) the ordinary business of the person includes the lending of money; and
  - (c) the loan security is enforced; and
  - (d) as a result of the enforcement of the loan security, the person becomes the holder of the share; and
  - (e) the person holds the share for a continuous period (the *holding period*) beginning at the time when the security was enforced;
- the person's interest in the share must be disregarded at all times during so much of the holding period as occurs during whichever of the following periods is applicable:
- (f) the period of 90 days beginning when the security was enforced;
  - (g) if the Minister, by written notice given to the person, allows a longer period—the end of that longer period.

## 10 Voting power

- (1) A reference in the ownership provisions to the *voting power* in a company is a reference to the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
- (a) the making of distributions of capital or profits of the company to its shareholders;
  - (b) the constituent document of the company;
  - (c) any variation of the share capital of the company.
- (2) A reference in the ownership provisions to *control of the voting power* in a company is a reference to control that is direct or

indirect, including control that is exercisable as a result of or by means of arrangements or practices:

- (a) whether or not having legal or equitable force; and
  - (b) whether or not based on legal or equitable rights.
- (3) If the percentage of total rights to vote or participate in decision-making differs as between different types of voting or decision-making, the highest of those percentages applies for the purposes of this clause.
- (4) If a company:
- (a) is limited both by shares and by guarantee; or
  - (b) does not have a share capital;
- this clause has effect as if the members or policy holders of the company were shareholders in the company.

## **11 Stake in a company**

- (1) A particular type of *stake* that a person holds in a company at a particular time is the aggregate of:
- (a) the direct control interests in the company of that type that the person holds at that time; and
  - (b) the direct control interests in the company of that type held at that time by associates of the person.
- (2) In calculating the stake that a person holds in a company, a direct control interest held because of subclause 12(5) is not to be counted under paragraph (1)(a) to the extent to which it is calculated by reference to a direct control interest in the company that is taken into account under paragraph (1)(b).
- (3) For the purpose of calculating the total of the stakes of a particular type that a group of persons holds in a company, if a particular stake that a person holds in a company would be counted more than once because the person is an associate of one or more other persons in the group, that interest is to be counted only once.

Clause 12

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**12 Direct control interests in a company**

- (1) A person holds a *direct control interest* in a company at a particular time equal to the percentage of the total paid-up share capital of the company in which the person holds an interest at that time.
- (2) A person also holds a *direct control interest* in a company at a particular time equal to the percentage of the voting power in the company that the person is in a position to control at that time.
- (3) A person also holds a *direct control interest* in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders on winding-up.
- (4) A person also holds a *direct control interest* in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up.
- (5) If:
  - (a) a person holds a particular type of direct control interest (including a direct control interest that is taken to be held because of one or more previous applications of this subclause) in a company (the *first level company*); and
  - (b) the first level company holds the same type of direct control interest in another company (the *second level company*);the person is taken to hold that type of direct control interest in the second level company equal to the percentage worked out using the formula:  
$$\text{first level percentage} \times \text{second level percentage}$$
where:  
*first level percentage* means the percentage of the direct control interest held by the person in the first level company.

*second level percentage* means the percentage of the direct control interest held by the first level company in the second level company.

### **13 Substantial interests in trust estates**

- (1) For the purposes of the ownership provisions:
  - (a) a person is taken to hold a *substantial interest* in a trust estate if the person, alone or together with an associate or associates, holds a beneficial interest in not less than 15% of the corpus or income of the trust estate; and
  - (b) 2 or more persons are taken to hold an *aggregate substantial interest* in a trust estate if the persons, together with an associate or associates, hold, in the aggregate, beneficial interests in not less than 40% of the corpus or income of the trust estate.
- (2) For the purposes of subclause (1), if, under the terms of a trust, a trustee has a power or discretion as to the distribution of the income or corpus of the trust estate to beneficiaries, each beneficiary is taken to hold a beneficial interest in the maximum percentage of income or corpus of the trust estate that the trustee is empowered to distribute to that beneficiary.

