



Australian Airports Liability and Compliance Guide



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NB: Due to the extensive nature of this publication and the pace of reforms and judicial consideration there may be an absence of reference to a recent case or some references to legislation and its provisions which are no longer current, yet proclaimed, amended or repealed. The publication attempts to draw out the most significant points in the relevant legislation. Whilst all care has been taken to ensure that the most up to date information has been included, not all cases or aspects of the legislation have been considered. The material contained in this publication is in the nature of general comment only, and neither purports nor is intended, to be advice on any particular matter. No reader should act on the basis of any matter contained in this publication without considering and, if necessary, taking appropriate professional advice upon his or her own particular circumstance. The content of this publication is current up to and including 30 April 2009.

Australian Airports Liability and Compliance Guide

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PREFACE

Airports are a complex and highly regulated aspect of the Australian economy. In their simplest and most basic of functions, they facilitate the conversion between ground and air, between landside and airside. In a world economy driven by speed and efficiency, airports funnel the aviation requirements for domestic and international travel into the aerodrome or 'terminal' experience. Via a web of greater urban design, passengers are drawn towards a sophisticated airline and airport industry. Often oblivious to it, these passengers move through delicate and complex balances struck between environmental, safety, commercial and aviation concerns at airports. As air travel becomes more popular and wide reaching, this influences the greater need for growth, new technology, more efficient infrastructure, larger aircraft, and, of course, heightened airport regulation.

Whether described as a microcosm, airport city or metropolis, these descriptions all characterise the same fundamental conglomeration of densely-situated diverse airport interests. With such varied and dynamic points of exchange, a complex and quasi integrated regulatory and liability environment is a natural effect.

As with many business disciplines, an airport's function is not only influenced by domestic and regional government regulation, but driven also by greater social and commercial developments. The airport industry is particularly attuned to and affected by advances in technology, world economics, aircraft capacity, tourism, disease, political unrest and terrorism.

With airport privatisation, or at least the impetus for privatisation around the world, comes new business pressures. Capacity constraints, noise and environmental restrictions and stakeholder interests are all barriers to maintaining and improving access to many airports. Three recent international examples which span the full spectrum of such business drivers reveal this very challenge.

The first example is of the small but embattled United States airport of Oceanside in California. Oceanside had almost succumbed to immense local government pressure to close down, before Californian-based company, Airport Property Ventures was awarded a 50 year 'development lease' on the basis of its promised USD\$21 million spend on airport improvements over 25 years. The decision is expected to turn a once ailing airport (that was on the verge of being sold), into a thriving business community supported by the Oceanside Airport Association and other airport users. Oceanside's success was even supported by the Federal Aviation Administration's decision to deny attempts to sell 15 acres of adjoining airport land, preserving the opportunity for airport expansion in the future. This phenomenon is by no means localised to the United States and is common to many regional airports which teeter on the balance of prosperity supported by a small local community, versus obliteration by redundancy and the economies of scale of larger airports.

The second example comes out of the United Kingdom (UK) where the British Airport Association (BAA) (which itself was privatised in 1987) owns and controls seven of the UK's airports. There has long been a murmur of discontent that BAA has supposedly abused its monopolistic control over London airports, in particular, by ignoring the needs of airlines and the travelling public.

The UK's Competition Commission (the equivalent of the Australian Competition and Consumer Commission) has now signaled the break up of BAA's airports when it called for the company to sell three of its seven airports, including two in London.

One of the Competition Commission's key concerns was the provision of adequate airport capacity to meet an expected growth in demand. The BAA Airport Inquiry Group found that after some 20 years of private control, there was inadequate runway capacity. The inquiry has laid the blame for the BAA's competition problems on its common ownership of the seven airports and says the regulatory regime needs to be modernised.

And finally, at the other extreme, we see the \$1.1 billion spend by the Indianapolis International Airport, which is said to be the first major American airport designed and constructed with '9/11' in mind. This airport was designed for the specific purpose of creating a safe, efficient and less stressful experience – for which even psychologists were utilised in developing airport plans. Among its features are a shopping mall in the heart of the terminal, more than 50 e-ticket machines, seven security lanes, two full-body image machines using millimetre wave technology, and a \$25.6 million luggage-sorting system with 3.5 kilometres of conveyors using thousands of photo cells to track luggage movement.

These three international examples reveal only a minor aspect of the complex context in which 'sustainable development' can be achieved at an airport. By sustainable development, airports seek to expand with sufficient capacity to meet a growing market, with stakeholder interests in mind across a range of safety, security, environmental and shareholder values.

While some of these forces can be difficult to predict and manage in the short to longer term (such as sustainable airport capacity, land development, open ended planning, and the dynamics of population shift), other factors can be the subject of good risk management, planning and control. The challenge remains for airports to cost-effectively manage strategic, operational, financial and compliance risks, whilst focusing on current needs and future demands. Despite this, the regulatory environment is becoming more onerous, rendering the task of compliance and monitoring of airport regulations a major undertaking. Indeed, with the December 2008 National Aviation Policy Green Paper revealing literally dozens of government proposals for new regulation, this task will only become more arduous in the future within Australia.

The inaugural edition of the Australian Airports Liability and Compliance Guide provides a number of tools to assist in this emerging challenge of regulatory compliance for Australian airports. This Guide provides a detailed review of the four key areas for Australian airport liability and compliance risks including: airport design and development; operations, services and pricing; safety and security; and environment and culture.

Those key to ensuring airport compliance are airport operators, operational and risk managers, consultants, tenants and contractors. Underwriters, claims managers and brokers also have a vital role in understanding the ambit of airport liability and compliance risks.

The aviation team at Carter Newell encourages the use of this Guide where possible, as well as any feedback on its contents and useability. We look forward to a strong ongoing partnership with Australian airports with a commitment to world class regulatory compliance and risk management.

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EXECUTIVE SUMMARY

This Guide provides a detailed review of the relevant legislation, case law and applicable penalties that relate to the operations of Australia's primary and secondary airports as at 30 April 2009. It is not just that compliance with the rules is important, airports must also ensure their rights are not infringed by others.

In choosing the applicable regulatory framework of this Guide, consideration has been given to on-airport activities, risks and operations across four key areas:

- Design and development;
- Operations, services and pricing;
- Safety and security; and
- Environment and culture.

Design and development

One of the effects of airport privatisation has been the need for regulation of on-airport property and development. Airports are no longer servants to aeronautical services, but pioneers of commerce in non-aviation ventures ranging from gambling and retail to leisure activities. Given an airport's critical infrastructure assets and essential safety requirements, it is important that a regulatory environment ensures the compliance of benchmark airport standards in development. Recent examples of this commercial and regulatory environment are the approvals of the Canberra International Airport's \$350 million southern concourse terminal, and the Darwin Airport's \$60 million works program to expand its domestic terminal.

The design and development of on-airport activities relates to airport master planning, leasing, building and development works. The purpose of the *Airports Act 1996* (Cth) is to promote the sound development of civil aviation in Australia and the efficient and economic development and operation of airports, by providing a regulatory framework which focuses on the interests of those who use airports and the general community. Giving further support to the purpose of the *Airports Act 1996* (Cth), the Commonwealth Government has recently stated that it:

'respects the right of airport operators to a reasonable return on capital invested, but will not support proposals for the site to be used for commercial purposes which prevent the site from reaching its full potential as an airport'.¹

For an airport operational or contracts manager considering the rights and entitlements attaching to an airport lease, or a project manager with planned on-airport works and liaising with an Airport Building Controller, this section of the Guide outlines the detailed regulatory environment applicable to airport land use under the *Airports Act 1996* (Cth) and other regimes. Underwriters and claims managers (particularly for Liability and Industrial Special Risk policies) will also be able to take advantage of this section of the Guide in understanding these issues.

¹ Commonwealth, 'Flight Path to the Future' *National Aviation Policy Green Paper*, 2008.

Operations, services and pricing

With privatisation comes aeronautical, commercial and retail capital improvements. Every airport is different in respect to its comparative revenue streams from airside versus landside sources, and demographics plays a significant role in this regard. In order to sustain profitability, airports have recognised the need to diversify their commercial interests. Airport operators/owners have become increasingly concerned with operational and service excellence and efficiency. The growing privatisation of airports has meant that airport operators/owners are looking at both airside and landside activities as sources of income.

For an airport operations or risk manager, or a financial officer interested in the Australian Competition and Consumer Commission's ongoing oversight of airport accounts, this section of the Guide provides a detailed review of the regulatory interplay between the need for generating income and the applicable legislative requirements concerning all landside airport activities.

Safety and security

The Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Mr Anthony Albanese MP, reminded the aviation industry on 14 November 2008 at the opening of CASA's new Operations Headquarters in Brisbane that there is no greater priority than safety:

'Australia has never before had a national aviation strategy and this will be an important milestone. There is no greater priority for an aviation minister than safety – it goes beyond anything else. Australia has the world's best safety record bar none and it is recognised internationally' (The Hon Mr Anthony Albanese MP, 'Opening Address' (speech delivered at the opening of CASA's new Operations Headquarters, Brisbane, 14 November 2008)).

Airport operational and risk managers, contractors, underwriters and claims managers alike will find the third section of the Guide useful in detailing the key areas of airport security and safety regulations. This section details the safety and security measures required of airports, the liaison necessary to ensure the control of such risks, and the day-to-day exigencies of ensuring a compliant, safe and secure airport. This section of the Guide also outlines key areas of airport operations which have tended to manifest into liability risks, particularly of late the topical issue of bird and animal hazard management.

Environmental and cultural



By their very nature, airports are dense concentrations of machine, building and human pollution and energy consumption. Airports have significant interplay with environmental regulation, often driven by land use, water, air and noise regulations. This interplay is not only heightened by, but invariably becomes problematic by the ever expanding dual development of not only the airport itself, but the public infrastructure surrounding it. As airports expand, both in land and aircraft capacity to meet increasing public demand, so too does housing, retail and road development begin to encroach ever closer to the airport.

Australia's harsh environmental extremes make this interplay no easier. From drought stricken communities, water reticulation and damaging storms, environmental issues are receiving unprecedented social and political awareness.

The fourth section of this Guide outlines the requirements of an 'Environment Strategy', along with other key regulations affecting airport noise, air, water, soil, culture and heritage. Airport operational and risk managers, consultants and environmental advisors working with an Airport environment officer will find guidance across all of these Commonwealth and State based legislative regimes, and likewise, environmental liability insurers and claims managers will also obtain a vital understanding of these issues.

FEATURES OF THE GUIDE

Included in this Guide are the following features:

-  The Carter Newell Arrow signifies important or crucial issues such as penalty provisions or key compliance requirements throughout this Guide;
-  The book graphic designates case law that is discussed throughout the Guide;
- Table of cases (page ix);
- Table of statutes (page x);
- Glossary (page xviii); and
- Abbreviations (page xx).

What is not covered by this Guide

Excluded from this Guide are the following areas:

- regulations dealing with airspace management and navigational issues which would otherwise be within the purview of AirServices Australia;
- secondary legislation such as generic or non-airport specific laws that may apply to a much wider category of organisation. An example of such legislation is the *Workplace Health and Safety Act 1995* (Qld); while clearly relevant to Queensland airports, its impact is beyond the scope of this Guide;
- laws and regulations relating to the landing of aircraft and fines or penalties applicable to pilots in command that may land at a Federal or secondary airport; and
- laws and regulations relating to the Federal Government's proposed Carbon Pollution Reduction Scheme.

GLOSSARY

Airport Site – A place that is declared by the regulations to be an airport site that is a Commonwealth place and is 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). The boundaries of an airport site include all buildings on the site.²

Airside area – The parts of the airport (including runways, taxiways, aircraft movement areas, aircraft parking areas and aircraft maintenance areas) used for taking-off, landing, moving, parking and storing of aircraft, and any part of the airport that is adjacent to a part of the airport and into which a member of the public is not generally allowed to go unescorted.³

Auditing and Assurance Standards Board Accounting Standard – an accounting standard made by the Australian Accounting Standards Board.

Authorised person – An officer of The Department, a protective service officer or special protective service officer of the Australian Federal Police or an employee of the airport-operator company for the airport.

Checked baggage – An article or possession of an aircraft passenger or crew member that has been checked in for a flight on the aircraft, is intended to be carried on board the aircraft or another aircraft and if carried in an aircraft, and is not accessible to the passenger or crew member while the aircraft is in flight.⁴

Commonwealth aerodrome – Australian land or water that is owned by the Commonwealth and used, or intended for use, either wholly or partly, for, or in connection with, the arrival, departure or other movement of aircraft and includes any building, structure, installation or equipment in that area, or on the land that forms the Federal airport that is provided for use in connection with the operation of that area or land as an aerodrome or Federal airport as the case may be.⁵

Commonwealth – The Commonwealth of Australia; the legislative and executive arms of the Commonwealth is constituted by the Federal Government.

Consumer trading – The supply of goods or services as a consumer.⁶

Emergency vehicle – A police vehicle or an ambulance vehicle or a fire service vehicle.⁷

Landside area – Any other area, that is not ‘airside’ (defined above), and which is within the boundaries of the airport.

Off-airport agencies – Off-airport agencies include fire brigades, police, medical and ambulance services, hospitals, defence forces, ATSB, SES, transport authorities, volunteer rescue services, welfare agencies, Government authorities, maritime services and refuelling agents.

² *Airports Act 1996* (Cth) s 5.

³ *Air Navigation Regulations 1947* (Cth) s 56.

⁴ *Aviation Transport Security Regulations 2005* (Cth) reg 1.03.

⁵ *Crimes (Aviation) Act 1991* (Cth) s 3.

⁶ Within the meaning of *Trade Practices Act 1974* (Cth) s 4B.

⁷ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 105.

Old gambling authority – An authority (however described, and however conferred, and including an authority that is part of the terms of a lease or licence) given, before the commencement of the airport lease for a regulated airport, by the Federal Airport Corporation of the Commonwealth to a person to engage in a gambling activity at the airport.^{7a}

On-airport agencies – On-airport agencies include air traffic services units, rescue and fire fighting units, airport administration, aircraft operators and security services.

Penalty unit – \$110 if the penalty relates to a Commonwealth offence^{7b} or \$100 if the penalty relates to a Queensland offence.^{7c} A court can impose a penalty upon a body corporate up to five times the amount of the maximum that could be imposed on a natural person convicted of the same offence.⁸ Where the offence is one of strict liability, it does not apply if the participant has a reasonable excuse. The evidential burden to evince such an excuse is a heavy one under the *Criminal Code Act 1995* (Cth). Reasonable excuse is a very limited legal defence that applies in addition to the usual defence of mistake of fact for strict liability offences.

Prescribed airspace – Any airspace around an airport that is specified in writing by the Secretary of The Department to be prescribed airspace in the interests of safety, efficiency or regularity of future air transport operations at the subject airport.⁹

Terminal area – The building or buildings on the airport used for processing the arrival and departure of the passengers of an aircraft engaged in a regular public transport operation.

The Department – The Australian Department of Infrastructure, Transport, Regional Development and Local Government. Any reference in this Guide to ‘The Department’ is a reference to the Australian Department of Infrastructure, Transport, Regional Development and Local Government.

The Minister or the Secretary – For continuity, any reference to ‘the Minister’ or ‘the Secretary’ for the first four chapters, and including the beginning of chapter five, is a reference to the Minister or the Secretary for The Department. Any reference to ‘the Minister’ for the remainder of chapter five following the heading, *Approval process for Environmental Strategy – 1. Advise the State or Territory Government*, refers to the relevant ‘State or Territory Minister/authority’.

Unlawful interference with aviation – Taking control of an aircraft by force, or threat of force, destroying or causing damage to an aircraft, putting the aircraft or any person on board or outside the aircraft at risk (which includes placing anything on board an aircraft that affects safety), and committing an act at an airport, or causing any interference or damage, that puts the safe operation of the airport, or the safety of any person at the airport, at risk.^{9a}

^{7a} *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 136.

^{7b} *Crimes Act 1914* (Cth) s 4AA.

^{7c} *Penalties and Sentences Act 1992* (Qld) s 5.

⁸ *Crimes Act 1914* (Cth) s 4B(3).

⁹ *Airports (Protection of Airspace) Regulations 1996* (Cth) reg 5(1).

^{9a} *Aviation Transport Security Act 2004* (Cth) s 10.

ABBREVIATIONS

AASB	Australian Accounting Standards Board
AAT	Administrative Appeals Tribunal
ABC	Airport Building Controller
AC	Advisory Circular
AD	Airworthiness Directive
ADA	Authorities to Drive Airside
AEC	Aerodrome Emergency Committee
AEO	Airport Environment Officer
AEP	Aerodrome Emergency Plan
AFP	Australian Federal Police
AIP	Aeronautical Information Publication
AIS	Aeronautical Information Service
ANAO	Australian National Audit Office
ANEF	Australian Noise Exposure Forecast
ASIC	Australian Security Identification Card
ATSB	Australian Transport Safety Bureau
AUA	Authority for the Use Airside
AUASB	Auditing and Assurance Standards Board
CASA	Civil Aviation Safety Authority
DAMP	Drug and Alcohol Management Plan
EMS	Environment Management Strategy (also known as an Environment Strategy (ES))
EPP	Environmental Protection Policy
ERSA	En-route Supplement Australia
GAAP	General Aviation Aerodrome Procedures
ICAO	International Civil Aviation Organisation
IPA	<i>Integrated Planning Act 1997</i> (Qld)
MOS	Manual of Standards

NOTAMs – Notice to Airmen

OLS – Obstacle Limitation Surface

PANS-OPS – Procedures for Air Navigation Services – Aircraft Operational Surface

PLA – *Property Law Act 1974* (Qld)

RPT – Regular Public Transport

SES – State Emergency Service

SMS – Safety Management System

SOP – Standard Operating Procedures

TSP – Transport Security Program

TPA – *Trade Practices Act 1974* (Cth)

VIC – Visitor Identification Card

VFR – Visual Flight Rules

AIRPORT DESIGN AND DEVELOPMENT

Leasing

Regulated airports

The *Airports Act 1996* (Cth) governs the leasing arrangement between the Commonwealth, as lessor, and an airport, that is any company that holds a lease to occupy and/or manage and operate any airport captured by the legislation. For continuity, any reference to an 'airport' in this part is a reference to the company that is granted a lease under *the Airports Act 1996* (Cth).

While some secondary airports are small or on state land and not open to regulation by the *Airports Act 1996* (Cth), the 'core regulated airports' (outlined in **Appendix 1**) are subject to the Commonwealth leasing provisions.¹⁰

Leaseholders

The Commonwealth may only grant a lease to an airport that qualifies under *the Airports Act 1996* (Cth).¹¹ There are strict requirements for qualification, and a failure to satisfy the requirements means automatic disqualification from holding a lease.

The qualifications limit:

- foreign ownership;
- share ownership by airlines;
- cross-ownership by airports; and
- the number of leases to be held (one only).

The requirement to qualify under this regime is constant, and in circumstances where the above qualifications cease to be satisfied, the lease is terminated.

An airport is subject to a strict limitation of 49% foreign ownership.¹² If this limit is exceeded, an 'unacceptable foreign ownership situation'¹³ occurs and the Federal Court has broad powers, specifically conferred by legislation, to overturn any unacceptable foreign ownership situation by any means considered appropriate to ensure the unacceptable foreign ownership situation ceases.¹⁴ To achieve this, the court is not limited in its options, but generally can do so by an order:

- directing the disposal of shares;
- restraining the exercise of rights attaching to shares (such as voting rights);
- prohibiting or deferring payment of sums to a person in respect of shares held by that person; or
- that any exercise of rights attaching to shares be disregarded (and therefore of no consequence).¹⁵

¹⁰ *Airports Act 1996* (Cth) s 12.

¹¹ *Airports Act 1996* (Cth) s 14(1).

¹² *Airports Act 1996* (Cth) s 40.

¹³ *Airports Act 1996* (Cth) s 40.

¹⁴ *Airports Act 1996* (Cth) s 43. At the time of publication no case law had been heard in respect of this provision by any Australian court.

¹⁵ *Airports Act 1996* (Cth) s 43(2).

Airline companies are restricted to a 5% limit on share ownership in companies granted interests in leases.¹⁶ If this limit is exceeded there is an ‘unacceptable airline ownership situation’.¹⁷ Again, the Federal Court has broad powers, specifically conferred by legislation, to overturn any unacceptable airline ownership situation as outlined above.¹⁸

Corporate structures must not undermine the Federal Government’s intention that a company be granted an interest in only one lease. This is achieved through a limit of 15% ownership for cross-vestment of interests between major airports.¹⁹ If this limit is exceeded, there is an ‘unacceptable cross-ownership situation’ (refer to **Appendix 2** for the prohibited cross company pairings).



There is broad potential for an airport to commit an offence by failing to take ‘all reasonable steps’ to ensure these limits are not exceeded – 500 penalty units – \$55 000.²⁰

A company may hold only one airport lease²¹, which cannot be transferred to any company that:

- is an airport leaseholder for another airport or holds an interest in any other airport lease;²² or
- does not qualify under *the Airports Act 1996* (Cth).