### **14 Airport holding companies in which foreign persons have direct control interests**

- (1) This clause applies if:
  - (a) a foreign person holds a particular type of direct control interest in a company (the *designated holding company*); and
  - (b) the designated holding company holds the same type of direct control interest in a particular airport-operator company (the *eligible airport-operator company*); and
  - (c) if the eligible airport-operator company is the airport-lessee company for Sydney (Kingsford-Smith) Airport or the airport-lessee company for Sydney West Airport—the designated holding company is operated solely for:

Clause 14

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- (i) the purpose of holding direct control interests in the airport-lessee company for Sydney (Kingsford-Smith) Airport and the airport-lessee company for Sydney West Airport; and
  - (ii) such other purposes (if any) as are prescribed; and
  - (d) if the eligible airport-operator company is neither the airport-lessee company for Sydney (Kingsford-Smith) Airport nor the airport-lessee company for Sydney West Airport—the designated holding company is operated solely for the purpose of holding direct control interests in one or more airport-operator companies; and
  - (e) the designated holding company is incorporated, or taken to be incorporated, under the Corporations Law of a State or internal Territory; and
  - (f) the designated holding company has a share capital.
- (2) In determining, for the purposes of section 40, whether there is a group of foreign persons who hold, in total, that type of stake in the eligible airport-operator company of more than 49%:
- (a) the stake of that type that the foreign person holds in the eligible airport-operator company is to be calculated on the basis that the designated holding company is taken not to be an associate of the foreign person; and
  - (b) the designated holding company is taken not to be a foreign person.
- (3) Subclause 12(5) is to be disregarded for the purposes of subclause (1) of this clause.

Note: Subclause 12(5) deals with deemed direct control interests.

**Table of Acts****Notes to the *Airports Act 1996*****Note 1**

The *Airports Act 1996* as shown in this compilation comprises Act No. 42, 1996 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequential and Transitional) Act 2001*, see Act No. 55, 2001.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Airports Act 1996</i>	42, 1996	9 Oct 1996	9 Oct 1996	
<i>Aviation Legislation Amendment Act (No. 1) 1997</i>	30, 1997	17 Apr 1997	17 Apr 1997	—
<i>Sydney Airport Demand Management Act 1997</i>	173, 1997	17 Nov 1997	Schedule 2: Royal Assent (a)	—
<i>Aviation Legislation Amendment Act (No. 1) 1998</i>	95, 1998	23 July 1998	Schedule 2: Royal Assent (b)	—
<i>Airports Amendment Act 1999</i>	19, 1999	19 Apr 1999	19 Apr 1999	Sch. 1 (item 18)
<i>Environmental Reform (Consequential Provisions) Act 1999</i>	92, 1999	16 July 1999	Schedule 7 (items 5, 6): 16 July 2000 (c)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 81–84): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (d)	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Corporations (Repeals, Consequential and Transitional) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 22–25): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (e)	Ss. 4–14
<i>Transport and Regional Services Legislation Amendment (Application of Criminal Code) Act 2001</i>	143, 2001	1 Oct 2001	2 Oct 2001	S. 4
<i>Transport and Regional Services Legislation Amendment (Application of Criminal Code) Act 2002</i>	8, 2002	4 Apr 2002	5 Apr 2002	—
<i>Civil Aviation Legislation Amendment Act 2003</i>	83, 2003	6 Sept 2003	Schedule 3: Royal Assent	—
<i>Trade Practices Legislation Amendment Act 2003</i>	134, 2003	17 Dec 2003	Schedules 1 and 2: 1 Mar 2004 (see <i>Gazette</i> 2004, No. GN8) Remainder: Royal Assent	—

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**Act Notes**

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- (a) The *Airports Act 1996* was amended by Schedule 2 only of the *Sydney Airport Demand Management Act 1997*, subsection 2(1) of which provides as follows:
- (1) This Act, other than Parts 2 and 3, commence on the day on which this Act receives the Royal Assent.
- (b) The *Airports Act 1996* was amended by Schedule 2 only of the *Aviation Legislation Amendment Act (No. 1) 1998*, subsection 2(5) of which provides as follows:
- (5) The remaining provisions of this Act (including items 9, 10 and 11 of Schedule 1) commence on the day on which this Act receives the Royal Assent.
- (c) The *Airports Act 1996* was amended by Schedule 7 (items 5 and 6) only of the *Environmental Reform (Consequential Provisions) Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences when the *Environment Protection and Biodiversity Conservation Act 1999* commences.
- (d) The *Airports Act 1996* was amended by Schedule 1 (items 81–84) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
  - (2) Subject to this section, this Act commences at the commencing time.
- (e) The *Airports Act 1996* was amended by Schedule 3 (items 22–25) only of the *Corporations (Repeals, Consequential and Transitions) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.

**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 1</b>	
S. 4.....	am. No. 30, 1997
S. 5.....	am. No. 30, 1997; No. 95, 1998; No. 19, 1999; Nos. 55 and 143, 2001
S. 7A .....	ad. No. 30, 1997
S. 7B .....	ad. No. 95, 1998
S. 10A .....	ad. No. 143, 2001
<b>Part 2</b>	
<b>Division 1</b>	
S. 11 .....	am. No. 30, 1997; No. 95, 1998
<b>Division 3</b>	
Heading to s. 16 .....	am. No. 95, 1998
S. 16.....	am. No. 95, 1998
Heading to s. 17 .....	am. No. 95, 1998
S. 17.....	rs. No. 95, 1998
Heading to s. 19 .....	am. No. 95, 1998
S. 19.....	am. No. 95, 1998
Heading to s. 20 .....	rs. No. 95, 1998
S. 20.....	am. No. 95, 1998
S. 20A.....	ad. No. 95, 1998
<b>Division 4</b>	
S. 24.....	am. No. 95, 1998
Heading to s. 28 .....	am. No. 30, 1997
S. 28 .....	am. No. 30, 1997
S. 29 .....	am. No. 30, 1997; No. 143, 2001
<b>Division 5</b>	
Heading to Div. 5 of Part 2 .....	rs. No. 30, 1997
Heading to s. 31 .....	am. No. 30, 1997
S. 31 .....	am. No. 30, 1997
<b>Division 6</b>	
<b>Subdivision A</b>	
Heading to Subdiv. A .....	ad. No. 30, 1997
of Div. 6 of Part 2	
S. 32.....	am. No. 95, 1998; No. 143, 2001
<b>Subdivision B</b>	
Heading to Subdiv. B .....	ad. No. 30, 1997
of Div. 6 of Part 2	
Subhead. to s. 33(1) .....	ad. No. 30, 1997
S. 33 .....	am. No. 30, 1997

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision C</b>	
Heading to Subdiv. C ..... of Div. 6 of Part 2	ad. No. 30, 1997
S. 34 .....	am. No. 30, 1997
Ss. 34A–34D .....	ad. No. 30, 1997
S. 35 .....	am. No. 30, 1997
Ss. 35A–35F .....	ad. No. 30, 1997
<b>Part 3</b>	
<b>Division 3</b>	
S. 42 .....	am. No. 143, 2001
<b>Division 4</b>	
S. 46 .....	am. No. 143, 2001
<b>Division 5</b>	
<b>Subdivision C</b>	
S. 52 .....	am. No. 143, 2001
<b>Subdivision D</b>	
S. 56 .....	am. No. 143, 2001
<b>Division 7</b>	
S. 60 .....	am. No. 30, 1997; No. 143, 2001
<b>Part 5</b>	
<b>Division 1</b>	
S. 67 .....	am. No. 30, 1997
<b>Division 2</b>	
S. 68.....	am. No. 19, 1999
<b>Division 3</b>	
S. 71 .....	am. No. 30, 1997
Ss. 73, 74 .....	am. No. 95, 1998
Ss. 75, 76 .....	am. No. 143, 2001
S. 78 .....	am. No. 143, 2001
S. 81 .....	am. No. 143, 2001
S. 84A .....	ad. No. 30, 1997
Ss. 85, 86 .....	am. No. 143, 2001
<b>Division 4</b>	
S. 89 .....	am. No. 30, 1997
S. 90 .....	am. No. 143, 2001
S. 91 .....	am. No. 30, 1997
Ss. 94, 95.....	am. No. 92, 1999
S. 95A .....	ad. No. 30, 1997
S. 96 .....	am. No. 143, 2001
<b>Division 5</b>	
<b>Subdivision A</b>	
S. 97 .....	am. No. 30, 1997