A transfer of a lease can only occur if expressly permitted by the Minister for The Department (for continuity, any reference to ‘the Minister’ for the first four chapters of this Guide, is a reference to the Minister for The Department).²³ The Minister has limited grounds for declining consent to a transfer of an airport lease²⁴, however, these have the potential to be broadly interpreted. The grounds include:

- lack of financial reserves on the part of the transferee;
- a likelihood for the destruction of diversity in Australian airport ownership;
- unfair and inequitable treatment to employees or their accrued benefits as a consequence;
- the Minister’s opinion that the transferee will be irresponsible in environmental matters; and/or
- the Minister’s opinion that the transferee will not be responsible regarding the regional needs or the needs of airport users.²⁵

¹⁶ Refer *Airports Act 1996* (Cth) div 4.

¹⁷ *Airports Act 1996* (Cth) s 44. At the time of publication no case law has been heard in respect of this provision by any Australian court.

¹⁸ *Airports Act 1996* (Cth) s 47(2).

¹⁹ *Airports Act 1996* (Cth) s 50. The cross-vesting applies distinctly to airport-lessee companies and airport-management companies for prescribed airports to ensure no cross-vesting irrespective of whether the company is the lessee or the airport manager. An unacceptable cross-ownership situation can arise even if a third party holds more than 15% in two prescribed airports.

²⁰ *Airports Act 1996* (Cth) ss 42, 46, 52 respectively. With exception to unacceptable foreign ownership situations, there is a strict liability regime for breach limits. Sections 41, 45 and 51 *Airports Act 1996* (Cth) also impose a fine on any person acquiring the prohibited interest if they do so knowingly or recklessly – 40 penalty units – \$44 000.

²¹ *Airports Act 1996* (Cth) s 16.

²² In accordance with limits on cross-vesting between airports.

²³ This gives continuity and stability to the airport management and provision of air services infrastructure within Australia and is an important aspect of ensuring that the critical infrastructure contained in airports is not subject to fluctuating commercial speculation.

²⁴ *Airports Act 1996* (Cth) s 24(3)(a).

²⁵ *Airports Regulations Act 1997* (Cth) reg 2.02.

The leaseholder is not necessarily required to manage and operate the particular airport. The leaseholder is entitled to engage a company for this purpose, known as an 'airport operator company'.²⁶ The appointed company must also qualify under the legislation²⁷, and must be approved in writing by the Minister.²⁸ The agreement between the parties must also be approved in writing by the Minister.²⁹ In making a decision, the Minister has a broad criterion for approval – it encompasses such matters that the Minister considers relevant.³⁰

With exception to legislation governing the arrangement between them, the obligations and rights of the airport operator company and the leaseholder are mirrored under the legislation.³¹

Lessor's obligations – Commonwealth and Minister

The Commonwealth's obligations as lessor are to some extent dependent on commercial arrangements between the Commonwealth and the airport, and these may vary depending on the size, location and strategic value of the airport.

In keeping with the purpose of privatisation, the Commonwealth essentially absolves itself of nearly all responsibility that is not expressly retained under the terms of the lease commercially negotiated with the airport.

However, there are some limitations imposed on the lessor in dealing with the airport under the lease. The Commonwealth is prohibited from passing regulations without the express written consent of the airport, if such regulations will have the effect of:³²

- repealing the declaration of an airport as an airport site;³³ or
- creating an absolute prohibition on the use of the airport site as an airport.³⁴

An airport is also entitled to exclusive possession of the airport site under the lease.³⁵ The Commonwealth must not grant a lease over the whole or even a part of the airport site to a person if another entity already holds a lease for the airport site.³⁶ However, the Commonwealth is not prevented from entering into leases with other parties before it enters into an airport lease.³⁷

²⁶ *Airports Act 1996* (Cth) pt 2 div 6.

²⁷ *Airports Act 1996* (Cth) s 33(1)(b).

²⁸ *Airports Act 1996* (Cth) s 33(1)(a).

²⁹ *Airports Act 1996* (Cth) s 33(3).

³⁰ *Airports Act 1996* (Cth) s 33.

³¹ For ease of reference in this Guide, the term 'airport' herein will be a reference to both the operator/management company and/or leaseholders as applicable.

³² Under s 162 of the *Airports Act 1996* (Cth) the prohibition is imposed on the Governor-General as, under Australian law, Regulations are not made until assented to by the Governor-General acting in Council with his/her Ministers.

³³ *Airports Act 1996* (Cth) s 161.

³⁴ *Airports Act 1996* (Cth) s 162.

³⁵ *Airports Act 1996* (Cth) s 19(1).

³⁶ *Airports Act 1996* (Cth) s 19(1).

³⁷ See page 5 of this Guide for comment on pre-existing interests.

Beyond this there are no statutory or regulatory obligations arising under *the Airports Act 1996* (Cth) that are imposed on the Commonwealth in its capacity as lessor. Obligations may arise under State or Territory leasing legislation to the extent that any matter is not dealt with under the Commonwealth legislation.³⁸


Airport obligations


In addition to obligations that uniquely arise by virtue of the commercial terms of the negotiated lease (which may vary from airport to airport), there are standard minimum statutory obligations read into the airport lease or otherwise imposed upon an airport.

An airport must use the airport site that is leased as an 'airport'.³⁹ While it is obvious that an airport will be used in this way, the requirement is relative to circumstances where the airport might attempt to use the airport site for purposes that are not (or may not be considered to be), within the context of the functions of an airport, such as shopping complexes, storage facilities, hotels etc. In this regard, an airport may carry on substantial trading or financial trading activities⁴⁰ as long as they:

- relate to the operation and/or development of the airport;
- are incidental to the operation and/or development of the airport; or
- are consistent with the lease or final master plan for the airport.⁴¹

Activities falling within the above categories are considered to be sufficient to fall within the meaning of use as an 'airport'. An example of 'incidental activities' include business activities such as charging fees for parking facilities at the airport, or operating shuttle services between terminals.

 Airports may not carry on any other type of business – 200 penalty units – \$220 000. Liability is assessed strictly, which means that the airport carries the burden of proving to the Commonwealth that it did not breach this prohibition.⁴²

 If an airport contracts with other companies to perform a function that is prohibited because it is not considered to be consistent with the use of the site as an airport, this does not affect the validity of such a transaction.⁴³ If an airport is required to cease the prohibited activity that it may have contracted with third parties to perform it may also be exposed to actions in breach of contract, tort and under the *Trade Practices Act 1974* (Cth).

³⁸ The primary leasing legislation for each State and Territory: *Land Titles Act 1994* (Qld); *Retail Shop Leases Act 1994* (Qld); *Property Law Act 1974* (Qld); *Conveyancing Act 1919* (NSW); *Retail Leases Act 1994* (NSW); *Real Property Act 1900* (NSW); *Leases (Commercial and Retail) Act 2001* (ACT); *Land Titles Act 1925* (ACT); *Retail Leases Act 2003* (Vic); *Property Law Act 1958* (Vic); *Land Titles Act 1980* (Tas); *Conveyancing and Law of Property Act 1884* (Tas); *Landlord and Tenant Act 1935* (Tas); *Real Property Act 1886* (SA); *Retail and Commercial Leases Act 1995* (SA); *Law of Property Act 1936* (SA); *Landlord and Tenant Act 1936* (SA); *Property Law Act 1969* (WA); *Transfer of Land Act 1893* (WA); *Commercial Tenancy (Retail Shops) Agreements Act 1985* (WA); *Law of Property Act 2000* (NT); *Land Title Act 2000* (NT); *Business Tenancies (Fair Dealings) Act 2003* (NT).

³⁹ This is because there is a prohibition on conducting 'non airport activities': *Airports Act 1996* (Cth) s 32.

⁴⁰ The term 'substantial trading or financial activities' is referred to in the *Airports Act 1996* (Cth) but is not further defined such that it is open to broad interpretation.

⁴¹ *Airports Act 1996* (Cth) s 32(1). Joint user airports are limited only to activities connected with or incidental to air traffic operations, without any allowance for development.

⁴² *Airports Act 1996* (Cth) s 32(3).

⁴³ *Airports Act 1996* (Cth) s 32(5).

The High Court has considered this in close scrutiny and within the context of determining exactly what constitutes an airport business in the case of *Westfield Management Ltd v Brisbane Airport Corporation Ltd*.⁴⁴ The court considered that an airport business will include a varied degree of alternative business activities that do not, on the face of it, appear to be connected with air travel per se. The decision by the High Court has allowed airports to cast a wide net over the kinds of incidental business activities that will be permitted under the legislation. However, airports should always remain cognisant that there is a constant need to ensure no prohibited business activities take place at the airport (Refer to page 40 of this Guide for an in depth analysis of this case).

An airport lease is also granted subject to any existing lease interests in the relevant land.⁴⁵ If there is any pre-existing interest, the airport is deemed to acquire the Commonwealth's rights and obligations in respect of that interest, as though there were a lease between the airport and the pre-existing party.⁴⁶

Although there are broad and varying types of interests in land, the continuation of these pre-existing interests only arises where they are granted or recognised in a pre-existing lease. This was a necessary arrangement during the transition period from Commonwealth management of airports to privatisation. However, these interests granted under pre-existing leases can still give rise to the many types of interests capable of being held in land, which may include:

- Easements – a general right over another's land, such as right of access for a particular purpose;
- Licences to occupy – either an exclusive or non exclusive right to access and occupy part of land; or
- Profits à prendre – a right to take something from the land of another.

Subleasing and licences (mandatory terms)

Subleasing occurs when an airport grants a lease to a third party for a part of the airport site, e.g. when terminal areas and facilities are leased to airline companies, baggage management companies, ground handlers, retail businesses, and private parking or shuttle service providers. Another lease arrangement includes when land surrounding the airport terminal is leased to third parties such as private charter businesses, aircraft maintenance businesses, long-term private access hangars, or retail outlets on the airport site. The arrangement is known as a 'sublease' because the airport holds its rights in the whole of the airport site under a 'head' lease from the Commonwealth.

While subleases usually allow for exclusive use of a specific area, licences are often granted to more than one party for the same area. A licence is a more temporary arrangement to grant a right of access and occupancy over a certain area. This is most common in circumstances such as building works (where builders are given a licence to occupy the building site on the airport) or for more long-term situations like luggage lockers, where the equipment is installed by a third party company that retains ownership in that equipment. Typically licences are more easily revoked than subleases. In addition, unlike a sublease, they grant no right in the licensed land to the licensee and they cannot be registered over the title to the land.

⁴⁴ [2005] FCA 32.

⁴⁵ *Airports Act 1996* (Cth) s 22.

⁴⁶ *Airports Act 1996* (Cth) s 22(2). However the *Airports Act 1996* (Cth) does not indicate that the pre-existing interest is to be subject to the subleasing provision of the *Airports Act 1996* (Cth). Refer to page 5 of this Guide for comments on subleases.



There are mandatory terms for all subleases and licences granted by an airport⁴⁷ and these must be included in all contract documents that grant either a sublease or a licence (or both).⁴⁸

Any sublease or licence must contain a trigger for automatic termination of the sublease/licence if the sub-lessee or licensee gains an interest that enables it to control the operation of a substantial part of the airport.⁴⁹ An example might be where the sub-lessee or licensee acquires a controlling stake in the shareholding of the airport.

The same mandatory inclusion applies where the direction in the development of a substantial part of the airport will fall within the control of a sub-lessee or licensee.⁵⁰

Any sublease or licence must also impose an obligation on a sub-lessee or licensee to impose the same obligations on any of its own sublessees or licensees.

Any tenancy arrangement with third parties on an airport triggers the mandatory provisions outlined above.⁵¹

Subleasing and licensing by airports is not uniformly permitted.⁵² Some subleases and licences are expressly prohibited, namely:⁵³

- a sublease/licence inconsistent with the use of an airport site as an airport;⁵⁴
- a sublease that is an airport management agreement unless to a qualifying company⁵⁵ and approved by the Minister; and
- a sublease/licence of premises for prostitution.



A failure to incorporate the above mandatory provisions renders the purported grant of sublease or licence to be of no effect. Similarly, a grant of a prohibited sublease or licence is also of no effect.⁵⁶

⁴⁷ *Airports Act 1996* (Cth) ss 34B, 35B, unless the sublease is pre-existing under s 26 of the *Airports Act 1996* (Cth).

⁴⁸ *Airports Regulations 1997* (Cth) reg 2.09.

⁴⁹ *Airports Regulations 1997* (Cth) reg 2.17(i).

⁵⁰ *Airports Regulations 1997* (Cth) reg 2.17(ii).

⁵¹ The inclusion of mandatory provisions may also extend to circumstances where the airport grants a licence to use intellectual property associated with the airport's activities under the lease agreement.

⁵² *Airports Act 1996* (Cth) s 34(1).

⁵³ *Airports Regulations 1997* (Cth) reg 2.04(1); there is also a prohibition on dealing with subleases or licences by way of trust (although this prohibition is subject to the Secretary of The Department permitting such a dealing): *Airports Regulations 1997* (Cth) regs 2.10, 2.11(2), 2.18, 2.19(2).

⁵⁴ See page 4 of this Guide, regarding Airport obligations.

⁵⁵ See pages 1–3 of this Guide for discussion on qualifying companies.

⁵⁶ *Airports Act 1996* (Cth) ss 34B(3), 35B(3); this would have an impact if an airport ever sought to enforce obligations imposed on the sub-lessee/licensee under the sublease/licence. Similarly, dealing with a sublease or licence by way of trust is considered to be of no effect: *Airports Act 1996* (Cth) ss 34C(2), 35(2).

Other subleases/licences are allowed only with the permission of the Secretary to The Department.⁵⁷ These are subleases/sublicences:

- for residential developments;
- to a person acting as trustee of a trust; and
- where the sublessee/licensee is not a corporation (i.e. a company), a bank or an authority of the Commonwealth.

➔ Notwithstanding, an individual can hold a sublease or licence if it is for a car parking bay or a single site retail business.⁵⁸

➔ The Secretary to The Department also has the authority to declare an otherwise prohibited sublease or licence to be valid on application by the sublessee or licensee.⁵⁹ The sublease or licence is then valid until the declaration is revoked by the Secretary of The Department.

➔ When issuing a proposed sublease or licence of any of the types above, it should contain a provision making the grant subject to a declaration by the Secretary of The Department.

Term of lease

An airport lease has a life of 50 years or less.⁶⁰ The Commonwealth is empowered, but not obliged, to grant an option to renew the lease for not more than 49 years.⁶¹

A lease to a particular airport will end if successfully transferred to another company with the consent of the Minister. However, an airport lease will automatically terminate early if the airport ceases to be a qualifying company, as previously discussed.⁶²

The airport can surrender the lease to the Commonwealth, unconditionally, or on terms and conditions agreed between the airport and the Commonwealth.⁶³

Other than automatic termination on the airport ceasing to be a qualifying company, early termination of the lease (prior to the expiry of the lease term) will be governed by the commercial terms of the lease, whether termination on the part of the airport or the Commonwealth, subject to overarching State or Territory legislation.

⁵⁷ *Airports Regulations 1997* (Cth) reg 2.04(2); however these are not subject to pre-existing subleases under s 26 of the *Airports Act 1996* (Cth): per reg 2.04(4) *Airports Regulations 1997* (Cth).

⁵⁸ *Airports Regulations 1997* (Cth) regs 2.04(2A), 2.12(2A).

⁵⁹ *Airports Regulations 1997* (Cth) regs 2.05, 2.13.

⁶⁰ *Airports Act 1996* (Cth) s 14(5)(c).

⁶¹ *Airports Act 1996* (Cth) s 14(5)(c).

⁶² *Airports Act 1996* (Cth) s 15.

⁶³ *Airports Act 1996* (Cth) s 163. Commonly lessees surrender leases for commercial reasons that are less likely to arise at an airport (such as a lessee's desire to move to a more suitable premises). Unless there is a serious financial concern or asset restructure, an airport is not likely to surrender a lease to the Commonwealth unless the term of the lease is expiring without renewal.

Because there are no specific Commonwealth requirements regarding termination of leases, the broad state by state legislative provisions relating to termination of leases applies. In Queensland minimum conditions governing termination of any lease (including leases for an airport) are compulsorily imposed for a wide range of matters, for example:⁶⁴

- although rights of termination by a lessor (in this case, the Commonwealth) generally arise when there is a breach under the lease, in Queensland, unless a party is in breach of an essential term under the lease (in which case termination can be immediate), the party wishing to terminate must deliver a Notice to Remedy Breach to the other party;⁶⁵ and
- a reasonable period to rectify the breach must be given. If the period expires without rectification, then a 'Notice to Terminate' the lease usually follows to give effect to any termination, subject to the terms of the lease.⁶⁶

These minimum requirements in Queensland cannot be contracted out of by the commercial terms of the lease.⁶⁷



The commercial terms of the lease may also deal with penalties arising for early termination of the lease and the lease document should be referred to for any additional requirements or pre-conditions to termination. Regard should be had to the allocation of burden under the lease terms for any such penalty (if one is included) when entering into a lease or determining to terminate early.



Facts:

In *Melksham v Archerfield Airport Corp*⁶⁸, the Supreme Court of Queensland heard an application by Melksham for relief from forfeiture⁶⁹ of a lease at Archerfield Airport.

Melksham was a tenant at 'Hanger 623' ('the hanger') of Archerfield Airport by way of lease with the airport (the respondent in the matter). Melksham purported to sub-lease the hanger to a third party, Hunter Aerospace Corporation ('Hunter', who was also the second respondent). Clause 4.13 of the lease prohibited subletting or parting with possession (which included sharing possession) without:

⁶⁴ Each other State and Territory's primary legislation will impose similar minimum conditions in the same way. The primary leasing legislation for each State and Territory: *Land Titles Act 1994* (Qld); *Retail Shop Leases Act 1994* (Qld); *Property Law Act 1974* (Qld); *Conveyancing Act 1919* (NSW); *Retail Leases Act 1994* (NSW); *Real Property Act 1900* (NSW); *Leases (Commercial and Retail) Act 2001* (ACT); *Land Titles Act 1925* (ACT); *Retail Leases Act 2003* (Vic); *Property Law Act 1958* (Vic); *Land Titles Act 1980* (Tas); *Conveyancing and Law of Property Act 1884* (Tas); *Landlord and Tenant Act 1935* (Tas); *Real Property Act 1886* (SA); *Retail and Commercial Leases Act 1995* (SA); *Law of Property Act 1936* (SA); *Landlord and Tenant Act 1936* (SA); *Property Law Act 1969* (WA); *Transfer of Land Act 1893* (WA); *Commercial Tenancy (Retail Shops) Agreements Act 1985* (WA); *Law of Property Act 2000* (NT); *Land Title Act 2000* (NT); *Business Tenancies (Fair Dealings) Act 2003* (NT).

⁶⁵ *Property Law Act 1974* (Qld) s 124.

⁶⁶ *Property Law Act 1974* (Qld) s 124.

⁶⁷ Only a limited number of provisions in the *Property Law Act 1974* (Qld) allow parties to commercially negotiate a different position to that set out in the Act. In all other instances, the provisions of the *Property Law Act 1974* (Qld) are mandatory and any attempt to avoid them will be of no effect at law. Other State and Territory legislation may have similar protections in place.

⁶⁸ [2004] QSC 164; [2004] ANZ ConvR 363.

⁶⁹ Forfeiture involves the loss of all interests in property, including the right to possession. It is usually in consequence of a failure to comply with a covenant or undertaking under a contract dealing with the interest in the property – in this case a lease.

- provision of reasonably required details of the proposed sub-lessee to the airport; and
- the airport's written consent.

A dispute arose as to whether the pre-conditions had been properly complied with. A failure to comply would not only invalidate any sub-lease, but constitute a breach of covenant, which would have given rise to rights under the *Property Law Act 1974* (Qld) ('PLA') for the airport to terminate the contract for 'forfeiture'.

Hunter had previously occupied a different hangar at the same airport, but had been given notice to vacate. The airport had advised Hunter that there were no other suitable sites at the airport for its aircraft maintenance business to relocate to, but offered to construct a shed for this purpose. The shed option was not considered feasible because the need to relocate was immediate. It was at this stage that Hunter became aware of Melksham's hangar which was 'available'.

Melksham and Hunter agreed to enter into a sub-lease (at the rate of \$8000 per month), and in the meantime the hangar was made available to Hunter prior to the execution of the lease. 'Rent' appeared to have been paid from this change in possession. The airport considered this to be a parting with possession, and therefore a breach of covenant. It consequently served a notice to remedy breach of covenant on Melksham.

The court heard that at some stage, without Melksham's knowledge, the locks to the premises were changed by Hunter to prevent unauthorised access – even by Melksham. The court concluded that there was nothing in Melksham's dealing with Hunter that would have caused an impression that it was not entitled to do so.

For some time the airport attempted informally to seek the relevant information to determine the issue of consent to sub-lease. Having been informed that negotiations were concurrent, several weeks passed before the airport re-asserted its demand to know relevant details and the basis of possession for the site. It was apparent that Melksham had deliberately avoided informing the airport of the proper basis of the third parties occupation of the hangar.

Melksham sought relief against the airport's notice under s 124(2) of the PLA, which conferred discretion on the court to grant or refuse relief as it sought fit.

Decision:

The court found the evidence demonstrated that at the very least, Melksham had shared possession of the premises with Hunter before the airport served its notice to remedy breach. Consequently, it concluded that the notice was valid.

The court concluded that in order to determine if its discretion should be invoked, it must consider:

- if the conduct of the airport contributed to any breach by Melksham;
- if Melksham's breach was inadvertent and not wilful, and trivial or slight;
- what damage or other adverse consequences the airport suffered by reason of the breach; and
- what the magnitude of Melksham's loss and the airport's gain is if forfeiture is endorsed by the court.