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision C</b>	
S. 99 .....	am. No. 143, 2001
S. 100 .....	am. No. 30, 1997
S. 102 .....	rs. No. 143, 2001
S. 103 .....	am. No. 143, 2001
<b>Subdivision D</b>	
Heading to Subdiv. D of Div. 5 of Part 5 .....	rs. No. 30, 1997
S. 104 .....	rs. No. 30, 1997
Heading to s. 106 .....	am. No. 30, 1997
S. 106 .....	am. No. 30, 1997; No. 143, 2001
Note to s. 106(3) .....	ad. No. 143, 2001
Note to s. 106(6) .....	ad. No. 143, 2001
Heading to s. 107 .....	am. No. 30, 1997
S. 107 .....	am. No. 30, 1997
S. 108 .....	am. No. 30, 1997 rs. No. 143, 2001
S. 109 .....	am. No. 30, 1997; No. 143, 2001
<b>Part 6</b>	
<b>Division 1</b>	
S. 113 .....	am. No. 30, 1997
<b>Division 2</b>	
S. 114 .....	am. No. 19, 1999
Ss. 118, 119 .....	am. No. 95, 1998
Ss. 120, 121 .....	am. No. 143, 2001
S. 123 .....	am. No. 143, 2001
S. 126 .....	am. No. 143, 2001
S. 130 .....	am. No. 30, 1997
S. 131 .....	am. No. 143, 2001
<b>Division 3</b>	
S. 131A .....	ad. No. 30, 1997 am. No. 19, 1999
Heading to s. 131B .....	am. No. 143, 2001
S. 131B .....	ad. No. 30, 1997 am. No. 143, 2001
Heading to s. 131C .....	am. No. 143, 2001
S. 131C .....	ad. No. 30, 1997 am. No. 143, 2001
Heading to s. 131D .....	am. No. 143, 2001
S. 131D .....	ad. No. 30, 1997 am. No. 143, 2001
S. 131E .....	ad. No. 30, 1997