Airport's contribution

Although the court heard evidence that the airport had taken a relaxed approach to consent on previous occasions, the court found that the evidence conveyed an '*alacrity*' to dispel any notion that the same could be assumed by Melksham.

Deliberate breach or inadvertent?

The court considered that Melksham had not originally perceived the sharing of possession to be a breach of its lease. However, it also noted that Melksham became aware that it was a breach and continued to remain in breach in the hope the issue might resolve itself.

However, the court considered the evasiveness of Melksham to clarify the position was not a case of intentional default, but carelessness of the implications of his action.

A trivial or slight breach?

The airport had been concerned with the Hunter's activities in and around the hangar. It considered some of them to pose a serious security risk because of its strategic location at the airport.

The airport also opined that the transport of aircraft for maintenance works to the new hangar location involved traversing taxi-ways and aprons, causing wear and tear. The airport also presented evidence that Hunter was storing equipment outside the hangar, which was not the leased area.

In what was clearly a serious breach of the building control provisions (refer page 12 of this Guide) Hunter had constructed a fence without approval from the airport building controller, or the airport itself. Further unauthorised building activity had also taken place within the hangar.

The court considered these consequences to render Melksham's giving of possession to Hunter to be a serious breach. However, it also recognised that there was no significant financial loss stemming from the breach (with exception to the cost of repairs to the runway).

General findings

The court noted that the mere fact that Hunter will become a sub-lessee if the forfeiture is overruled is not an issue for consideration. The court could only be guided by Hunter's conduct to date, not any risk it may pose in the future; that would be appropriate only at the time the airport determined its consent, which Melksham would still be required to seek.

Melksham's Loss v Airport's Gain

Melksham stood to lose 14 years of the remaining lease term. Melksham had constructed the hangar as part of its lease terms at a cost of \$375 000 (with \$150 000 in additional expenditure over a period of time). As a result, the rent was only \$875.44 per month. Against the sub-rental of \$8000 per month, Melksham stood to lose a significant sum if the lease was forfeited.

Presumably, the airport stood to gain the same amount in re-leasing the hangar to another party.

Conclusion

Overall, the court considered all of the above factors, in addition to the sub-lessee's willingness to comply with certain demands of the airport, and the lack of 'calculated disregard for [Melksham's] obligations under the lease' to fall in favour of a grant for relief for Melksham from a forced forfeiture of the lease. This finding was made because of the

airport's unsatisfied notice to remedy Melksham's breach of covenant – it considered that without such relief, there would have been a disproportionately punitive outcome.

This meant that Melksham was able to continue in the lease. It did not, however mean that the breach was allowed to continue. The court's order comprised a condition that the situation regarding Hunter's shared possession without a valid sub-lease be rectified.

Melksham was still required to seek the airport's consent for the proposed sub-lease. However, the court did foreshadow a possibility of Melksham seeking further relief against the airport (by way of another court action) if the airport unreasonably withheld consent. It would appear that such further action was not necessary as at the time of publication of this Guide, there is no public record of this.

Rights of review

Because many activities require the approval or direction of the Minister, decisions made by the Minister (or the Minister's delegate), which affect the airport's interests (or even an interested third party) are subject to review by the Administrative Appeals Tribunal (AAT), which has the power to rescind, amend or affirm a decision.⁷⁰

Some decisions by the Minister are expressly excluded from review.⁷¹ Within the context of leasing, these are decisions to:

- grant an airport lease;
- approve or refuse the transfer of a lease;
- approve, deny or vary an airport management agreement; and
- delegate or refuse to delegate a power.

For all other reviewable decisions, the Minister is required to inform the recipient of the decision, and that it is capable of review.⁷²

Decisions made by the Secretary of The Department are also reviewable by the AAT.⁷³ However these are limited to decisions:

- not to make a declaration that a prohibited sublease is permitted;⁷⁴
- not to revoke a declaration permitting a prohibited sublease;⁷⁵
- not to approve a sublease to a State or Territory Government or authority;⁷⁶
- not to make a declaration about a proposed dealing with a sublease;⁷⁷ and
- decisions of the same nature as the above relating to licences.

⁷⁰ *Airports Act 1996* (Cth) s 242(1).

⁷¹ *Airports Act 1996* (Cth) s 242(2).

⁷² *Airports Act 1996* (Cth) s 242(3).

⁷³ *Airports Regulations 1997* (Cth) reg 2.20.

⁷⁴ Because of the wording in reg 2.20 *Airports Regulations 1997* (Cth), the decision is only reviewable where the Secretary decides *not* to make a declaration. If the Secretary decides to make a declaration, that decision is not subject to AAT review.

⁷⁵ Because of the wording in reg 2.20 *Airports Regulations 1997* (Cth), the decision is only reviewable where the Secretary decides *not* to revoke a declaration. This means that if a declaration permitting a prohibited sublease is made, the Secretary must first receive an application calling for a revocation of that declaration, and must then decide against the application, before being subject to AAT review.

⁷⁶ Again, because of the wording in reg 2.20 *Airports Regulations 1997* (Cth), any decisions to approve a sublease to a state Government or authority is not subject to AAT review.

⁷⁷ This relates to a requirement for permission to dispose of a sublease by way of declaration of trust or transfer a beneficial interest under sublease independent of legal interest: *Airports Regulations 1997* (Cth) reg 2.11(1). The same applies to licences: *Airports Regulations 1997* (Cth) reg 2.18.

For a case analysis of an applicant's right of review under the *Administrative Appeals Tribunal Act 1975* (Cth) in respect of a decision under the *Airports Act 1996* (Cth) refer to page 39 of this Guide, regarding the matter of *Brisbane Airport Corporation Ltd v Wright*.^{77a}

Airport Building Controller (ABC)

Whilst the *Airports Act 1996* (Cth) governs an airport's planning strategy (refer to page 25 of this Guide), it also governs the point where the strategy is carried into practice. This is the purpose of the Airport Building Controller (ABC).

The ABC is responsible for ensuring that activities at an airport meet all appropriate building and engineering standards and operates under the delegated authority of The Department.

Although the Airport Master Plan and Major Development Plan regimes are designed for greater transparency in development objectives of airports (refer to page 25 of this Guide), the ABC regime gives an effective means of ensuring that, in practice, building activities are consistent with the published documentation indicated as the airport's planning objectives.

There are two key functions to be performed by the ABC:

1. approval of building activity applications – this is to ensure that building works to be undertaken comply with airport planning regimes; and
2. certification – this is to certify that construction works 'as built' or 'as completed' have complied with the terms of the approval, and the work is complete.

Applications for building, works or demolition permit

Unless exempt, before any building, construction or alteration works or demolition is undertaken on an airport site, permission must be granted by the ABC.⁷⁸

An application must be made to the ABC where an airport requires the ABC to issue 'building approval'.⁷⁹ The 'Building Approval' is issued in the form of a:⁸⁰

- building permit – for the construction or alteration of a building (eg. new buildings, terminals, hangars, terminal or shop fit-outs etc);
- works permit – for the construction or alteration of 'works'⁸¹ (eg. example civil works including runways, taxiways, roads, drains, bulk earthworks and surcharge works); or
- demolition authorisation – for the demolition, destruction, dismantling or removal of a building or works.

For ease of reference in this Guide, these will be referred to collectively as 'building activities'.⁸²

^{77a} (2002) 120 FCR 157; (2002) 77 ALD 411; (2002) 35 AAR 192; [2002] FCA 359.

⁷⁸ *Airports Act 1996* (Cth) s 99(1).

⁷⁹ *Airports (Building Control) Regulations 1996* (Cth) reg 2.02(1).

⁸⁰ *Airports (Building Control) Regulations 1996* (Cth) reg 2.02(2).

⁸¹ Works is specifically defined as 'earthworks or engineering works (within the meaning of s 98(3) of the *Airports Act 1996* (Cth)), electrical works and hydraulic works'. The definition is not exhaustive.

⁸² The same term is used in the *Airports (Building Control) Regulations 1996* (Cth) without further definition.

An application must be in a form ‘acceptable to the airport building controller’.⁸³ In terms of content, an application for any permit or authorisation for ‘building activities’ must contain:

- a description of the proposed activity (including the proposed location);
- explanations of why or how the building activity is consistent with the Airport Master Plan and Major Development Plan (whether approved or draft) or why it is exempt from the plans (refer page 25 of this Guide);
- explanation of why or how the building activity is consistent with any Final Environment Strategy (refer page 128 of this Guide) or why it is exempt from the strategy;
- two copies of the site plan including a depiction of the proposed development resulting from the building activity;
- a copy of any other information about the proposed building activity required by a regulatory authority or other body having regulatory function;⁸⁴
- the proposed cost of the building activity;
- an estimate of time to completion;
- a statement setting out precautions that will be taken to protect persons using the airport from injury and to protect property at the airport from damage; and
- a statement setting out the proposed arrangements for clean-up and rehabilitation of the site of the proposed building activity.

These apply to all applications for building approval regardless of the building activity. However, each building activity also has additional unique requirements:

- building permit applications must contain:⁸⁵
 - two copies of the building plan which must also:⁸⁶
 - identify the class or classes of building under the Building Code;
 - describe the type of construction according to Part C1 of the Building Code;
 - show dimensions of all parts including footings;
 - include a section plan at the level of each floor in scale;
 - depict each elevation at scale;
 - depict designed provision of fire safety measures;
 - give details of construction materials proposed to be used;
 - provide for periodic inspections; and
 - set out each design and construction stage for the project or all other progress stages.
 - two copies of the specification for the proposed building activity which must also:
 - describe in detail the type of construction and materials for the proposed building;
 - describe in detail the proposed methods of drainage, sewerage, water supply and gas supply;
 - advise of intention to use second hand material that may be adverse to structural integrity or safety;

⁸³ *Airports (Building Control) Regulations 1996* (Cth) reg 2.05(1).

⁸⁴ For example, accreditation for any proposed contractor if dealing with the removal of asbestos, safe workplace method statements or equivalent system requisites under the *Workplace Health and Safety Act 1994* (Qld); *Occupational Health and Safety Act 2000* (NSW); *Occupational Health and Safety Act 1989* (ACT); *Occupational Health and Safety Act 2004* (Vic); *Workplace Health and Safety Act 1995* (Tas); *Occupational Health, Safety and Welfare Act 1986* (SA); *Occupational Health and Safety Act 1984* (WA); *Workplace Health and Safety Act 2007* (NT), or other state legislation imposing conditions or obligations on the building activity.

⁸⁵ *Airports (Building Control) Regulations 1996* (Cth) reg 2.07(1).

⁸⁶ *Airports (Building Control) Regulations 1996* (Cth) reg 2.07(2).

- include all certificates required under any law approving the arrangements for health and comfort of persons⁸⁷, fire resistance, fire protection or telecommunications services;
 - include any certificate provided by an appropriate building expert approving the structural elements of the building plan (eg. an architect or an engineer);
 - include any approval (if required) received under the *Airport (Protection of Airspace) Regulations 1996* (Cth) (refer page 23 of this Guide); and^{87a}
 - if an alteration is to an existing building, include depictions distinguishing the changes proposed.⁸⁸
- works permit applications must contain:⁸⁹
 - two copies of the works plan;
 - two copies of the specification of the proposed works;
 - all certificates required under any law approving arrangements for sewerage, drainage, lighting, ventilation, fire resistance and fire protection;
 - any certificate given by an appropriate works expert approving the structural elements of the works plan;
 - details of the progress stages that it is proposed will be the inspection stages for the ABC to perform the ABC's duties of inspection; and
 - details of the construction materials proposed to be used in the works.
 - demolition authorisation applications must contain:⁹⁰
 - two copies of the demolition plan;
 - nomination of the provisions of the Australian building standards which the work is proposed to comply;
 - any certificate by an expert in demolition procedures approving the structural elements of the demolition plan; and
 - the progress stages that it is proposed will be the inspection stages for the ABC to perform the ABC's duties of inspection.

The ABC is empowered to require the production by the airport of any information reasonably required to make a competent determination.⁹¹ The ABC's obligation to make a determination on the application is suspended until this requirement is satisfied.⁹²

When the applicant for a building activity is not the airport, the consent of the airport is required before the ABC can issue a building approval. The airport must notify the ABC and the applicant of its decision regarding consent within 28 days of receiving a copy of the application.⁹³

The airport's consent cannot be withheld where the proposed building activity complies with the Final Master Plan (refer page 25 of this Guide), an approved Major Development Plan (refer page 26 of this Guide) or a Final Environment Strategy (refer page 128 of this Guide) or the airport's planning objectives. Only one of these is needed to trigger the prohibition on withholding the airport's consent.⁹⁴

⁸⁷ For example, heating, insulation, cooling/air conditioning, sanitation, disposal of refuse, sewerage, drainage, lighting and ventilation.

^{87a} *Airport (Protection of Airspace) Regulations 1996* (Cth) reg 14(1).

⁸⁸ *Airports (Building Control) Regulations 1996* (Cth) reg 2.07(3).

⁸⁹ *Airports (Building Control) Regulations 1996* (Cth) reg 2.08.

⁹⁰ *Airports (Building Control) Regulations 1996* (Cth) reg 2.09.

⁹¹ *Airports (Building Control) Regulations 1996* (Cth) reg 2.11(2).

⁹² *Airports (Building Control) Regulations 1996* (Cth) reg 2.11(3).

⁹³ *Airports (Building Control) Regulations 1996* (Cth) reg 2.03(4).

⁹⁴ *Airports (Building Control) Regulations 1996* (Cth) reg 2.04(1).

To determine consent, the airport must have regard to the significance of any inconsistency, as well as:

- the type, location, shape, size, height, density, design and external appearance of the development that will result from the proposed building activity;
- the site of any proposed building in relation to size and shape of the site it will occupy;
- the impact the proposed building will have on existing buildings and other structures and approved development on adjoining land to the airport;
- means of entrance to and exit from the proposed development, including adequate provision for loading, unloading, manoeuvring and parking of vehicles;
- means of entrance to and exit of vehicles and pedestrians; and
- impacts on the environment and any ability to protect the environment.⁹⁵

If an airport considers any of the above issues can be addressed by granting consent with certain conditions, it must nevertheless continue to have regard to any impacts on safety, security, airport services and the efficient operation of the airport.⁹⁶



There is no prescribed penalty for failure to consider these aspects. Any decision regarding consent may be open to being voided by a court if it can be demonstrated that an airport has not considered these issues.

Applications can be amended or withdrawn at any time before the ABC has made a decision.⁹⁷ This can be done by giving the ABC written notice and paying a specified fee and any difference in application fee that might arise because of estimated increased costs of the works (if any). Any proposed variation cannot significantly alter the character or impact of the building activity or its end result.⁹⁸

Irrespective of the ABC's determination, the ABC must keep a register of all applications.⁹⁹ The transparency of the ABC's approval process is further solidified by a requirement to comply with a notice for the production of documents or information to the Secretary of The Department.¹⁰⁰

⁹⁵ *Airports (Building Control) Regulations 1996* (Cth) reg 2.04(4).

⁹⁶ *Airports (Building Control) Regulations 1996* (Cth) reg 2.04(5).

⁹⁷ *Airports (Building Control) Regulations 1996* (Cth) reg 2.10. However a fee is payable: *Airports (Building Control) Regulations 1996* (Cth) reg 2.10(3).

⁹⁸ *Airports (Building Control) Regulations 1996* (Cth) reg 2.10(2).

⁹⁹ *Airports (Building Control) Regulations 1996* (Cth) reg 2.21.

¹⁰⁰ *Airports (Building Control) Regulations 1996* (Cth) reg 2.22(1).

Exemption of works for ABC approval

Building activities that would ordinarily require an application to the ABC but are exempt from the application and approval process are:¹⁰¹

- erection or installation of a manufactured home or moveable dwelling;
- erection or building of a garage or shed;¹⁰²
- erection or building of an antenna, fence, retaining or free-standing wall;¹⁰³
- repair or alteration to existing buildings¹⁰⁴ provided the repair or alteration:
 - does not adversely affect building safety;
 - does not adversely affect the structural soundness of the building;
 - is not for the underpinning or replacement of footings;
 - is appropriate;
 - is of a cosmetic or fit-out nature to the interior or exterior; or
 - is essential for safety by reason of an emergency;
- repair or alteration to existing works¹⁰⁵ provided the repair or alteration:
 - is minor;
 - does not adversely affect the structural soundness of the works; and,
 - is appropriate.

The ABC can also direct in writing that minor works should be exempt from building approval application when the ABC determines the interference to the airport site is minor and no danger arises of injury to a person using the airport.¹⁰⁶

Exemption from the application process does not mean the ABC is not involved in the proposed building activity. There is a continued requirement for the airport to notify the ABC of exempt building activities¹⁰⁷, along with additional requirements to produce independent certification of structural safety¹⁰⁸, as well as an obligation to retain all records for one year after completion.¹⁰⁹ The ABC may inspect these records at any time after giving 24 hours written notice.¹¹⁰

Approvals by ABC

Once an application is submitted, the ABC will consider the application in accordance with certain criteria. Each building activity has different criteria that the ABC must base their decision upon. However, an overarching requirement is that Ministerial approval to a major airport development plan exists if the work forms a part of major airport development.^{110a}

For Building Permits and Works Permits, the ABC must not approve an application unless the ABC is satisfied:

- the proposed building/works (according to the plans and specifications) will be fit for occupancy/use; and
- the building activity will be carried out in accordance with appropriate standards.¹¹¹

¹⁰¹ *Airports (Building Control) Regulations 1996* (Cth) reg 2.24.

¹⁰² Specifically a class 10(a) building within the meaning of the Building Code of Australia.

¹⁰³ Specifically a class 10(b) building within the meaning of the Building Code of Australia, qualified by a height restriction and excluding barbed or razor wire.

¹⁰⁴ *Airports (Building Control) Regulations 1996* (Cth) reg 2.24(1)(d).

¹⁰⁵ *Airports (Building Control) Regulations 1996* (Cth) reg 2.24(1)(e).

¹⁰⁶ *Airports (Building Control) Regulations 1996* (Cth) reg 2.24(f).

¹⁰⁷ *Airports (Building Control) Regulations 1996* (Cth) reg 2.24(2).

¹⁰⁸ *Airports (Building Control) Regulations 1996* (Cth) reg 2.24(3).

¹⁰⁹ *Airports (Building Control) Regulations 1996* (Cth) reg 2.24(4).

¹¹⁰ *Airports (Building Control) Regulations 1996* (Cth) reg 2.24(2).

^{110a} *Airports (Building Control) Regulations 1996* (Cth) reg 2.11(1).

¹¹¹ *Airports (Building Control) Regulations 1996* (Cth) regs 2.13(1), 2.14(1). This is not restricted to published Australian standards, but may also encompass industry standards (particularly where there is no applicable Australian standard).

Ultimately it is not an objective question of whether this will be complied with, but a question of whether or not the ABC is satisfied. However, it is deemed (and therefore outside the ABC's ability to determine otherwise) that building activity will be carried out in accordance with appropriate standards if:

- the design ensures compliance with Australian building standards; or
- if not, the application contains a written explanation of the inappropriateness of any Australian building standard and the ABC approved the non-compliance.¹¹²

In approving an application for Building and Works Permits, the ABC can rely on reports prepared by building experts or regulatory authority certificates to demonstrate that the aforementioned is satisfied.¹¹³ An application that contains these would therefore fair a better chance of swift approval.

However, the ABC must also have regard to:¹¹⁴

- public safety during the building activity;
- the amenity of buildings and services at the airport during the building activity;
- arrangements for linkages with services and facilities outside the airport during the building activity; and
- arrangements for site cleanliness and rehabilitation.

As for Demolition Authorisation, the ABC (with the assistance of expert reports if necessary)¹¹⁵ must also be satisfied the demolition:¹¹⁶

- will be carried out in accordance with applicable Australian building standards; and
- according to its plan, will cause no greater disruption to other activities at the airport than is the least reasonably practicable.

Similarly, the ABC must have regard to the following in respect of Demolition Authorisations:¹¹⁷

- public safety during the demolition;
- the amenity of buildings and services at the airport during the demolition;
- arrangements for linkages with services and facilities outside the airport during the demolition; and
- arrangements for site cleanliness and rehabilitation.

¹¹² *Airports (Building Control) Regulations 1996* (Cth) reg 2.13(2).

¹¹³ *Airports (Building Control) Regulations 1996* (Cth) reg 2.13(3).

¹¹⁴ *Airports (Building Control) Regulations 1996* (Cth) reg 2.13(4).

¹¹⁵ *Airports (Building Control) Regulations 1996* (Cth) reg 2.14 (3).

¹¹⁶ *Airports (Building Control) Regulations 1996* (Cth) reg 2.14(2).

¹¹⁷ *Airports (Building Control) Regulations 1996* (Cth) reg 2.14(4).

Airport works approved by ABC

An airport (and any other person) is prohibited from carrying out or permitting building activity at an airport unless authorised.



Airports must obtain authorisation for building activity – 250 penalty units – \$27 500.¹¹⁸

Once a proposed building activity is approved, an extensive list of duties is imposed on airports. The ABC can direct otherwise. However, the duties that automatically arise after approval are:¹¹⁹

- the materials used in the building/works and method of use of those materials must comply with the Australian building standards for material of that type when used in a building/works of that type;
- the building activity be carried out with ‘appropriate expertise’;¹²⁰
- the building activity must be carried out in accordance with the plan, specifications and conditions with which the building approval has been granted;
- the building activity must be performed by qualified and licensed people;
- the building activity must be supervised appropriately by qualified and licensed people;
- all necessary safety precautions must be taken in carrying out the building activity;
- at least seven days before inspection of the building activity falls due¹²¹, the ABC must be notified of an expectation for inspection and the airport must ensure further work on that part of the building activity does not occur until an inspection has taken place, and is:
 - found to be in accordance with the building approval; and
 - if inspection is performed only by an expert (not a regulatory authority) a certificate to this effect is issued.
- grant access for inspection by the ABC (including the opening up of works if required) upon notice in writing to the airport with a reasonable period in advance of such inspection;
- rectify or remove work or materials considered defective by the ABC;
- provide the ABC with results in writing of any tests conducted at its direction;
- provide the ABC with detailed ‘as-built’ drawings not more than six months after practical completion; and
- undertake an immediate clean up and rehabilitation of a site as soon as a building activity is complete.

If a building approval has been granted by the ABC with conditions, those conditions must be complied with.¹²² At any time during the performance of a building activity, the ABC may impose additional conditions on a Building Approval if needed for protection against personal injury or property damage.¹²³



All conditions imposed by the ABC on a building approval must be complied with – 50 penalty units – \$5500.¹²⁴

¹¹⁸ *Airports Act 1996* (Cth) ss 99(2), 99(2A). Individuals may also be fined – 50 penalty units – \$5500: *Airports Act 1996* (Cth) s 99(3).

¹¹⁹ *Airports (Building Control) Regulations 1996* (Cth) reg 2.17.

¹²⁰ The regulations do not provide any further guidance as to what ‘appropriate expertise’ might actually be. However this is likely directed at complementing the requirement that the person performing work under the Building Approval is qualified.

¹²¹ Such as inspections by regulatory bodies for workplace / occupational health and safety, Building Safety Authority, Environmental Protection Agency.

¹²² *Airports Act 1996* (Cth) s 102.

¹²³ *Airports (Building Control) Regulations 1996* (Cth) reg 2.18(1).

¹²⁴ *Airports Act 1996* (Cth) ss 102(1), (2).

A building approval is valid for three years after the grant by the ABC (unless otherwise specified in the approval)¹²⁵ and may be extended on application for a period of one year.¹²⁶

The ABC has the power to revoke a building approval in certain circumstances¹²⁷, namely:

- if no building activity is undertaken or in the ABC's opinion likely to be undertaken within two years from the approval;¹²⁸
- if the building activity ceases and the ABC's opinion is it is not likely to be resumed;
- if the building activity can no longer comply with the approval;
- when building activity is being carried out contrary to the basis on which approval was given;
- when building activity is being carried out contrary to applicable Australian Standards; or
- when building activity is not being carried out in accordance with a condition of the approval.

The ABC has a broad power to issue a written stop work order at any time the ABC considers there to have been a significant contravention of a provision of the *Airports Act 1996* (Cth) or any of the various regulations under the Act.¹²⁹

If building activity occurs without a building approval issued by the ABC, or in contravention of a condition imposed by the ABC, the ABC has an additional power to issue a written direction to:

- stop work on the building activity;
- carry out remedial work on the building activity; and/or
- demolish, dismantle or remove the product of the building activity.¹³⁰

The Secretary of The Department is also permitted to inspect the building activity on two days written notice, and the airport and other relevant persons are obliged to grant the access for inspection.¹³¹ The purpose of this inspection is for the Secretary of The Department to oversee the ABC approval process, rather than to check the airport's compliance with the building approval.

Certification by ABC

The ABC's certificate is to document the completion of the building activity and, (with exception to demolition works) declare a building fit for occupancy or use. The certification process must therefore occur once the building activity is finished. The certificate is issued either in the form of a:¹³²

- certificate for occupancy; or
- certificate for use.

¹²⁵ *Airports (Building Control) Regulations 1996* (Cth) reg 2.19(1).

¹²⁶ *Airports (Building Control) Regulations 1996* (Cth) reg 2.19(3). The application must be made before the initial term expires and there is a limit of two extensions.

¹²⁷ *Airports (Building Control) Regulations 1996* (Cth) reg 2.20.

¹²⁸ But only if the ABC is of the opinion it is not likely to begin before the approval expires: *Airports (Building Control) Regulations 1996* (Cth) reg 2.20(a)(i).

¹²⁹ *Airports (Building Control) Regulations 1996* (Cth) reg 2.18(2).

¹³⁰ *Airports Act 1996* (Cth) s 103(1).

¹³¹ *Airports (Building Control) Regulations 1996* (Cth) reg 2.22(4).

¹³² *Airports (Building Control) Regulations 1996* (Cth) reg 3.04.

Certification occurs following receipt by the ABC of a written application¹³³ for certification from the airport, a person carrying out the building activity or any other third party.¹³⁴ The ABC is taken to have refused to issue a certificate if they have not given notice of a decision within 14 days from receiving an application.¹³⁵

The ABC is entitled to issue part certification where the ABC is satisfied with only parts of the subject building activity.¹³⁶ This may be because some parts are not in fact complete, or may not have been completed according to the building approval.

When determining whether to issue the certification, the ABC must be satisfied the building or works:¹³⁷

- is completed in accordance with the plan and specification submitted with the application for building approval;^{137a}
- makes proper provision for health, safety and comfort of occupants or users in accordance with Australian building standards;^{137b}
- can reasonably be used for the purpose it was built;^{137c}
- is consistent with the approval given by the ABC;¹³⁸
- makes adequate provision for the protection of occupants against fire;¹³⁹
- makes adequate provision for insulation, sanitation, disposal of refuse, sewerage, drainage, heating, cooling, lighting and ventilation;¹⁴⁰ and
- makes adequate provision for services, installations and ancillary equipment likely to be required by users.¹⁴¹

Once the certificate for occupancy or use is issued to the airport, the airport is obliged to:¹⁴²

- ensure the building is not used for any purpose inconsistent with the classification of the building under the Building Code; and
- maintain the building in a condition consistent with its classification; or
- ensure the works are not used for any purpose inconsistent with the standards to which it was constructed; and
- maintain the works in a condition that is consistent with its use.

The certificate has a life in perpetuity until revoked or until the building ceases to exist or is substantially altered.¹⁴³ An ABC's certificate is unaffected by transfers of title or beneficial interests in the relevant land or building.¹⁴⁴

¹³³ A fee is payable based on the ABC's estimated time for investigation of the airport's compliance with the Regulations: *Airports (Building Control) Regulations 1996* (Cth) reg 3.02(2).

¹³⁴ *Airports (Building Control) Regulations 1996* (Cth) reg 3.02.

¹³⁵ *Airports (Building Control) Regulations 1996* (Cth) reg 3.04(8).

¹³⁶ *Airports (Building Control) Regulations 1996* (Cth) reg 3.04(6).

¹³⁷ *Airports (Building Control) Regulations 1996* (Cth) reg 3.04(3).

^{137a} *Airports (Building Control) Regulations 1996* (Cth) reg 3.04(3)(a).

^{137b} *Airports (Building Control) Regulations 1996* (Cth) reg 3.04(3)(b).

^{137c} *Airports (Building Control) Regulations 1996* (Cth) reg 3.04(3)(c).

¹³⁸ *Airports (Building Control) Regulations 1996* (Cth) reg 3.05(a).

¹³⁹ *Airports (Building Control) Regulations 1996* (Cth) reg 3.05(b).

¹⁴⁰ *Airports (Building Control) Regulations 1996* (Cth) reg 3.05(c).

¹⁴¹ *Airports (Building Control) Regulations 1996* (Cth) reg 3.05(d).

¹⁴² *Airports (Building Control) Regulations 1996* (Cth) reg 3.07.

¹⁴³ *Airports (Building Control) Regulations 1996* (Cth) reg 3.11(1).

¹⁴⁴ *Airports (Building Control) Regulations 1996* (Cth) reg 3.11(2).

If the building, structure, earthworks or other works is in use or occupied and a certificate of compliance is issued but conditions are not complied with, the Secretary of The Department can issue a written direction to the airport requiring it to:¹⁴⁵

- cease to occupy or use the building, structure or works;
- carry out remedial works on the building, structure or works; or
- demolish, dismantle or remove the building, structure or works.



Directions issued by the Secretary of The Department must be complied with – 50 penalty units – \$5500.

The function of certification is for the satisfaction of the ABC only. It is not in lieu of any additional security or assurance that the building contractor or airport ought to (either at law or as a matter of good practice) be satisfied the building activity complies with planning laws, safety requirements or relevant Australian or industry standards.¹⁴⁶ Put simply, an airport cannot rely on certification for anything other than a declaration that the building activity has been completed.

Infringement of provisions for ABC

Where an airport is required to comply with a requirement described above, and fails to do so, it has committed an offence.¹⁴⁷

Instead of dealing with an airport's offence by way of the courts, the ABC can make use of a separate infringement notice regime as an alternate means of dealing with an airport's breach of statutory obligations.¹⁴⁸

The ABC must have reasonable grounds for believing an airport has committed an offence under the legislation before they can serve an infringement notice.¹⁴⁹

An airport served with an infringement notice can elect that the offence be dealt with by a court by not complying with the infringement notice.¹⁵⁰ The time for payment of a penalty under an infringement notice is 28 days.¹⁵¹ This period can be extended on written application by the airport to the Secretary of The Department or the ABC.¹⁵² The application can be refused if the Secretary of The Department or the ABC is not satisfied that it is proper to grant a further period.¹⁵³ Whether approved or refused, the Secretary of The Department or the ABC must give written notice of the decision, and give reasons for any refusal.¹⁵⁴

¹⁴⁵ *Airports Act 1996* (Cth) s 109.

¹⁴⁶ *Airports (Building Control) Regulations 1996* (Cth) reg 3.15.

¹⁴⁷ *Airports Act 1996* (Cth) s 111; *Airports (Building Control) Regulations 1996* (Cth) reg 5.01.

¹⁴⁸ *Airports (Building Control) Regulations 1996* (Cth) reg 5.02. The same regime can apply to any third party that has committed an offence.

¹⁴⁹ *Airports (Building Control) Regulations 1996* (Cth) reg 5.03(1).

¹⁵⁰ *Airports (Building Control) Regulations 1996* (Cth) reg 5.03(2)(f).

¹⁵¹ *Airports (Building Control) Regulations 1996* (Cth) regs 5.04, 5.07.

¹⁵² *Airports (Building Control) Regulations 1996* (Cth) reg 5.04(1). The application ought to be made within the 28 days in order to avoid a requirement to explain why the applicant could not deal with the notice within the 28 days: *Airports (Building Control) Regulations 1996* (Cth) reg 5.04(2).

¹⁵³ *Airports (Building Control) Regulations 1996* (Cth) reg 5.04(1).

¹⁵⁴ *Airports (Building Control) Regulations 1996* (Cth) reg 5.04(3).

The infringement notice must contain:

- the name and address of the person served;
- the provision of the legislation allegedly contravened;
- details of the offence;
- the maximum penalty that a court can impose;
- the amount payable under the infringement notice and details on how it can be paid;
- a statement that payment discharges the airport's liability for the offence and is not taken to be a conviction; and
- the name of the ABC serving the infringement notice.¹⁵⁵

An infringement notice can be withdrawn by the Secretary of The Department at any time.¹⁵⁶ An airport can dispute the infringement notice by written notice to the Secretary of The Department within 28 days of service of the notice.¹⁵⁷ The Secretary must give written notice of its decision, with reasons for any refusal.¹⁵⁸ The Secretary must make a decision after consideration of:

- the facts or matters set out in a notice from the airport of matters it believes ought to be taken into account;
- the circumstances in which the alleged offence was committed;
- where the airport has a prior conviction under the legislation;
- whether an infringement notice has previously been given to the airport for the same kind of offence; and
- any other matter considered relevant to the decision.

An infringement notice penalty is set at one fifth (20%) of the maximum fine that a Court can impose for the offence.¹⁵⁹

Rights of review

Specific decisions made by the ABC are subject to appeal to the AAT. These specific decisions have been depicted in **Appendix 3**.¹⁶⁰ Appeals on relevant decisions are subject to the rules of the tribunal and the *Administrative Appeals Tribunal Act 1975* (Cth).¹⁶¹

However, beyond the scope of merits review, the ABC has a regulatory immunity from suit for any decision made in good faith or anything done in reasonable reliance on a certificate from an expert, or in the reasonable belief of exercising power of functions under the legislation.¹⁶² Any adverse consequences of the ABC's decision (even if overturned on merits review) may not necessarily expose the ABC to liability. Ultimately liability only extends in circumstances where the ABC oversteps their delegated authority.¹⁶³ Because the immunity is based on this condition, an airport should consider the circumstances surrounding any decision that is adverse to an airport's interests in order to explore the potential for further action directly against the ABC.

¹⁵⁵ *Airports (Building Control) Regulations 1996* (Cth) reg 5.03(2). If the application is refused then the penalty must be paid within the earlier of seven days after receiving the notice of refusal, or the end of 28 days after the date of service of the notice: *Airports (Building Control) Regulations 1996* (Cth) reg 5.04(4).

¹⁵⁶ *Airport (Building Control) Regulations 1996* (Cth) reg 5.06(1).

¹⁵⁷ *Airport (Building Control) Regulations 1996* (Cth) reg 5.06(2).

¹⁵⁸ *Airport (Building Control) Regulations 1996* (Cth) reg 5.06(3); a refusal must also state that failure to pay the penalty within 28 days will trigger prosecution: *Airports (Building Control) Regulations 1996* (Cth) reg 5.06(4).

¹⁵⁹ *Airports Act 1996* (Cth) s 111(2).

¹⁶⁰ Decisions that are not of a kind referred to in this Appendix are taken to be outside the jurisdiction of the AAT, and therefore not subject to appeal.

¹⁶¹ *Airports (Building Control) Regulations 1996* (Cth) reg 6.01.

¹⁶² *Airports (Building Control) Regulations 1996* (Cth) reg 4.02. The immunity is restricted only to the ABC and does not extend to the Secretary of The Department.

¹⁶³ *Airports (Building Control) Regulations 1996* (Cth) reg 4.02.

Controlled Building Activities – Protection of airspace

Because building activities will invariably take place alongside fully functioning airports, the protection of airspace is an essential part of the regulatory regime.

Any activity that results in an intrusion on ‘prescribed airspace’¹⁶⁴, is considered to be a ‘controlled activity’, and is subject to the following regulatory process.

A ‘controlled activity’ is:¹⁶⁵

- constructing any structure that intrudes prescribed airspace;
- altering any structure that causes it to intrude on prescribed airspace;
- any other activity that causes a thing attached to or in physical contact with the ground to intrude on prescribed airspace;
- operating a source of artificial light where:
 - the intensity of the light emitted exceeds permitted levels; and
 - the light is capable of blinding or confusing pilots operating aircraft in the prescribed airspace;
- operating a prescribed plant or facility that reflects sunlight where the reflection has the same effect as any prohibited source of artificial light (see above);
- any activity that results in air turbulence that exceeds a level permitted under the regulations¹⁶⁶ and is capable of affecting normal flight of aircraft operating in the prescribed airspace;
- any activity that results in the emission of smoke, dust or other particulate matter where the emission exceeds permitted levels¹⁶⁷ and is capable of affecting the ability of aircraft to operate in the prescribed airspace;¹⁶⁸ and
- any activity that results in the emission of steam or gas where the emission exceeds permitted levels¹⁶⁹ and is capable of affecting the ability of aircraft to operate in the prescribed airspace.¹⁷⁰



Controlled activities must not be undertaken/carried on without approval – 250 penalty units – \$27 500. This is assessed on a strict liability basis.¹⁷¹

¹⁶⁴ ‘Prescribed airspace’ is any airspace around an airport that is specified in writing by the Secretary to be prescribed airspace in the interests of safety, efficiency or regularity of future air transport operations at the subject airport: *Airports (Protection of Airspace) Regulations 1996* (Cth) reg 5(1). The Secretary must specify a lower boundary of the airspace prescribed: *Airports (Protection of Airspace) Regulations 1996* (Cth) reg 5(3).

¹⁶⁵ *Airports Act 1996* (Cth) s 182.

¹⁶⁶ *Airports (Protection of Airspace) Regulations 1996* (Cth) reg 6A states the level to be a vertical velocity of 4.3 meters per second at the point of emission.

¹⁶⁷ At the time of publication there does not appear to be a prescribed limit set out in the Regulations. This is subject to change.

¹⁶⁸ This is assessed within the context of the Visual Flight Rules (VFR) contained in Annex 2 of the *Convention on International Civil Aviation* (the Chicago Convention) as amended by the Protocols referred to in s 3A(2) of the *Air Navigation Act 1920* (Cth).

¹⁶⁹ At the time of publication there does not appear to be a prescribed limit set out in the Regulations. This is subject to change.

¹⁷⁰ This is assessed within the context of the VFR contained in Annex 2 of the *Convention on International Civil Aviation* (the Chicago Convention) as amended by the Protocols referred to in s 3A(2) of the *Air Navigation Act 1920* (Cth).

¹⁷¹ *Airports Act 1996* (Cth) s 183.

Application for controlled activities

Ordinarily an airport will be a proponent for a 'controlled activity' (although a third party is able to apply for approval). The airport must submit an application to the Secretary of The Department.¹⁷²

An application must contain:¹⁷³

- details of the proposed controlled activity;
- the proposed location of the activity;
- the proposed maximum height (above the Australian Height Datum) of the proposed building, structure or thing;
- the proposed maximum height (above the Australian Height Datum) of any temporary structure or equipment to be used in the erection of the proposed building, structure or thing; and
- the purposes of the controlled activity.

Exemption from controlled activities application

There are no specific exemptions from the application for controlled activity approval from the Secretary of The Department. However, if the proposed activity is not considered a 'controlled activity', there is no requirement to lodge an application.

Controlled activities approval

No application for controlled activities can be approved if it would result in an intrusion into Procedures for Air Navigation Services – Aircraft Operational Surface (PANS-OPS) airspace.¹⁷⁴

However, controlled activities that would intrude into other prescribed airspace¹⁷⁵ must be subject to an application for approval of the Secretary to The Department no later than 28 days before the proposed controlled activity commences.¹⁷⁶

If the Secretary considers that further information is required, the airport is required to provide information reasonably necessary for proper consideration of the proposal when requested by the Secretary in writing. A decision need not be made until this requirement is satisfied.¹⁷⁷

The Secretary will call for submissions about the proposed controlled activity from Civil Aviation Safety Authority (CASA), Air Services Australia (in the case of joint-user airports), the Department of Defence, and the ABC.¹⁷⁸ There is no prescribed limitation on the subject matter for these submissions. The Secretary must consider the opinions of these parties in respect of the effect the controlled activity may have on the efficiency or regularity of existing or future air transport operations for the subject airport.¹⁷⁹

The Secretary cannot approve a controlled activity if CASA advises that it considers the activity will have an unacceptable effect on the safety of existing or future air transport operations at the subject airport.¹⁸⁰

¹⁷² *Airports (Protection of Airspace) Regulations 1996* (Cth) reg 7(1).

¹⁷³ *Airports (Protection of Airspace) Regulations 1996* (Cth) reg 7(2).

¹⁷⁴ *Airports (Protection of Airspace) Regulations 1996* (Cth) reg 14(2). A PANS-OPS airspace is airspace above a PANS-OPS surface, which is defined and assessed in the International Civil Aviation Organisation *Procedures for Air Navigation Services Aircraft Operations* (1993).

¹⁷⁵ Which is airspace that is declared by the Secretary to be a specified airspace around an airport: *Airports (Protection of Airspace) Regulations 1996* (Cth) reg 5.

¹⁷⁶ *Airports (Protection of Airspace) Regulations 1996* (Cth) reg 7(2).

¹⁷⁷ *Airports (Protection of Airspace) Regulations 1996* (Cth) reg 11.

¹⁷⁸ *Airports (Protection of Airspace) Regulations 1996* (Cth) reg 12.

¹⁷⁹ *Airports (Protection of Airspace) Regulations 1996* (Cth) reg 10(2).

¹⁸⁰ *Airports (Protection of Airspace) Regulations 1996* (Cth) reg 13.

If the above is not relevant, then unless the Secretary is satisfied the controlled activity would interfere with the safety, efficiency or regularity of existing or future air transport at the subject airport, the Secretary must approve the controlled activity.¹⁸¹

Approval may be granted subject to conditions, but only if the conditions are directed to a concern in respect to the safety, efficiency or regularity of existing or future transport at the subject airport.¹⁸²

The Secretary's decision must be issued no later than 28 days from receipt of an application or delivery of further information.¹⁸³ At any time after a decision approving the controlled activity, the Secretary may revoke, impose conditions upon or vary a condition of the approval.¹⁸⁴

Rights of review

Any of the Secretary's decisions in respect of controlled activities are reviewable in the AAT and are subject to the rules of the tribunal and the *Administrative Appeals Tribunal Act 1975* (Cth).¹⁸⁵

For a case analysis of an applicant's right of review under the *Administrative Appeals Tribunal Act 1975* (Cth) in respect of a decision under the *Airports Act 1996* (Cth) refer to page 39 of this Guide, regarding the matter of *Brisbane Airport Corporation Ltd v Wright*.^{185a}

Airport Master Plan and Major Development Plan

Purpose of an Airport Master Plan

An Airport Master Plan¹⁸⁶ maps out an airport's strategy for economic growth and development at an airport site during a 20 year 'planning period'.¹⁸⁷ The final Master Plan must be reviewed every five years to ensure consistency and to allow for improved management of environmental and economic concern.¹⁸⁸

A final Master Plan is a draft Master Plan that has been approved by the Minister.¹⁸⁹

All regulated airports are required to have a final Master Plan (refer to **Appendix 4** for the applicable airports).¹⁹⁰

Whilst airports are not statutorily obliged to either use or develop an airport site in accordance with a final Master Plan, any matters affecting the achievement of the final Master Plan must be notified to the Minister.¹⁹¹ A written notice must be given to the Minister within 60 days of the airport becoming aware of the matter setting out its particulars and effects on achieving the final Master Plan.