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 132.....	am. No. 30, 1997; No. 95, 1998; No. 8, 2002
S. 133.....	am. No. 30, 1997; No. 95, 1998
Ss. 134–137 .....	am. No. 30, 1997
<b>Part 7</b>	
<b>Division 2</b>	
S. 140.....	am. No. 19, 1999
<b>Division 3</b>	
S. 141.....	am. Nos. 55 and 143, 2001
Ss. 142, 143 .....	am. No. 143, 2001
S. 143A .....	ad. No. 30, 1997
S. 144.....	am. No. 55, 2001
<b>Division 4</b>	
S. 145 .....	am. No. 143, 2001
S. 145A .....	ad. No. 30, 1997
<b>Division 5</b>	
S. 146 .....	am. No. 143, 2001
<b>Division 6</b>	
S. 147 .....	am. No. 30, 1997; No. 134, 2003
Note to s. 147(2).....	am. No. 134, 2003
<b>Division 7</b>	
Heading to Div. 7 of Part 7.....	rs. No. 134, 2003
Heading to s. 148.....	am. No. 134, 2003
S. 148.....	am. No. 134, 2003
<b>Part 8</b>	
<b>Division 2</b>	
S. 151.....	am. No. 19, 1999
<b>Division 5</b>	
S. 156 .....	am. No. 143, 2001
<b>Division 7</b>	
S. 158.....	am. No. 134, 2003
Note to s. 158(2).....	am. No. 134, 2003
<b>Division 8</b>	
Heading to Div. 8 of Part 8.....	rs. No. 134, 2003
Heading to s. 159.....	am. No. 134, 2003
S. 159.....	am. No. 134, 2003
<b>Part 9</b>	
S. 160.....	am. No. 19, 1999
Subhead. to s. 161(1) .....	rep. No. 19, 1999
S. 161.....	am. No. 19, 1999
S. 163A.....	ad. No. 19, 1999
<b>Part 10</b>	
S. 167 .....	rs. No. 143, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 11</b>	
S. 169.....	am. No. 19, 1999
<b>Part 12</b>	
<b>Division 4</b>	
S. 182.....	am. No. 19, 1999
S. 183 .....	am. No. 143, 2001
S. 185 .....	rs. No. 143, 2001
S. 186 .....	am. No. 143, 2001
S. 187.....	am. No. 19, 1999
<b>Part 13</b>	
<b>Division 2</b>	
S. 192.....	am. No. 95, 1998; No. 19, 1999 rep. No. 83, 2003
Note to s. 192(2).....	ad. No. 95, 1998
<b>Division 3</b>	
S. 194.....	am. No. 173, 1997; No. 19, 1999
Note to s.194(1) .....	ad. No.173, 1997
<b>Division 5</b>	
S. 200 .....	am. No. 30, 1997
<b>Division 6</b>	
S. 202 .....	am. No. 30, 1997
<b>Division 7</b>	
S. 208 .....	rs. No. 143, 2001
<b>Part 14</b>	
S. 216 .....	am. No. 143, 2001
<b>Part 16</b>	
S. 224 .....	am. No. 143, 2001
<b>Part 17</b>	
Heading to Part 17 .....	rs. No. 137, 2000
S. 226 .....	am. No. 137, 2000
S. 227 .....	rep. No. 137, 2000
S. 228 .....	am. No. 143, 2001
S. 229 .....	rep. No. 137, 2000
S. 230 .....	am. No. 143, 2001
S. 231 .....	rs. No. 143, 2001
<b>Part 18</b>	
S. 234 .....	am. No. 143, 2001
S. 237 .....	am. No. 143, 2001
<b>Part 19</b>	
Ss. 242, 243 .....	am. No. 30, 1997
S. 244.....	am. No. 146, 1999
S. 249.....	am. No. 146, 1999

**Table of Amendments**

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

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Provision affected	How affected
S. 251.....	am. No. 95, 1998

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**Note 2**

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**Note 2**

Schedule (subclause 8(1)(e))—Schedule 3 (item 25) of the *Corporations (Repeals, Consequential and Transitional) Act 2001* provides as follows:

**Schedule 3**

**25 Paragraph 8(1)(e) of the Schedule**

Omit “Corporations Law of a State or internal Territory”, substitute “*Corporations Act 2001*”.

The proposed amendment was misdescribed and is not incorporated in this compilation.

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**Table A**

**Table A**

**Application, saving or transitional provisions**

*Airports Amendment Act 1999* (No. 19, 1999)

**Schedule 1**

**18 Application—section 192 of the *Airports Act 1996***

The amendment of section 192 of the *Airports Act 1996* made by this Schedule does not apply to an airport if a determination relating to the airport was made under subsection (1) of that section before the commencement of this item.

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*Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* (No. 137, 2000)

**Schedule 2**

**418 Transitional—pre-commencement offences**

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
  - (a) an offence committed before the commencement of this item;  
or
  - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
  - (c) any matter connected with, or arising out of, such proceedings;as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

## **Table A**

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### **419 Transitional—pre-commencement notices**

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
- (b) any or all of those other provisions are repealed by this Schedule; and
- (c) the first-mentioned provision is amended by this Schedule;

the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.

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*Transport and Regional Services Legislation Amendment (Application of Criminal Code) Act 2001 (No. 143, 2001)*

### **4 Application of Amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.