¹⁸¹ *Airports (Protection of Airspace) Regulations 1996* (Cth) 14(1).

¹⁸² *Airports (Protection of Airspace) Regulations 1996* (Cth) reg 14(3).

¹⁸³ *Airports (Protection of Airspace) Regulations 1996* (Cth) reg 15.

¹⁸⁴ *Airports (Protection of Airspace) Regulations 1996* (Cth) reg 16.

¹⁸⁵ *Airports (Protection of Airspace) Regulations 1996* (Cth) reg 17.

^{185a} (2002) 120 FCR 157; (2002) 77 ALD 411; (2002) 35 AAR 192; [2002] FCR 359.

¹⁸⁶ Referred to as a final Master Plan in the *Airports Act 1996* (Cth).

¹⁸⁷ *Airports Act 1996* (Cth) s 72.

¹⁸⁸ *Airports Act 1996* (Cth) s 77.

¹⁸⁹ *Airports Act 1996* (Cth) s 83.

¹⁹⁰ *Airports Act 1996* (Cth) s 70(1).

¹⁹¹ *Airports Act 1996* (Cth) s 85.



Written notice of matters affecting the achievement of the final Master Plan must be provided to the Minister within the stipulated timeframe – 100 penalty units – \$11 000.¹⁹²

Contents of a draft Master Plan

A draft Master Plan (and ultimately the final Master Plan) should contain:¹⁹³

- the development objectives for the airport;
- an assessment of an airport user's future needs for services and facilities relating to the airport;
- the airport's intentions for land use at the airport site and related development;
- an Australian Noise Exposure Forecast (ANEF) (refer to page 137 of this Guide);
- the flight paths at the airport;
- a plan developed to combat noise intrusion (refer to page 137 of this Guide);
- an assessment, plan and strategy concerning the environmental issues affected by the proposed Plan and development at the airport site (refer to page 128 of this Guide);
- any change caused to the OLS or PANS-OPS surfaces of the airport if development were to occur as proposed by the Master Plan;
- the contents of any examination report of the area and the plans for dealing with the soil pollution found (if any) where a change of use is proposed (refer to pages 142–143 of this Guide);¹⁹⁴
- the proposals for landside land use and related planning, zoning or development; and
- any obligation or interest that has passed to the airport or to which the airport lease is subject to under the *Airports (Transitional) Act 1996* (Cth).

In the case of *Westfield Management Ltd v Brisbane Airport Corporation & Ors*¹⁹⁵, the court confirmed that where an airport's lease permits the use of the airport site for use other than as an airport, the other uses must be included in the draft or final Master Plan addressing the appropriate State or Territory planning schemes in effect if it is the intention of the airport to engage in those other uses.

Purpose of a Major Development Plan

Whilst an airport may have in force an approved final Master Plan, it does not mean that each proposed development by the airport has been granted approval.

A 'major development' at an airport site requires a Major Development Plan to be prepared by the airport and approved by the Minister before any major development can be carried out.¹⁹⁶



If a major development is carried out and is not in accordance with an approved Major Development Plan, the airport commits an offence – 2000 penalty units – \$220 000.¹⁹⁷

Smaller developments at an airport site only require approval by the appointed ABC and Airport Environment Officer (AEO).¹⁹⁸

¹⁹² *Airports Act 1996* (Cth) s 85(2).

¹⁹³ *Airports Act 1996* (Cth) s 71; *Airports Regulations 1997* (Cth) reg 5.02.

¹⁹⁴ *Airports (Environment Protection) Regulations 1997* (Cth) regs 6.09, 6.07(2).

¹⁹⁵ [2005] FCA 32.

¹⁹⁶ *Airports Act 1996* (Cth) s 90(1).

¹⁹⁷ *Airports Act 1996* (Cth) s 90(3).

¹⁹⁸ Appointed by the The Department.

What is a Major Development?

A 'Major Development' is a development carried out at an airport site comprising:¹⁹⁹

- constructing a new runway;
- extending the length of a runway;
- constructing a new building for use as a passenger terminal where the gross floor space is more than 500m²;
- extending a building used as a passenger terminal where the extension increases the gross floor space by more than 10%;
- constructing a new building not for use as a passenger terminal (the cost of construction must exceed \$20 million);
- constructing a new taxiway where the construction significantly increases the capacity of the airport to handle movements (the cost of construction must exceed \$20 million);
- extending a taxiway where the extension increases the capacity of the airport to handle movements (the cost of extension must exceed \$20 million);
- extending or constructing a new road or vehicular access facility significantly increasing the capacity of the airport to handle movements (the cost of extension/construction must exceed \$20 million);
- extending or constructing a new railway or new rail handling facility significantly increasing the capacity of the airport to handle movements (the cost of extension/construction must exceed \$20 million);
- a development of a kind that is likely to have a significant environmental or ecological impact (refer to page 134 of this Guide); or
- a development affecting an area identified as environmentally significant to the Environment Strategy (refer to page 129 of this Guide).²⁰⁰

Contents of a Major Development Plan

The contents of a Major Development Plan must set out or address the following matters:²⁰¹

- the airport's objectives for the proposed development;
- the extent to which the development will meet the prospective needs of civil aviation users and other users of the airport;
- a detailed outline of the development;
- the consistency of the development with the airport lease;
- the consistency of the proposed development with the final Master Plan (if in force);
- the effects of the development on noise exposure levels at the airport (refer to page 135 of this Guide);
- the effect of the development on flight paths at the airport;
- the plans developed for managing aircraft noise intrusion within significant ANEF areas (refer to page 137 of this Guide);²⁰²
- an outline of the approvals that have been sought in respect of elements of the development;
- an assessment of environmental impacts reasonably expected to be connected with the development;
- the plans for dealing with environmental impacts (refer to page 129 of this Guide);
- the date of a draft Environment Strategy (refer to page 128 of this Guide);²⁰³ and
- the obligations of the airport as sublessor and the rights of the sublessee under any sublease of the airport site.

¹⁹⁹ *Airports Act 1996* (Cth) s 89.

²⁰⁰ This only applies if a final Environment Strategy is in force for the airport.

²⁰¹ *Airports Act 1996* (Cth) s 91; *Airports Regulations 1997* (Cth) reg 5.04.

²⁰² In developing these plans, an airport must have regard to Australian Standard AS 2021—2000 ('Acoustics—Aircraft Noise Intrusion—Building Siting and Construction'). This standard is concerned with land use planning and building at airport sites. It provides guidance on siting and construction in consideration of aircraft noise.

²⁰³ This only applies if the airport has an Environment Strategy in force.

Variation of a final Master Plan or Major Development Plan

An airport can apply to the Minister for a Variation of a final Master Plan or Major Development Plan by providing the Minister with a draft Variation of a 'minor nature' which must be approved or refused within 50 business days from the date the Variation is received by the Minister.²⁰⁴

Public comment and advice

Before a draft Master Plan, Major Development Plan or Variation can be submitted for Ministerial approval, the airport must first advise the relevant State or Territory Minister (and relevant authority) responsible for town planning and use of land as well as each local government body with responsibility for areas surrounding the airport site, of its intention to submit the Plan or Variation to the Minister.²⁰⁵

Once the airport has advised of its intention to submit the Plan or Variation to the Minister, a Notice must be published on the airport's website, and in a newspaper that circulates generally throughout the relevant State or Territory, stating:

- a preliminary or draft version of the Plan or Variation has been prepared;
- members of the public are entitled to purchase copies of (and make comment on) the preliminary or draft version which will be available for inspection (during normal office hours) throughout the period of:
 - 60 business days for a draft Master Plan or Major Development Plan; or
 - 15 business days for a Variation of a final Master Plan or Major Development Plan;and
- the place(s) where copies will be available for inspection and purchase.²⁰⁶

The airport must then make available copies of the preliminary or draft version to members of the public in accordance with the notice and in a readily accessible format on the airport's website free of charge.²⁰⁷

After publication of the Notice by the airport, the Plan or Variation can be submitted to the Minister. At this time, a copy of the advice and a written certificate signed on behalf of the airport identifying the relevant persons to whom the advice was given must be submitted.²⁰⁸

In circumstances where public comment has been received regarding the preliminary or draft version, the airport is required to submit a copy of the comments made. Additionally, a certificate containing the names of the members of the public who made comment regarding the preliminary or draft version (summarising the comments made) must also be submitted demonstrating that the airport has had due regard to the comments in preparation of the Plan or Variation.²⁰⁹

²⁰⁴ *Airports Act 1996* (Cth) ss 84, 95.

²⁰⁵ *Airports Act 1996* (Cth) ss 79, 84A, 92, 95A. In the case of a variation to a Major Development Plan, the airport is only required to advise the relevant persons and authorities if the Minister subjects the Variation to public comment under s 95(2)(c).

²⁰⁶ *Airports Act 1996* (Cth) ss 79(1), 84A(1), 92(1), 95A(1). When publishing the Notice in a newspaper, the airport must make sure it states that members of the public will be able to obtain copies of the preliminary or draft version free of charge on the airport's website throughout the period of applicable business days after the publication of the Notice. Further, the Notice must draw reference to the airport's website address.

²⁰⁷ *Airports Act 1996* (Cth) ss 79(1)(b)-(c), 84A(1)(b)-(c), 92(1)(b)-(c), 95A(1)(b)-(c).

²⁰⁸ *Airports Act 1996* (Cth) ss 79(1B), 84A(1B), 92(1B).

²⁰⁹ *Airports Act 1996* (Cth) ss 79(2), 84A(2), 92(2), 95A(2).

Approval of a draft Master Plan

In order to affect a final Master Plan, an airport must first prepare a draft Master Plan to be approved by the Minister.²¹⁰

The Minister, upon receiving the draft Master Plan, must either approve or refuse to approve the draft.²¹¹ Upon approval of the draft Master Plan, it will, for all intents and purposes, become the final Master Plan.²¹²

The Minister has 50 business days from the date of receiving a draft Master Plan to decide whether to approve the Plan.²¹³ In doing so, the Minister must have regard to:²¹⁴

- the extent to which the Plan achieves its purpose;
- the extent to which carrying out the Plan would meet requirements of users of the airport, for the services and facilities relating to the airport;
- the effect on the use of land at and surrounding the airport site by carrying out the Plan;²¹⁵
- the consultations undertaken in preparation of the Plan; and
- the views of the CASA and AirServices Australia, in relation to the safety and operational aspects of the Plan.

During this time, the Minister may reasonably request further materials from the airport relevant to making a decision.²¹⁶

If the Minister decides to approve the draft Master Plan, the airport must be notified in writing as soon as practicable.²¹⁷

The Minister can of course refuse to approve the draft Master Plan, in which case the Minister may either notify the airport of the reasons for refusal, or give a written notice directing a fresh draft Master Plan to be submitted.²¹⁸ An airport has 180 days (or any longer period as provided by the Minister in writing) in which to provide a fresh draft to the Minister.²¹⁹



If an airport fails to comply with a written direction to provide a fresh draft Master Plan, it commits an offence – 250 penalty units – \$27 500.²²⁰

If the Minister fails to approve or refuse the draft Master Plan within 50 business days, the draft Master Plan is taken to have been approved.²²¹

²¹⁰ *Airports Act 1996* (Cth) s 81.

²¹¹ *Airports Act 1996* (Cth) s 81(2).

²¹² *Airports Act 1996* (Cth) s 83.

²¹³ *Airports Act 1996* (Cth) s 81(5).

²¹⁴ *Airports Act 1996* (Cth) s 83(3).

²¹⁵ In the case of, *Re Queensland Investment Corporation and Minister for Transport and Regional Services* (2004) 84 ALD 717; [2004] AATA 1025, an application was made in the Administrative Appeals Tribunal for a review of a decision whereby a draft Master Plan for Essendon Airport was approved by the Minister for Transport and Regional Services (MTRS). The Applicant, Queensland Investment Corporation (QIC), owned and operated three large shopping centres with one being located approximately 10 kilometres from Essendon Airport. The application for review was granted as QIC's interests were considered to be affected by the MTRS decision to approve the draft Master Plan due to it being within Essendon Airport's surrounding area.

²¹⁶ *Airports Act 1996* (Cth) s 80A. The time period in which the Minister has to approve the draft Master Plan extends until the further materials are provided.

²¹⁷ *Airports Act 1996* (Cth) s 81(6).

²¹⁸ *Airports Act 1996* (Cth) s 81(8).

²¹⁹ *Airports Act 1996* (Cth) s 81(8).

²²⁰ *Airports Act 1996* (Cth) s 81(9).

²²¹ *Airports Act 1996* (Cth) s 81(5).

Approval of a Major Development Plan

Upon receiving a draft Major Development Plan, the Minister must either approve or refuse to approve the Plan.²²² In doing so, and in a similar fashion to those factors relevant to the approval of a draft Master Plan, the Minister must have regard to:²²³

- the extent to which the Plan achieves its purpose;
- the extent to which carrying out the Plan would meet civil aviation user's future needs, and other users of the airport, for services and facilities relating to the airport;
- the effect that carrying out the Plan would be likely to have on the future operating capacity of the airport;
- the impact that carrying out the Plan would be likely to have on the environment;
- the consultations undertaken in preparing the Plan (including the outcome of the consultations); and
- the views of the CASA and Airservices Australia, in relation to the safety aspects and operational aspects of the Plan.

It is important that an airport prepares a Major Development Plan that is consistent with the airport's final Master Plan. An inconsistent Major Development Plan is unlikely to be approved by the Minister.

The Minister is provided with 50 business days from the date of receipt to approve or refuse the draft Major Development Plan.²²⁴ Failure by the Minister to either approve or refuse the draft will mean the Plan is taken to have been approved.²²⁵

Whilst determining the approval of a Major Development Plan, the Minister may reasonably request the airport provide specified material relevant to making a decision.²²⁶

Upon approval or refusal of an airport's Major Development Plan, the Minister must provide the airport with written notification.²²⁷ If the Minister refuses to approve the Plan, the reasons for refusal must be provided.²²⁸

Conditional approval of a Major Development Plan

The Minister may approve a draft Major Development Plan subject to one or more conditions.²²⁹ These may include:

- conditions in relation to the operation of a development contained in the Major Development Plan; or
- conditions obliging an airport to prepare, submit or implement a plan for managing the impacts on the airport (including the area surrounding the airport site) of a development to which a Major Development Plan relates.

²²² *Airports Act 1996* (Cth) s 94.

²²³ *Airports Act 1996* (Cth) s 94(3).

²²⁴ *Airports Act 1996* (Cth) s 94(6A). If the advice of the Minister who administers the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) is sought under Subdivision A of Division 4 of Part 11 of that Act in relation to a draft Plan, the period in which the Minister has to determine approval of the draft Major Development Plan begins when it is given to the Minister, instead of the day the draft Plan was received.

²²⁵ *Airports Act 1996* (Cth) s 94(6).

²²⁶ *Airports Act 1996* (Cth) s 93A. The time period in which the Minister has to make a decision regarding approval of the Plan will extend until the further specified material is provided.

²²⁷ *Airports Act 1996* (Cth) s 94(8).

²²⁸ *Airports Act 1996* (Cth) s 94(9).

²²⁹ *Airports Act 1996* (Cth) s 94(7).



Facts:

In the case of *Corowa v State of Queensland*²³⁰, a Major Development Plan was approved for a development that partly occurred on Coolangatta Airport with an imposed condition that a Cultural Heritage Management Plan be prepared before the development could be carried out.

In this case, the Applicant (Mr Robert Corowa) sought to restrain the State of Queensland and Judy Niota Benton (the Respondents) from carrying out any further works at the Tugun Bypass development, as aboriginal objects protected by New South Wales (NSW) State law were affected.

The Applicant sought an injunction on the basis the Respondents were in contravention of ss 86 and 90 of the *National Parks and Wildlife Act 1974* (NSW) (NPWA) which provide for consent to be obtained from the Director-General of the Department of Environment and Conservation.

The Applicant advanced his case on the basis that State laws can operate within Commonwealth places by virtue of the *Commonwealth Places (Application of Laws) Act 1970* (Cth) despite s 112 of the *Airports Act 1996* (Cth) prohibiting the application of State laws at Core Regulated airports (here, the Coolangatta Airport). The Applicant argued that there was no inconsistency between the Commonwealth and State laws as there were no such comparable provisions (that is, ss 86 and 90 of the NPWA did not relate to land use, planning or building).

The Respondents contended that the court did not have jurisdiction in this instance, as State law may only apply in Commonwealth places if it is applied law²³¹ and that s 109 of the Commonwealth Constitution provides that a State law that is inconsistent with Commonwealth law is invalid. The Respondents contested that the application of ss 86 and 90 of the NPWA would 'alter, impair or detract from the Commonwealth regulatory scheme for airport land'. The Respondent also argued that the Tugun Bypass development was an authorised development under the Act as it was in accordance with a Major Development Plan which was only subject to the condition that the airport prepare and implement a Cultural Heritage Management Plan prior to development works being carried out. A Cultural Heritage Management Plan was prepared and approved by the Minister and Department of Environment and Heritage for the subject airport at Coolangatta.

Decision:

The court held that whilst s 112(2) of the *Airports Act 1996* (Cth) concerns land use, planning and building, s 112(1) has a much wider scope and excludes the application of ss 86 and 90 of the NPWA. The application failed meaning the Tugun Bypass development could proceed.

The approval of a draft Major Development Plan is subject to a condition that the development be substantially complete before the end of a specified period ending no later than five years after approval.²³² The period in which the development must be substantially complete can be extended once, for a period of two years. However, the Minister may impose further conditions.

²³⁰ (2006) 149 LGERA 1.

²³¹ *Commonwealth Places (Application of Laws) Act 1970* (Cth) s 4(1).

²³² *Airports Act 1996* (Cth) s 94(7A) unless approval by the Minister states otherwise.

Approval of a variation to a final Master Plan or Major Development Plan

On receiving a Variation to a final Master Plan or Major Development Plan, the Minister has 50 business days in which to grant approval.^{232a}

If the Minister approves the Variation, the final Master Plan or Major Development Plan will be varied accordingly. The Minister must then notify the airport in writing as soon as practicable after approval of the Variation has been decided.²³³ However, the Minister may refuse to approve the Variation, in which case, the Minister must provide the airport with written notification of the reasons why the Variation was refused.²³⁴

In circumstances where the Minister neither approves nor refuses to approve the Variation within 50 business days, the draft Variation is taken to have been approved by the Minister.²³⁵

In the case of a Variation to a Major Development Plan that the Minister has not previously subjected to public comment, the Minister may subject the Variation to public comment if it is considered to be in the interests of the public.²³⁶

Publication of a final Master Plan, Major Development Plan or Variation

After approval of a draft Master Plan, Major Development Plan or Variation, an airport must publish a Notice stating the Plan or Variation has been approved.²³⁷

The Notice must be published on the airport's website and in a newspaper that circulates generally throughout the relevant State or Territory, stating the Plan or Variation has been approved and that copies are available for inspection or purchase at the specified places during normal office hours.²³⁸

In the case of a draft Master Plan or Variation to a Master Plan, copies of the Plan or Variation must be available for inspection whilst the Plan remains in effect.²³⁹ However, copies of a Major Development Plan or Variation to a Major Development Plan must be available during a period of 180 days from the date the notice was published.²⁴⁰

When publishing a Notice in a newspaper, the Notice must also specify the airport's website address and state that a copy of the Plan or Variation is available free of charge during the relevant period.²⁴¹

The airport must comply with all publication requirements within 50 business days after the approval of the Plan or Variation, or any longer period as allowed by the Minister in writing.²⁴²



It is an offence if an airport engages in conduct contravening the requirement to publish the Notice and make copies of an approved Master Plan or Variation available – 250 penalty units – \$27 500.²⁴³

^{232a} *Airports Act 1996* (Cth) ss 84(3), 95(3).

²³³ *Airports Act 1996* (Cth) ss 84(4), 95(4).

²³⁴ *Airports Act 1996* (Cth) ss 84(5), 95(5).

²³⁵ *Airports Act 1996* (Cth) ss 84(3), 95(3).

²³⁶ *Airports Act 1996* (Cth) s 95(2)(c).

²³⁷ *Airports Act 1996* (Cth) ss 86, 96.

²³⁸ *Airports Act 1996* (Cth) ss 86(2), 96(2).

²³⁹ *Airports Act 1996* (Cth) s 86(2)(b).

²⁴⁰ *Airports Act 1996* (Cth) s 96(2)(a)(ii).

²⁴¹ *Airports Act 1996* (Cth) ss 86(2)(a)(iv)-(v), 96(2)(a)(iv)-(v).

²⁴² *Airports Act 1996* (Cth) ss 86(2)(c)-(d), 96(2)(c)-(d).

²⁴³ *Airports Act 1996* (Cth) ss 86(3), 96(3).

Grant or acquisition of an airport lease

Within 12 months after acquisition or grant of an airport lease, an airport must submit to the Minister a draft Master Plan for approval.²⁴⁴



An airport commits an offence if it fails to provide the Minister with a draft Master Plan within 12 months after the acquisition or grant of an airport lease – 250 penalty units – \$27 500.²⁴⁵

Transfer of an airport lease

In the event an airport lease is transferred, the transferee is taken to have adopted the final Master Plan that is in force at the time.²⁴⁶ However, in the event an airport lease is transferred during the approval process of a draft Master Plan, the transferee is taken to have adopted the draft Master Plan under determination, unless within 60 days after the transfer, the transferee provides the Minister with a written undertaking to submit an alternate draft Master Plan.²⁴⁷

Renewal of a final Master Plan

When renewing a final Master Plan, an airport must submit a new draft Master Plan to the Minister before the expiry of the original Master Plan (being five years). The 20 year planning period of the new draft Master Plan is to take effect immediately after the expiry of the original Plan.²⁴⁸



It is an offence if an airport fails to submit a new draft Master Plan before the expiry of the original final Master Plan – 50 penalty units – \$5500.²⁴⁹

In the event a new draft Master Plan is not submitted in time, the final Master Plan will remain in force until such time that a new Master Plan is approved.²⁵⁰

Replacement of a final Master Plan

An airport may replace a final Master Plan by providing the Minister with a draft Master Plan that replaces it.²⁵¹ An airport is required to replace a final Master Plan when:

- the Minister requests the airport submit a draft Master Plan in order to replace a final Master Plan currently in force;²⁵² or
- the Minister approves the endorsement of a more recent ANEF.²⁵³

The airport must provide the Minister with a replacement Plan within 180 days after receiving such notice or any longer period allowed by the Minister in writing.



Failure to provide a replacement Master Plan upon written notice by the Minister, or whenever a more recent ANEF is endorsed, is an offence – 250 penalty units – \$27 500.²⁵⁴

²⁴⁴ *Airports Act 1996* (Cth) s 75. In a situation where an airport lease has been granted or acquired and a final Master Plan for the airport is not in force at the time the airport lease is acquired or granted, the Minister must be provided with a draft Master Plan within a 12 month period.

²⁴⁵ *Airports Act 1996* (Cth) s 75(2).

²⁴⁶ *Airports Act 1996* (Cth) s 74.

²⁴⁷ *Airports Act 1996* (Cth) s 82.

²⁴⁸ *Airports Act 1996* (Cth) s 76.

²⁴⁹ *Airports Act 1996* (Cth) s 76(2).

²⁵⁰ *Airports Act 1996* (Cth) s 77(1).

²⁵¹ *Airports Act 1996* (Cth) s 78(1). Upon approval of the replacement, the original Master Plan will effectively be replaced.

²⁵² *Airports Act 1996* (Cth) s 78(2).

²⁵³ *Airports Act 1996* (Cth) s 78(3).

²⁵⁴ *Airports Act 1996* (Cth) s 78(3).

Consultation

If an airport consults a government authority, local government body, airline, or any other person whilst preparing a draft Master Plan or Major Development Plan, a written statement must be provided to the Minister along with the Plan listing the names of the persons consulted and summarising the views expressed by those persons.²⁵⁵

State and Territory Laws and Planning Policies

The *Airports Act 1996* (Cth) and its associated regulations administer the land use of leased airports and prohibit the application of State and Territory laws in relation to land use planning and building activities.²⁵⁶

However, the regulations provide that an Airport Master Plan, where possible, in relation to the landside, must:

*‘describe proposals for land use and related planning, zoning or developments in an amount of detail equivalent to that required by, and using terminology (including definitions) consistent with that applying in, land use planning, zoning and development legislation in force in the State or Territory in which the airport is located’.*²⁵⁷

In Queensland, the *Integrated Planning Act 1997* (Qld) (IPA) applies to land use planning, zoning and development.²⁵⁸ The IPA requires Queensland local governments to consider State government interests in planning when preparing planning schemes.

State Planning Policy

State Planning Policy has effect when development proposals are assessed and government planning schemes are prepared or amendments are made. Accordingly, relevant Queensland State Planning Policy must be considered as well as Commonwealth and State legislation as outlined earlier. Refer to **Appendix 5** for a list of State and Territory planning and other relevant policy considerations.

The Queensland Government specifically drafted State Planning Policy 1/02 (the Policy) concerning ‘Development in the Vicinity of certain Airports and Aviation Facilities’ with the aim of influencing local planning at State significant airports and their aviation facilities. Whilst the Policy is not directly relevant to developments that occur at airport sites, it does apply to developments in areas that surround the Queensland airports shown in **Appendix 6**.

Generally, the areas surrounding the relevant airports to which the Policy applies are the areas:

- below and immediate to the airport’s operational airspace;²⁵⁹
- surrounding the airport’s aviation facilities;
- within the airport’s 20 ANEF; and
- recognised and identified as public safety areas.

²⁵⁵ *Airports Act 1996* (Cth) ss 80, 93.

²⁵⁶ *Airports Act 1996* (Cth) s 112.

²⁵⁷ *Airport Regulations 1997* (Cth) reg 5.02(2).

²⁵⁸ *Environmental Planning and Assessment Act 1979* (NSW); *Planning and Development Act 2007* (ACT); *Planning and Environment Act 1987* (Vic); *Land Use Planning and Approvals Act 1993* (Tas); *State Development Act 1993* (SA); *Planning and Development Act 2005* (WA); *Planning Act 2008* (NT).

²⁵⁹ This specific area may vary according to the type of airport to which the Policy applies (i.e. civilian or military airports).

The Policy governs developments surrounding airports that may potentially compromise the airport's safety and operations or may increase population in areas surrounding the airport within the significant ANEF. The Policy also applies to developments surrounding airports that intend to cause storage of hazardous materials within recognised public safety areas.

When applications for proposed developments are made or when local community planning takes place, it is necessary that four of the seven outcomes set out in the Policy (discussed in more detail below) are taken into consideration. The remaining three outcomes relate to constructing and amending local planning schemes.

Airport airspace and aviation facilities

Outcome One of the Policy concerns the operational airspace at airports and their aviation facilities. The Policy provides that adverse affects on safety and operations at an airport can not only be avoided by employing appropriate site planning and management, but also by not undertaking developments that cause:²⁶⁰

- physical obstruction to the airport's airspace;
- a gaseous plume to enter an airport's airspace;
- other intrusions into an airport's airspace;
- an attraction of wildlife into an airport's airspace;
- lighting or other emission that interferes with the visibility required for safe operations of an airport;
- electrical (or electro-magnetic) interference; or
- reflective interference.

Effects of aircraft noise

Outcome Two concerns the material change of use within an airport's ANEF and the forecasted noise levels of aircraft noise. The Policy provides that material change of use is compatible with forecast noise levels unless of course the change of use relates to a 'development commitment'²⁶¹ or if it is primarily in the public's interest for the development to occur.²⁶²

Methods of noise reduction

Outcome Three concerns the methods of noise reduction by certain developments within the airport's ANEF. The Policy provides that material change of use developments within the surrounding areas of an airport site and within the ANEF should contain measures of noise reduction unless of course the development is incompatible, or conditionally compatible, within the applicable ANEF.

Public safety areas

Outcome Four concerns the public safety areas at airport sites located at either end of an airport's main runways at the Queensland airports noted in **Appendix 6** (this includes any other runway at the airport site which provides for regular public transport, jet aircraft services, or more than 10000 movements per annum of high level aircraft, and have the relevant runway dimensions).

The Policy provides that unless a proposed development is a development commitment, developments within the airport's public safety areas should not have potential to increase the population of people within those areas and should not utilise or amass hazardous materials.

²⁶⁰ See Annexure 2 of the State Planning Policy 1/02.

²⁶¹ Refer to State Planning Policy 1/02; for example, an approved, exempt or consistent development.

²⁶² The public's interest in the development is only accounted if the development cannot suitably or reasonably occur at an alternate site.

Case Study 1: State or Territory Planning Considerations

The following cases outline the impact that State or Territory planning policies have on developments around airports.



Facts:

The case of *Clive Elliot Jennings & Co Pty Ltd v Western Australian Planning Commission*²⁶³, was an appeal against a decision made by the Town Planning Appeals Tribunal (the Tribunal) in Western Australia. In November 2000, the Appellant (Clive Elliot Jennings & Co Pty Ltd) applied for subdivision of approximately 16,000 square metres of land located for residential purposes in Bellevue. However, the Appellant's application for subdivision was refused by the Western Australian Planning Commission (the Commission) because:

1. *The subject land is not suitable for residential development by reason of noise levels over the site arising from the operation of the Perth International Airport. The subject land is affected by the 25 Australian Noise Exposure Concept (ANEC) wherein further residential development is not appropriate;*
2. *The subject land is, and will continue to be in the longer term, significantly affected by noise associated with the operation of the Perth International Airport. The use, enjoyment and amenity of the subject land is too adversely affected by the current and forecast noise levels for the Commission to support residential development over the subject land; and*
3. *Approval of the subdivision would set an undesirable precedent for the further subdivision of surrounding lots.*

Section 20(1) of the *Town Planning and Development Act 1928* (WA) provides that subdivision of land in Western Australia is prohibited without approval from the Commission.

The Appellant's appeal was made on the basis that:

'the subject land was suitable for the type of residential subdivision and development depicted in its application to the Commission . . . the town planning and development history of the subject land, its physical location and condition . . . all support a submission that the subject land was ripe for subdivision and residential development . . .'

The main issue emanating from the appeal was whether the Tribunal rigidly applied the final Master Plan (the Plan) for Perth International Airport.

The Appellant asserted the Tribunal erred in law as it considered the Plan to be determinative whereas it should have considered the merits of the subdivision and development proposal before it.

According to the Plan and Table 2.1 of Australian Standard AS2021-2000, the land (the subject of the subdivision proposal) was within the Airport's 25 ANEF contour. For this reason the Tribunal was of the view the application should be rejected as subdivision and development was unacceptable for residential purposes.

²⁶³ [2002] WASCA 276; (2002) 122 LGERA 433.

Decision:

The Tribunal considered the Plan provided no more than a 'relevant consideration' in the assessment of an application for subdivision and reliance on it for this purpose was acceptable:

'There is no doubt that the existence and development of airports throughout Australia have significant implications for the planning and development of land, including for human habitation. The interplay between the airport planning process mandated by the Commonwealth Airports Act, and the implementation of the State planning controls, is complex and not easily harmonised. However, as these reasons indicate, the noise which may be characterised as potentially real, although speculative, from future airport developments may be taken into account in the planning process. Indeed, it might be suggested that planning authorities would be in dereliction of their responsibilities if they chose not to do so.'

The appeal was dismissed and the Tribunal's decision was upheld to refuse subdivision of the Appellant's land.



Facts:

In the case of *Cairns City Council v Hessels and Anor*²⁶⁴, the Court of Appeal considered a dispute about the development of land surrounding an airport in relation to environmental and planning legislation.

A property located approximately 2.5 kilometres from Cairns International Airport was proposed by Hessels for subdivision into 14 residential allotments of various sizes. The land was directly beneath the northern approach flight path to the airport.

The local council had refused the subdivision application by Hessels, and the matter was subsequently appealed to the Planning and Environment Court. Subject to special court imposed conditions, the Planning and Environment Court approved the subdivisions.

The Council appealed that decision to the Court of Appeal on the basis of an error in law. Simultaneously, Hessels objected to two of the conditions imposed on the approval for subdivision by the Planning and Environment Court.

Despite being zoned for residential development, the Court of Appeal observed that the land (because of its location) was not suitable for residential development.

The Planning and Environment Court approached a review of the decision in the context of the relevant Planning Scheme and Development Control Plan (Protection of Airport Installations); which were both Council documents. These documents required consideration be given to the Australian Standards for Aircraft Noise Intrusion, which stipulates that an ANEF of greater than 25 renders a site unacceptable for housing. The subject land for Hessels was within a 35 ANEF contour and therefore outside the acceptable range.

²⁶⁴ [1999] QPLR 1.

The Planning and Environment Court, however, also had particular regard to the Council's Development Control Plan (Protection of Airport Installations) which relevantly stated the Council's general intent to:

- prevent encroachment by inappropriate development of Cairns International Airport and associated facilities; and
- avoid encouraging developments sensitive to aircraft noise in areas exposed to such noise.

The Planning and Environment Court recognised the zoning of the land as residential, in spite of these unfavourable factors, it was important that it gave not only strong planning indication, but also valid expectations for Hessels. It was apparent that the zoning was conflicting with the Council's Strategic Plan and Development Control Plan (Protection of Airport Installations). On this basis Hessels successfully convinced the court to approve the application, albeit with conditions.

Decision:

The Court of Appeal, in reviewing the Planning and Environment Court findings, found the Planning and Environment Court gave undue importance to the zoning of the land. The Court of Appeal found the Strategic Plan and Development Control Plan requirements under the *Local Government (Planning and Environment) Act 1990* (Qld)²⁶⁵ were erroneously interpreted by the Planning and Environment Court as being subordinate to the general zoning of the subject land.

The Court of Appeal concluded that the Planning Schemes themselves provided for criteria on which even urban designated land may not be suitable for subdivision.

On this basis the Council's appeal was upheld by the Court of Appeal and the subdivision approval overturned.

The cross-appeal by Hessels was therefore a moot point and not discussed by the court. However, the Court of Appeal suggested in its final findings that Hessels had now been deprived of deriving commercial advantage that might reasonably have been anticipated at the time of acquisition of the land; the prospect having been frustrated by the expansion of the Cairns International Airport. The Court of Appeal suggested that this may give rise to compensation from public funds, but gave no orders in this respect.

²⁶⁵ Since repealed and replaced with the *Integrated Planning Act 1997* (Qld).



Facts:

In the case of *Brisbane Airport Corporation Ltd v Wright*²⁶⁶, the Federal Court considered an appeal from Mr Kevin Rudd (MP) against a decision of the AAT on his application for review of the Minister for The Department's decision, approving the Brisbane Airport's draft Master Plan.

This case reflects the limited scope of interested parties who can object to Ministerial decisions under the *Airports Act 1996* (Cth), as well as how the courts will interpret the competing interests of airport infrastructure and growth against those of the individual.

Substance of objection

Mr Kevin Rudd MP objected to the approval of the draft Master Plan because it contained a forecast for the construction of a second runway at Brisbane Airport. Mr Rudd was concerned that aircraft noise from the second runway would adversely affect residential areas, including his own residence.

The objection revolved around the ANEF for the area in which Mr Rudd's residence was located. The draft master plan predicted exposure not in excess of ANEF 20. The court observed that the significant level for exposure was ANEF 30.²⁶⁷

Mr Rudd led evidence to suggest that ANEF level predictions were not always accurate, particularly when at levels below 20.

An interested party – who can appeal the Minister's decisions?

Mr Rudd sought to object to the Minister's approval of the draft master plan in the AAT on the basis that he was a 'person of interest' sufficiently affected by the Minister's decision because:

- he was a member of Parliament;
- he was a representative of a community group known by the acronym of 'BARB';²⁶⁸ and
- he and his wife owned and occupied a home at Norman Park, about 9-10 kilometers from the southern end of the existing runway at Brisbane Airport.

At first instance, the AAT rejected the first two grounds, but upheld the third. Mr Rudd appealed on this point.

The court observed that a person's interest must be affected by the Ministerial decision before being eligible for appeal to the AAT. The court recognised established case law that in determining when a person's interests was 'affected by' a decision, it should have regard to the 'subject, scope and purpose of the statute'; in this case the *Airports Act 1996* (Cth). It also accepted that the nature of the interest required will be influenced by the subject matter and context of the decision under review.

In having regard to these considerations, the court observed the airports obligations under the *Airports Act 1996* (Cth) to:

- forecast areas subject to ANEF levels above 30;
- consult with user airlines and relevant local authorities;
- develop a plan for managing aircraft noise intrusion in surrounding areas, but
- did not extend to consultation with occupiers of properties so affected.

²⁶⁶ (2002) 120 FCR 157; (2002) 77 ALD 411; (2002) 35 AAR 192; [2002] FCA 359.

²⁶⁷ By reference to s 5 of the *Airports Act 1996* (Cth) at [30].

²⁶⁸ 'Ban Aircraft over Residential Brisbane'.

The court deduced from this that neighbouring residents' interest were intended to be protected by the 'relevant local authorities'. For this reason the court found:

'In those circumstances it seems unlikely that Parliament intended that [neighbouring residents] should be able to commence proceedings for review of a decision to approve a master plan.'

The court also considered that even though Mr Rudd challenged the ANEF forecast without evidence suggesting an ANEF level of 30 or more, it was even less likely that his interests would be sufficiently affected with a forecast of below ANEF level 20.

The airport's obligations to notify of Ministerial approval to the public²⁶⁹ was also narrowed by the court to prevent extension of a right of appeal to any member of the public, stating:

'It is most unlikely that it was intended that any member of the public might seek review of a decision to approve a master plan. Further, although the [airport] lessee must have due regard to public comment, that is part of the formulation of the draft master plan and not necessarily part of the Minister's decision-making process.'

The court noted that the Minister was also only required to have consideration of what the effect approving the master plan would have on the 'use' of land surrounding the airport; it did not extend to the amenity or value of the land.

The court also accepted that commercial interests mandated a restriction on eligibility to apply for AAT review; the Brisbane Airport had entered into a commercial arrangement with the Commonwealth and expanding the scope for potential applicants could threaten the airports capacity to carry on its business which is of 'considerable public importance'.

The court applied a narrow approach to eligibility for appeal to the AAT in respect of a Ministerial decision regarding the draft master plan, stating:

'at least where the decision in question concerns approval of a master plan, only the [airport] lessee is an interested party for the purposes of seeking review.'

The court was prepared to entertain a wider scope allowing application by the relevant airlines and local authorities, with which the airport is obliged to consult.

Decision:

Having determined that the *Airports Act 1996* (Cth) effectively restricted the scope for eligible applicants to the AAT, the court was left with no alternative but to set aside the decision of the AAT and rule that Mr Rudd was ineligible to appeal. This meant that all three grounds on which Mr Rudd based his standing to appeal were rejected.

²⁶⁹ *Airports Act 1996* (Cth) s 79.

Case Study 2: *Westfield Management Ltd v Brisbane Airport Corporation Limited & Ors* [2005] FCA 32

In the case of *Westfield Management Ltd v Brisbane Airport Corporation & Ors*²⁷⁰, it was questioned whether the *Airports Act 1996* (Cth ('the Act')) limits the conduct and operations of airports to activities associated with the operation of an airport solely for aviation purposes.



Facts:

In 2003, proceedings were commenced in the Federal Court of Australia by Westfield Management Ltd (Westfield) and CPT Manager Limited (CPT) (referred to collectively as the Applicants) against Brisbane Airport Corporation Ltd (BACL), the Minister for Transport and Regional Services (the MTRS), Philip Chun & Associates Pty Ltd (which was the building controller responsible for the Brisbane Airport) (Building Controller) and Direct Factory Outlets Pty Ltd (DFO), a proposed sub-lessee of a planned development by BACL.²⁷¹

The Applicants alleged that BACL proposed to carry on substantial trading or financial activities other than activities relating to the operation and development of the airport in contravention of s 32(1) of the Act, in that it proposed to engage in '*business, retail and leisure*' activities at Gateway Park. BACL's approved Master Plan included a proposed development, referred to as Gateway Park²⁷², which was identified as being available for commercial and industrial development.

BACL's proposed development of Gateway Park was for a variety of commercial uses, which included:

- office accommodation;
- a golf course;
- health centres;
- cafes; and
- tourism and retail outlets.

BACL had also agreed to construct and sub-lease to DFO two buildings for the purposes of retail sales.

The Applicants further alleged that:

- the approval of the 2003 BACL Airport Master Plan was ineffective as it included provisions for the development of Gateway Park which were not incidental to the operation and development of the airport as an airport and was therefore invalid;
- the likely cost of construction of each of the seven precincts proposed to be developed was likely to exceed \$10m with the inclusion of infrastructure, earthworks and preparatory work costs.²⁷³ For this reason, the proposed development was a 'Major Development' requiring approval by the MTRS of a Major Development Plan;

²⁷⁰ [2005] FCA 32.

²⁷¹ Subsequent to these proceedings, DFO commenced proceedings against the Applicants and BACL seeking declaratory relief that its proposed dealings with BACL to construct and sub-lease a retail sales outlet was not in contravention of the Act. The DFO's action was heard in conjunction with the main BACL matter.

²⁷² Whilst the precinct was referred to as Gateway Park in BACL's original Master Plan, it is now known as Number 1 Airport Drive.

²⁷³ *Airports Amendment Act 2007* (Cth). The cost of construction has since been amended from in excess of \$10m to in excess of \$20m, refer to page 27 of the Guide.

- the approval by the MTRS of the 2003 BACL Airport Master Plan was invalid as it did not comply with the requirements of the Act; and
- it was not within the scope of the Building Controller's authority to approve the earthworks already undertaken.

Use of an airport

The basis upon which the Applicants advanced their claim, was that BACL:

*'is required to operate and develop Brisbane Airport as an airport which provides aeronautical services to the civil aviation users and for such other uses related or incidental to such use of Brisbane Airport and BACL is prohibited from using Brisbane Airport or any part of it for any other use which involves significant trading or financial activities unrelated or not incidental to such use as an airport to facilitate movement of aviation traffic.'*²⁷⁴

BACL, the MTRS and DFO argued the use of an airport:

'... for the purpose of aviation activities is but one, albeit the primary one, of a range of possible additional permissible uses not inconsistent with the operation of the Brisbane Airport as an airport.'

Decision:

The court turned its mind to the proper construction of the *Airports Act 1996* (Cth) in which it questioned whether this regime operated to deny BACL the enjoyment of its common law rights as a lessee of Brisbane Airport.

The court held the use of an airport site under the airport lease, other than use solely for aviation purposes, is to be provided for within the provisions of the airport lease.

The airport lease granted to BACL sets out the following:

'3.1 Lessee must give access

The Lessee:

(a) must at all times:

- (i) provide for the use of the Airport Site as an airport;*
- (ii) provide for access to the airport by interstate and international air transport;*
- (iii) provide for access to the airport by intrastate air transport;*
- (iv) not use, or permit to be used, the Airport Site for any unlawful purpose or in breach of legislation; and*
- (v) not use any name other than Brisbane Airport for the Airport Site without prior written consent of the Lessor.*

²⁷⁴ [2005] FCA 32 at 13. The Applicants submitted that the operation and development of the airport took on another sense of the meaning when used in the context of s 32 of the Act. The Applicants suggested that the words 'the operation ... of the airport' and 'the development of the airport' adopted a more specific technical meaning used within the standards developed by the ICAO.

(b) may:

(i) permit the Airport Site to be used for other lawful purposes that are not inconsistent with its use as an airport; and

(ii) subject to sub-clause 3.1(c), . . . construct, alter, remove, add to or demolish the Structures; and . . .

It was held that BACL was entitled to use part of Brisbane Airport for ‘any use which is not inconsistent with the use of the site as an airport’.

Justice Cooper was of the view that ss 31 and 32 of the *Airports Act 1996* (Cth) did not deny BACL the right to exercise its common law rights as a lessee of Brisbane Airport. Where BACL’s lease of Brisbane Airport permits the uses of Brisbane Airport (which extend further than its use as just an airport), BACL is entitled to utilise Brisbane Airport for those uses.

BACL’s Brisbane Airport lease also stated:

‘10 SUB-LEASING

(a) The Lessee must not grant any sub-lease or licence which is inconsistent with any prohibition on sub-leasing or licensing set out in the regulations to the Airports Act or, unless the Lessor agrees otherwise in writing, with any written commitment sought and obtained from the Lessee by the Lessor in relation to sub-leasing which specifies this clause 10.

Accordingly, BACL was entitled to enter into a sub-lease with DFO for a use or purpose other than the use of the site as an airport.

Inclusion of Gateway Park development provisions in Master Plan

Justice Cooper also held, after considering the proper construction of the Act and the provisions contained in BACL’s airport lease, where an airport lease permits the use of an airport site for use other than as an airport in which the airport intends to engage in, the other uses must be incorporated into the draft or final Master Plan and must address the relevant State or Territory planning schemes that are in effect.

Accordingly, BACL was entitled to include in its draft Master Plan the development objectives for the Brisbane Airport and its proposals for land use and related development. Effectively, Brisbane Airport’s 2003 Master Plan was validly approved.

Construction costs and Major Development Plan

In August 2001, BACL applied to the Building Controller for approval of earthworks in preparation of works for Gateway Park Stage 1. In November 2002, BACL decided to construct a building (DFO1) with a projected cost of approximately \$9.8m. BACL also intended to construct a second larger building (DFO2) and approved its cost in excess of \$10m. Both buildings were to be sub-leased to DFO.

In February 2004, a draft Major Development Plan was submitted to the MTRS for approval in respect of the construction of DFO1 and DFO2, which was subsequently approved in June 2004.

The Applicants argued the development of Number 1 Airport Drive²⁷⁵ was a single mixed-use integrated development which (pursuant to s 94 of the *Airports Act 1996* (Cth)), required a Major Development Plan to be approved before construction could take place. However, major earthworks had already been undertaken by BACL.

²⁷⁵ As it is now known.

The Applicants claimed the BACL did not have an approved plan at that time and that the commencement of the earthworks constituted a contravention of s 90(1) of the *Airports Act 1996* (Cth).²⁷⁶ The Applicants also argued the Major Development Plan obtained in 2004 by BACL was not valid because it did not cover the other proposed buildings and precincts which, together, made up the Number 1 Airport Drive development.

His Honour accepted evidence on behalf of BACL that the earthworks undertaken by BACL were not done in preparation for specific developments as these were unresolved by BACL. The earthworks were performed to develop the site so that future construction could take place.

His Honour was of the view the developments of DFO1 and DFO2 were separate stand-alone developments and the Major Development Plan was valid containing all relevant details required by the *Airports Act 1996* (Cth).

Scope of The Building Controller

The argument put forward by the Applicants regarding the scope of the Building Controller's power to authorise the earthworks already undertaken by BACL was based on s 101 of the *Airports Act 1996* (Cth) which provides that building approval must be consistent with the airport's final Master Plan and Major Development Plan. However, the building approval need only be consistent with a Major Development Plan if one is in force.

At the time the earthworks were approved in 2001 and 2002, BACL had an approved final Master Plan in force for Brisbane Airport (1998 Brisbane Airport Master Plan) which contained respective land use zones. The approvals for the earthworks were consistent with the final Master Plan in force at the time.

Accordingly, the court held the approval for earthworks was not in contravention of the *Airports Act 1996* (Cth):

*'... there is no basis to construe the power of the Building Controller to approve a building activity as limited to an activity which is an element of an aeronautical development of Brisbane Airport.'*²⁷⁷

Justice Cooper handed down a decision allowing airports to seek development approvals to commercially develop its leased land.

His Honour made the following declarations:

- the Brisbane Airport Master Plan was valid and effective;
- the Major Development Plan was valid and effective;
- the earthworks permitted by the Building Controller were within the controller's authority and were valid and effective; and
- the agreement between BACL and DFO was not in contravention of s 32 of the Act and is not proscribed by any provision contained in the Act or its associated regulations.

BACL was entitled to include in its draft Major Development Plan proposed developments for land use other than the use of Gateway Park as an airport on the basis the airport lease permitted the use of the airport site for other purposes that were not inconsistent with its use as an airport.

²⁷⁶ *Airports Act 1996* (Cth) s 90 contemplates that an approved Major Development Plan will be obtained before construction of a Major Development commences.

²⁷⁷ [2005] FCA 32 at 130.

AIRPORT DESIGN AND DEVELOPMENT CHAPTER SUMMARY TABLES

TABLE 1: Contrast between Airport Master Plan and Major Development Plan

	Airport Master Plan	Major Development Plan
Purpose of Plan	Maps out an airport's strategy for economic growth and development at the airport during a planning period of 20 years	Maps out an airport's proposed Major Development at the airport (must be prepared before any Major Development can be carried out)
Approval required by	Minister for Infrastructure, Transport, Regional Development and Local Government	Minister for Infrastructure, Transport, Regional Development and Local Government
Period of public comment prior to approval by Minister	Draft Plan: 60 business days Variation: 15 business days	Draft Plan: 60 business days Variation: 15 business days
Period of assessment for approval by the Minister	Draft Plan: 50 business days Variation: 50 business days	Draft Plan: 50 business days Variation: 50 business days
Period of publication for Approved Plan/ Variation	An airport must cause to be published a Notice within 50 business days or any longer period allowed by the Minister in writing	An airport must cause to be published a Notice within 50 business days or any longer period allowed by the Minister in writing
Period of inspection/ purchase of Approved Plan or Variation	Copies of the approved Plan or Variation must be made available for inspection or purchase by members of the public whilst the Plan remains in force	Copies of the approved Plan or Variation must be made available for inspection or purchase by members of the public for a period of 180 days after publication of the notice
Obligations/ conditions	An airport has a duty to notify the Minister of matters affecting the achievement of its Master Plan	The approved development must be substantially complete before the end of a specified period ending no later than 5 years after approval
Review/extension	An Airport Master Plan must be reviewed every five years	The period in which the development must be substantially complete can be extended by 2 years. This period can only be extended once

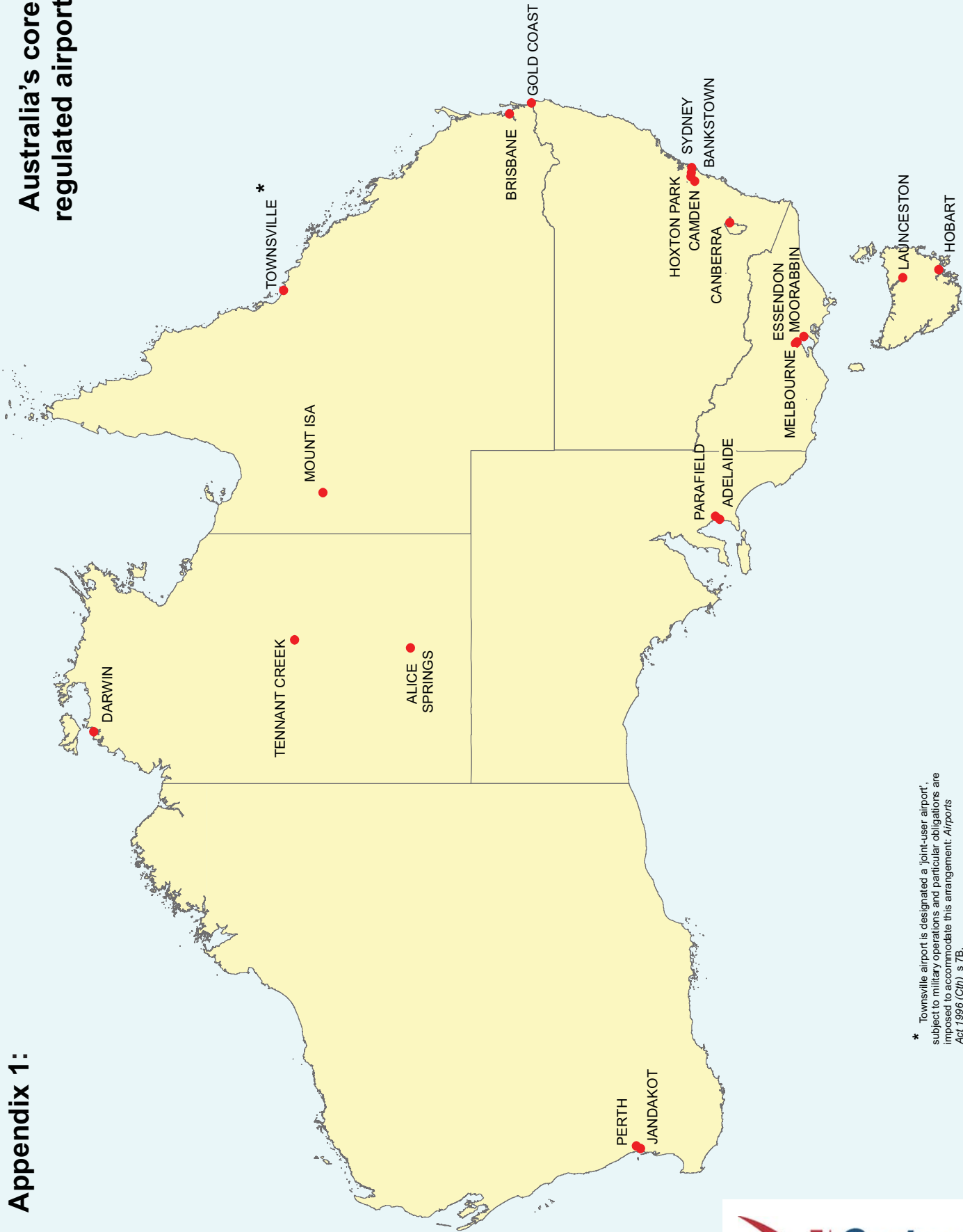
TABLE 2: Penalty provisions

	Legislation	Section	Description	Penalty for non-compliance
Leaseholders	<i>Airports Act 1996 (Cth)</i>	s 41	Individuals must not knowingly or recklessly acquire an interest which results in foreign ownership levels being exceeded	400 penalty units (\$44 000)
	<i>Airports Act 1996 (Cth)</i>	s 42	Airports must take 'all reasonable steps' to ensure foreign ownership levels are not exceeded	500 penalty units (\$55 000)
	<i>Airports Act 1996 (Cth)</i>	s 45	Individuals must not knowingly or recklessly acquire an interest which results in share ownership levels being exceeded	400 penalty units (\$44 000)
	<i>Airports Act 1996 (Cth)</i>	s 46	Airports must take all reasonable steps to ensure share ownership limits are not exceeded	500 penalty units (\$55 000)
	<i>Airports Act 1996 (Cth)</i>	s 51	Individuals must not knowingly or recklessly acquire an interest which results in cross-ownership levels being exceeded	400 penalty units (\$44 000)
	<i>Airports Act 1996 (Cth)</i>	s 52	Airports must take all reasonable steps to ensure cross-ownership levels are not exceeded	500 penalty units (\$55 000)
Airport Leasing Obligations	<i>Airports Act 1996 (Cth)</i>	s 32(3)	Airports must not carry on activities which are not connected with, or incidental to the operation and/or development of the airport	2000 penalty units (\$200 000)
Airport Works Approved by ABC	<i>Airports Act 1996 (Cth)</i>	ss 99(2), (2A)	Airports must not cause, carry out or permit building activities without approval	250 penalty units (\$27 500)
	<i>Airports Act 1996 (Cth)</i>	s 99(3)	Individuals must not cause, carry out or permit building activity without approval	50 penalty units (\$5 500)
	<i>Airports Act 1996 (Cth)</i>	s 102	Conditions imposed by the ABC on a building approval must be complied with	50 penalty units (\$5 500)
Certification by ABC	<i>Airports Act 1996 (Cth)</i>	s 109	Remedial directions received in writing from an authorised person must be complied with	50 penalty units (\$5 500)

	Legislation	Section	Description	Penalty for non-compliance
Protection of Airspace	<i>Airports Act 1996 (Cth)</i>	s 183	Controlled activities must not be undertaken or carried on without approval granted under the <i>Airports Regulations 1997 (Cth)</i>	250 penalty units (\$27 500)
Purpose of a Master Plan	<i>Airports Act 1996 (Cth)</i>	s 85(2)	Written notice of matters affecting the achievement of the final Master Plan must be approved by the Minister within the stipulated timeframe of 60 days	100 penalty units (\$11 000)
Purpose of a Major Development Plan	<i>Airports Act 1996 (Cth)</i>	s 90(3)	'Major developments' may only be carried out after a Major Development Plan has been prepared by the airport and approved by the Minister	2000 penalty units (\$220 000)
Approval of a Draft Master Plan	<i>Airports Act 1996 (Cth)</i>	s 81(9)	Airports must comply with any written notice from the Minister that directs the airport to submit a fresh Master Plan	250 penalty units (\$27 500)
Publication of a final Master Plan, Major Development Plan or Variation	<i>Airports Act 1996 (Cth)</i>	ss 86(3), 96(3)	Airports which have had a draft Master Plan, Major Development Plan or Variation approved by the Minister must publish a Notice to this effect and makes copies available within the stipulated timeframes	250 penalty units (\$27 500)
Grant or Acquisition of an Airport Lease	<i>Airports Act 1996 (Cth)</i>	s 75(2)	Airports must submit a draft Master Plan to the Minister within 12 months after the acquisition or grant of an airport lease	250 penalty units (\$27 500)
Renewal of a final Master Plan	<i>Airports Act 1996 (Cth)</i>	s 76(6)	Airports must submit a new draft Master Plan to the Minister before expiry of the existing Master Plan	50 penalty units (\$5 500)
Replacement of a Final Master Plan	<i>Airports Act 1996 (Cth)</i>	s 78(3)	Airports that have replaced a final Master Plan under request by the Minister or where a more recent ANEF is endorsed must provide a replacement Master Plan within 180 days	250 penalty units (\$27 500)



Australia's core regulated airports



* Townsville airport is designated a 'joint-user airport', subject to military operations and particular obligations are imposed to accommodate this arrangement: *Airports Act 1996 (Cth)* s 75.



Appendix 2¹:

Unacceptable cross-ownership situations

<i>This company must not</i>	<i>Form a pair with this company above the cross-vesting limit</i>
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 Bankstown (Sydney West) Airport
An airport-management company for Melbourne (Tullamarine) Airport	The airport-lessee company for Bankstown (Sydney West) Airport
The airport-lessee company for Melbourne (Tullamarine) Airport	An airport-management company for Bankstown (Sydney West) Airport
An airport-management company for Melbourne (Tullamarine) Airport	An airport-management company for Bankstown (Sydney West) Airport
The airport-lessee company for Brisbane Airport	The airport-lessee company for Bankstown (Sydney West) Airport
An airport-management company for Brisbane Airport	The airport-lessee company for Bankstown (Sydney West) Airport
The airport-lessee company for Brisbane Airport	The airport-lessee company for Bankstown (Sydney West) Airport
The airport-lessee company for Brisbane Airport	An airport-management company for Bankstown (Sydney West) Airport
An airport-management company for Brisbane Airport	An airport-management company for Bankstown (Sydney West) Airport
The airport-lessee company for Perth Airport	The airport-lessee company for Sydney (Kingsford-Smith) Airport

¹ *Airports Act 1996* (Cth) s 49.

Unacceptable cross-ownership situations (Cont'd)

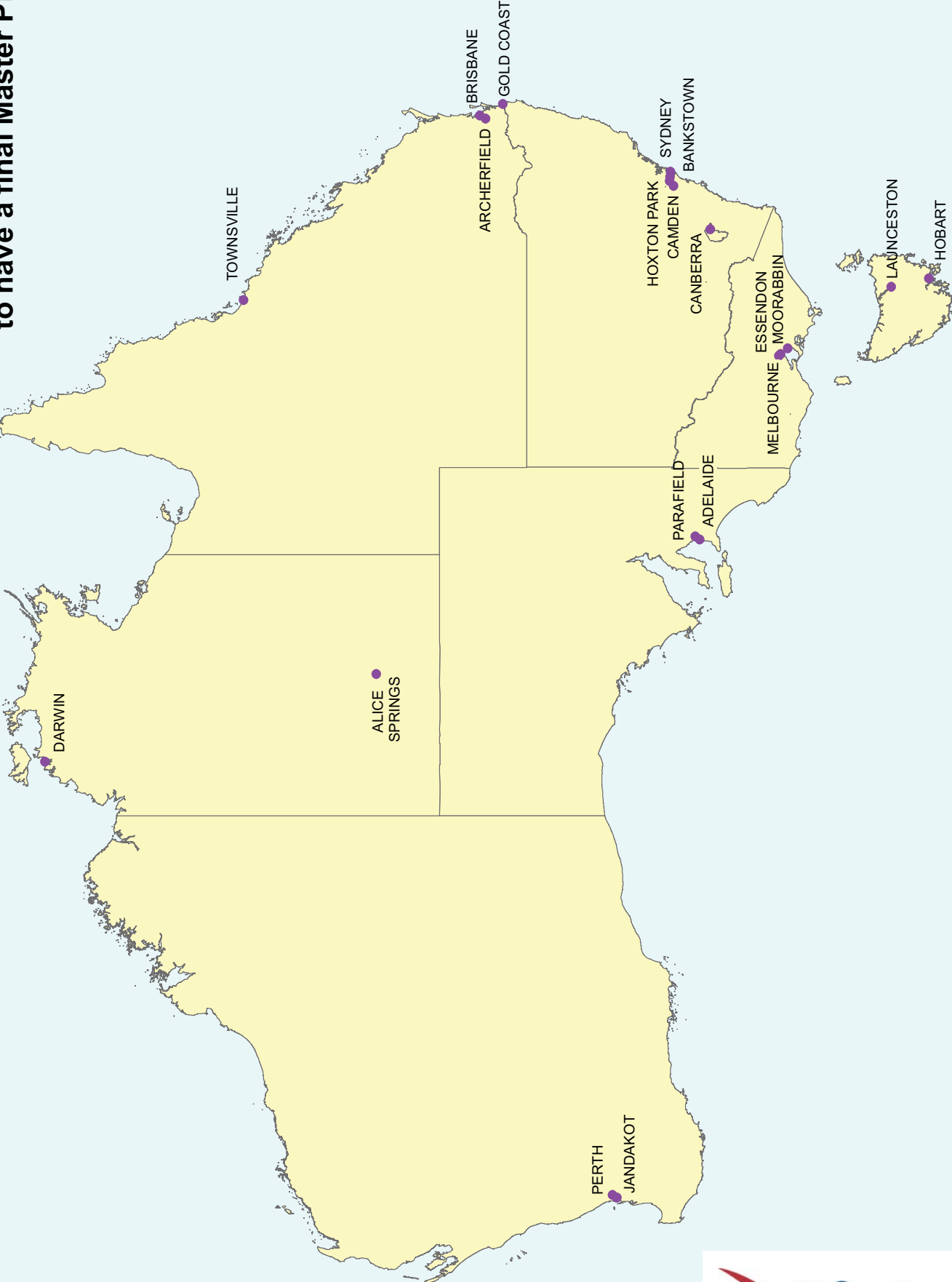
<i>This company must not</i>	<i>Form a pair with this company above the cross-vesting limit</i>
An airport-management company for Perth Airport	The airport-lessee company for Sydney (Kingsford-Smith) Airport
The airport-lessee company for Perth Airport	An airport-management company for Sydney (Kingsford-Smith) 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 Bankstown (Sydney West) Airport
An airport-management company for Perth Airport	The airport-lessee company for Bankstown (Sydney West) Airport
The airport-lessee company for Perth Airport	An airport-management company for Bankstown (Sydney West) Airport
An airport-management company for Perth Airport	An airport-management company for Bankstown (Sydney West) Airport

Appendix 3:

ABC and airport-lessee company decisions subject to AAT appeal

Decisions by ABC	Person
Subregulations 2.11 (1) and (6) – refusal, or failure to approve a building activity	The applicant for the approval
Subregulation 2.11 (1) – imposition of a condition on a building approval	The applicant for the approval
Subregulation 2.11 (1) – giving of a direction in relation to a building approval	The applicant for the approval
Subregulation 2.13 (2) (b) – refusal to approve non-compliance with Australian building standards	The applicant for the approval
Regulation 2.16 – refusal to grant a varied building approval	The applicant for the approval
Subregulation 2.18 (1) – imposition of a condition on a building approval	The applicant for the approval
Subregulation 2.18 (2) – Issuing of a stop work order on a building approval	The person carrying out the building activity
Subregulation 2.19 (2) – refusal to extend duration of a building approval	The person carrying out the building activity
Regulation 2.20 – revocation of a building approval (except at the request of the holder)	The person carrying out the building activity

Decisions by ABC	Person
Paragraph 3.02 (2) (a) – estimate of time that will be taken to investigate a building or structure for the issue of a certificate of compliance	The person that applied for the certificate
Subregulation 3.04 (2) – refusal to issue a certificate of compliance for a building or works	The holder of the building approval that authorised the building activity that resulted in the building or works
Subregulation 3.04 (2) – imposition of a condition on a certificate of compliance	The holder of the building approval that authorised the building activity that resulted in the building or works
Subregulation 3.10 (1) – variation of a certificate of compliance	The holder of the certificate of compliance
Paragraph 3.10 (1A) (a) – estimate of time that will be taken to investigate a building or structure for the variation of a certificate of compliance	The person that applied for the variation
Subregulation 3.10 (1) – refusal to vary a certificate of fitness	The holder of the certificate of fitness
Subregulation 3.12 (1) – revocation of a certificate of compliance	The holder of the certificate of compliance
Subregulation 3.14 (1) – refusal to issue certified copy of a certificate of compliance	The person who applied for the certified copy
Subregulation 5.04 (1) – refusal to grant a period of time for payment of an infringement notice penalty	The person served with the infringement notice
Subregulation 5.05 (2) – refusal to make an arrangement for periodical payment of an infringement notice penalty	The person served with the infringement notice
Subregulation 5.06 (3) – refusal to withdraw an infringement notice	The person served with the infringement notice
Decision by Airport-Lessee Company	
Subregulations 2.03 (4) and (6) – refusal, or failure to grant consent to application	The applicant for the approval
Subregulation 2.03 (4) – imposition of a condition on a grant of consent	The applicant for the approval



Appendix 5:

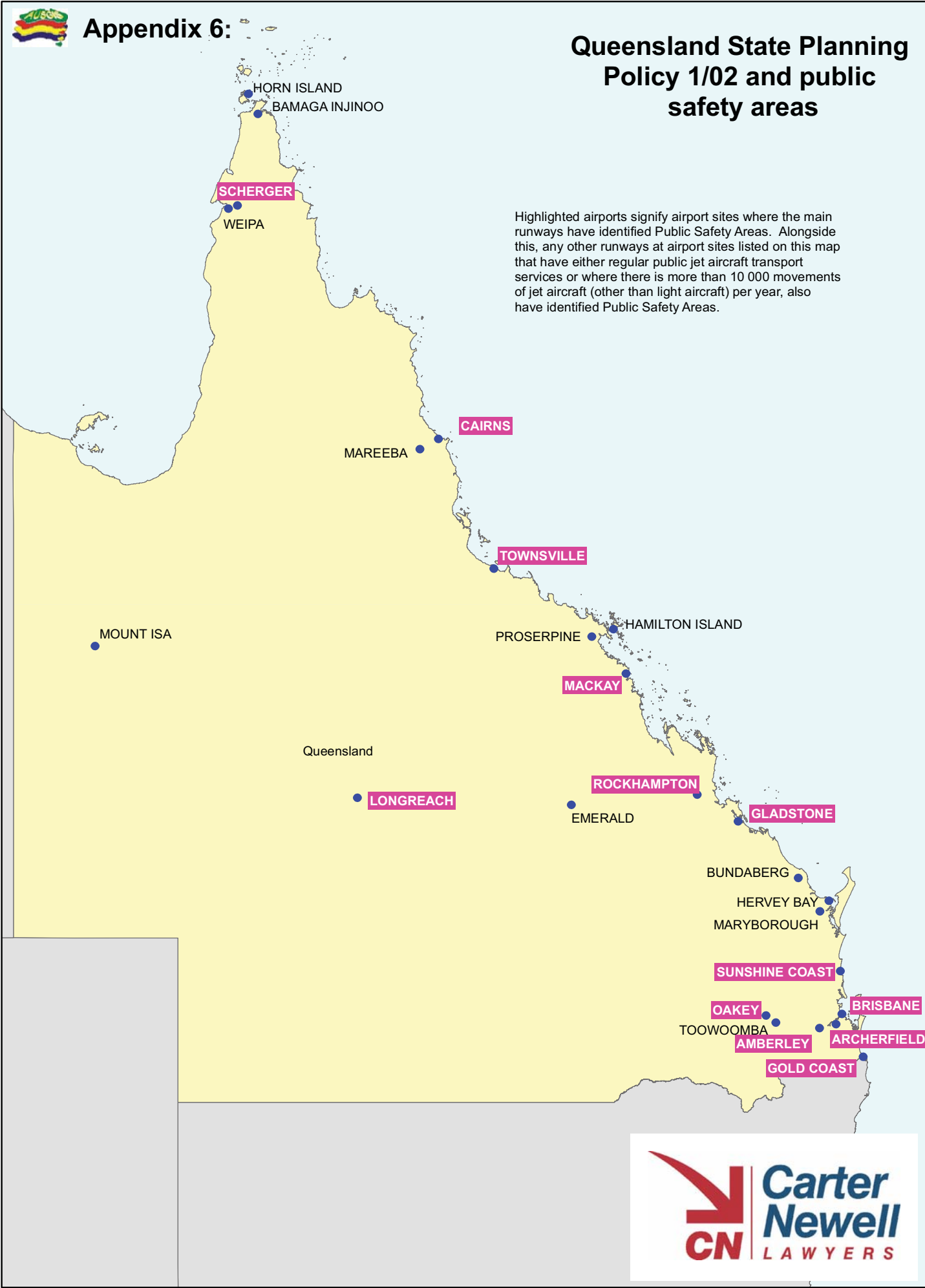
Each Australian State and Territory has in place a strategy or policy to help control capital developments. The following table includes a list of policies and strategies that may need to be considered when a proposed development is to occur on or within the vicinity of an airport.

State or Territory	Relevant State Planning or Other Policies
QLD	SPP 1/02 Development in the Vicinity of certain Airports SPP1/03 Mitigating the adverse impacts of Flood, Bushfire and Landslide State Coastal Management Plan Brisbane City Council's City Plan
NSW	State Environmental Planning Policy (Infrastructure) 2007 Regional Environmental Plans Local Environmental Plans Development Control Plans
ACT	National Capital Plan Canberra Spatial Plan
VIC	State Planning Policy Framework Strategies for Metropolitan Melbourne Victoria Planning Provisions <ul style="list-style-type: none"> - Environmental Significance Overlay; - Heritage Overlay; and - Melbourne Airport Environs Overlay.
TAS	Council Planning Schemes
SA	Planning Strategy for Metropolitan Adelaide Planning Strategy for Outer Metropolitan Adelaide Region
WA	SPP No. 5.1 Land Use Planning in the Vicinity of Perth Airport SPP No. 5.3 Jandakot Airport Vicinity
NT	Northern Territory Planning Scheme



Appendix 6:

Queensland State Planning
Policy 1/02 and public
safety areas



OPERATIONS, SERVICES AND PRICING

Landside and passenger activities

The ACCC has compartmentalised the following core airport activities:

- passenger related: services or facilities associated with check-in, government inspection, gate lounges, baggage and washrooms (**Appendix 7**);
- landside-related: services or facilities associated with airport access;
- aircraft-related: services or facilities associated with the runway, apron and taxiway system, gates, aircraft parking, ground service equipment and freight facilities (**Appendix 8**); and
- management related: the production of annual reports and financial accounts.

These airport service categories have been recognised by the ACCC as requiring constant monitoring with respect to quality of service. This section of the Guide focuses on landside and passenger related airport activities and also on airport management regulations insofar as they relate to obligations imposed by the ACCC.²⁷⁸ Such landside and passenger activities are grouped into the following:

- liquor;
- commercial trading;
- vehicle movement;
- gambling; and
- smoking.

Liquor

Airports are required to obtain a liquor licence if they wish to sell or supply liquor on a permanent basis.²⁷⁹ The sale, supply, disposal or possession of liquor at airports differs from airport to airport as well as from State to Territory.

The *Liquor Act 1992* (Qld)²⁸⁰ (the *Liquor Act*), applies to all Queensland airports however special requirements are applicable to the Gold Coast, Townsville, Archerfield and the Mount Isa Airports.²⁸¹ These airports have liquor authorisation for the sale and supply of liquor from their premises, including an authority that is part of the terms of a lease, sublease, licence or sublicense. This authorisation does not include a liquor licence granted under the *Liquor Act 1992* (Qld).²⁸²

²⁷⁸ Refer to pricing on page 64 of this guide.

²⁷⁹ *Liquor Act 1992* (Qld) s 3.

²⁸⁰ *Liquor Act 2007* (NSW) & *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) pt 1A; *Liquor Act 1975* (ACT) & *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) pt 2 div 8; *Liquor Control Reform Act 1988* (Vic) & *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) pt 2 div 3; *Liquor Licensing Act 1990* (Tas) & *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) pt 2 div 7; *Liquor Licensing Act 1997* (SA) & *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) pt 2 div 5; *Liquor Control Act 1988* (WA) & *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) pt 2 div 6; *Liquor Act 1978* (NT) & *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) pt 2 div 9.

²⁸¹ In Queensland, only the Archerfield, Gold Coast, Mount Isa and Townsville Airports are granted special requirements under the *Commonwealth Airports (Control of On-Airports Activities) Regulations 1997* (Cth). These special requirements are outlined in 'Existing Queensland Leases' in Appendix 9. All other Queensland airports are granted liquor licences under the state *Liquor Act 1992* (Qld) and therefore are only subject to the requirements under that Act.

²⁸² *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 46.

There are currently eight categories of liquor licences which may be granted.²⁸³ Generally 'on-premises (other activity)' licences and 'commercial special facility' licences are preferred at airports.²⁸⁴

An 'on-premises (other activity)' licence authorises the licensee to sell liquor on the licensed premises, for consumption on or off the premises, during the times stated in the licence.²⁸⁵

The following standard trading conditions are applicable to an 'on-premises (other activity)' licence:

- liquor may be served at any time from Monday to Sunday, between the hours of 5am and midnight;²⁸⁶
- Public Holidays such as Good Friday, Christmas Day and Anzac Day, alcohol must be served with a meal;²⁸⁷
- liquor is to be sold for consumption in defined areas on the premises; and
- the licensee may (if agreed by the Chief Executive that is, for Queensland, the relevant officer of the Office of Liquor Serving and Racing Queensland)²⁸⁸, sell liquor to a person genuinely attending a function relating to the activity stated in the licence.²⁸⁹

If the licensee intends to serve alcohol outside of these times, a separate application must be lodged.²⁹⁰ While there is no guarantee such an application will be granted, given airports facilitate the development of tourism, liquor and hospitality industries, airports are able to seek approval to trade for 24 hours under a 'commercial special facility' licence. This licence also allows airports to seek approval for entertainment. A 'commercial special facility' licence is the only type of licence that permits 24 hour trading and is only applicable to, amongst others, airport premises.

A licensee holding a 'special facility' licence will be permitted to sublet all or part of a licensed area;²⁹¹ this is not permitted under an 'on-premises (other activity)' licence.²⁹²



It is an offence for a licensee to let or sublet all of the licensed premises without the Chief Executive's approval – 40 penalty units – \$4000.²⁹³

All trading conditions will be determined having regard to the nature of the business being conducted and will be endorsed on the licence document.

²⁸³ Liquor licences differ from state to territory. For corresponding licences refer to *Liquor Act 2007* (NSW) & *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) pt 1A; *Liquor Act 1975* (ACT) & *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) pt 2 div 8; *Liquor Control Reform Act 1988* (Vic) & *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) pt 2 div 3; *Liquor Licensing Act 1990* (Tas) & *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) pt 2 div 7; *Liquor Licensing Act 1997* (SA) & *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) pt 2 div 5; *Liquor Control Act 1988* (WA) & *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) pt 2 div 6; *Liquor Act 1978* (NT) & *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) pt 2 div 9.

²⁸⁴ *Liquor Act 1992* (Qld) s 63.

²⁸⁵ *Liquor Act 1992* (Qld) s 64.

²⁸⁶ *Liquor Act 1992* (Qld) s 9.

²⁸⁷ *Liquor Act 1992* (Qld) s 9(3).

²⁸⁸ The Chief Executive exists under the Office of Liquor, Gaming and Racing Queensland.

²⁸⁹ *Liquor Act 1992* (Qld) s 81.

²⁹⁰ *Liquor Act 1992* (Qld) s 86.

²⁹¹ *Liquor Act 1992* (Qld) s 153.

²⁹² *Liquor Act 1992* (Qld) s 149.

²⁹³ *Liquor Act 1992* (Qld) s 153.

On the commencement of its lease, the Gold Coast and Townsville airports are taken to be granted a 'special facility liquor' licence. Such a licence authorises these airports to sell liquor over a 24-hour period²⁹⁴ and extends to the whole terminal area.²⁹⁵ Licences applicable for the Gold Coast and Townsville terminals are not transferable.²⁹⁶

Existing Queensland leases

Where a liquor licence is held prior to the commencement of a new airport lease, the holder of such a liquor authorisation will be taken to have been granted a liquor licence under the *Liquor Act 1992* (Qld).²⁹⁷

Within six months after the commencement of an existing lease at the Archerfield, Mount Isa, Gold Coast and Townsville airports (Refer to **Appendix 9** for Queensland airport leases with liquor licences), a person holding an existing licence must give the Chief Executive a copy of a plan of the premises showing their boundaries.²⁹⁸ The Chief Executive may suspend the Liquor Licence until this plan is provided.²⁹⁹

Licences to sell liquor from an existing authority at the Archerfield, Mount Isa, Gold Coast or Townsville airports cease:

- if the relevant liquor authorisation is conferred in a lease, licence, sublease or sublicense;³⁰⁰ or
- when it expires under the *Liquor Act 1992* (Qld).³⁰¹

Commercial trading

Commercial trading regulations are applicable to commercial traders (such as lessees at airports) as opposed to airports per se. However, airport operators may wish to ensure all commercial traders have a licence or permission authorising them to carry on consumer trading.³⁰² The licence to engage in commercial trading will be subject to the relevant legislative requirements within that industry. Such trading requirements are subject to the codes and statutory requirements relevant to its statutory trading authority.³⁰³ For Queensland, such as the Office of Liquor Gaming and Racing, the Department of Employment and Industrial Relations and the Office of Fair Trading.^{303a}

The licence or permission to trade is not transferable and ceases when the lessee no longer has trading authorisation.³⁰⁴

²⁹⁴ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 48 (1).

²⁹⁵ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 48 (2). Terminal area is defined in reg 3 of the *Airports (Control of On-Airport activities) Regulations 1997* (Cth). 'Terminal area' of an airport means the building or buildings on the airport used for processing the arrival and departure of the passengers of an aircraft engaged in a regular public transport operation (within the meaning given by the *Air Navigation Act 1920* (Cth)).

²⁹⁶ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) regs 47, 49, 51.

²⁹⁷ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 53.

²⁹⁸ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 55(1).

²⁹⁹ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 55(2).

³⁰⁰ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 52(2)(a).

³⁰¹ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 52(2)(c).

³⁰² *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 98(1).

³⁰³ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 98(3).

^{303a} Other interstate statutory trading authorities include the NSW Office of Fair Trading, ACT Office of Fair Trading, TAS Office of Fair Trading – Consumer Affairs & Fair Trading, SA Office of Consumer and Business Affairs, WA Department of Commerce and Consumer Affairs Council NT.

³⁰⁴ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 98 (4)(b)(i).

Brisbane, Archerfield, Gold Coast and Townsville Airports are under no restrictions with respect to trading hours.³⁰⁵

The major commercial trading type restrictions placed on airports are those pertaining to the characterisation of airport business activities outlined in the case of *Westfield Management Ltd v Brisbane Airport Corporations Ltd*.³⁰⁶ The BACL argued the use of its airport site for the purpose of aviation activities is but one of a range of possible additional permissible uses not inconsistent with the operation of the airport. Justice Cooper accepted that operations in airports may include services outside that of airport services. This case widens the scope of airport services and demonstrates the scope to develop airport land for commercial purposes beyond that merely pertaining to aviation services.

Vehicle movement

An Airside Vehicle Control Handbook is utilised by airports to ensure the safe and orderly movement of staff, passengers, aircraft and vehicular traffic on the airport site.³⁰⁷

For larger airports such as the Sydney (Kingsford-Smith), Melbourne (Tullamarine), Brisbane, Perth, Hobart, Gold Coast, Townsville and Launceston airports, an Airside Vehicle Control Handbook is mandatory and is required to be contained as an annexure in their Aerodrome Manual.³⁰⁸

Whilst State laws are generally applicable to the control of vehicle movement on airport grounds, there are airport specific vehicle movement requirements which concern Landside Vehicle Parking, Airside Vehicle Parking, and Airside Vehicle Operations.

Landside vehicle parking

To ensure the safe operation of landside vehicle parking, airports are required to draft a 'Parking Signage Plan' and 'Standard Operating Procedure'.³⁰⁹

The 'Parking Signage Plan' must describe the areas of the airport where infringement notice offences apply.³¹⁰ Infringement notices are issued where a vehicle breaks an Australian Road Rule or where a taxi driver leaves a taxi unattended in certain areas.³¹¹ The Australian Road Rules applicable to airports include those relating to stopping, parking and obstructing access to and from a footpath or driveway.³¹²

³⁰⁵ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) regs 102; regs 99, 100 for airports in New South Wales; reg 101 for Melbourne Airport; reg 103 for airports in South Australia; reg 104 for Perth Airport. Consumer trading is regulated by the *Shop Trading Act 2008* (NSW) in the Sydney (Kingsford-Smith) Airport and Sydney West Airport. Shops in the Melbourne Airport are exempt from the trading requirements as imposed by the *Shop Trading Reform Act 1996* (Vic). The *Shop Trading Hours Act 1977* (SA) does not apply to consumer trading on premises in the terminal area of Adelaide Airport and Parafield Airport. The *Retail Trading Hours Act 1987* (WA) does not apply to consumer trading at the Perth Airport.

³⁰⁶ Discussed in detail on page 41 of this guide in the *Westfield Management Ltd v Brisbane Airport Corporations Ltd* case study.

³⁰⁷ Refer to Airside Vehicle Operation on page 60 for further information on what to include in an Airside Vehicle Control Handbook.

³⁰⁸ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 106A.

³⁰⁹ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 106BA(1).

³¹⁰ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 106BA(2).

³¹¹ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 106BA(2).

³¹² *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 106E.

Penalties relating to breaches of the Australian Road Rules are outlined in **Appendix 10**.

The Standard Operating Procedure (SOP) must set out procedures and duties for all ‘authorised persons’³¹³ of the airport, along with how such persons may issue infringement notices.³¹⁴ Additionally the following must also be included in the operating procedures:

- all processes to be carried out before an infringement notice is issued;³¹⁵
- the rights and obligations of those people in relation to parking or using a vehicle on the landside of the airport;³¹⁶ and
- the procedures for dealing with complaints about parking or using a vehicle on the landside of the airport.³¹⁷

Airports may also impose fines on:

- taxi drivers who leave their vehicle unattended may be fined 3 penalty units at the Brisbane and Gold Coast Airports,³¹⁸ and 2 penalty units in Tasmania and at the Townsville Airport;³¹⁹
- drivers of taxis, hire cars and public buses who do not show authority cards when required may be fined – 3 penalty units – \$330;³²⁰ and
- drivers of vehicles who do not comply with the directions required of them by an airport authorised person may be fined – 3 penalty units – \$330.³²¹

In order to ensure vehicles on airport grounds are not affecting airport safety and security, airports may instruct an authorised person to move the vehicle if that vehicle is either causing an interference, has been abandoned or is contravening parking control measures. All reasonable attempts to find the driver must be made before such action is taken.³²² The airport can then sell or dispose of a vehicle where the vehicle’s driver or owner cannot be found or has not recovered the vehicle within three months after the day on which the vehicle was moved.³²³

Airside vehicle parking

Airports may find that it is in the interests of airport safety and security to have ‘no parking’ and ‘no standing’ areas which must be prominently and clearly marked.³²⁴ A person who parks in a no parking area or stops in a no standing area commits an offence – 3 penalty units – \$330.³²⁵ There is an exception to this penalty where the driver of the vehicle drives an ‘emergency vehicle’³²⁶ or was directed to park the vehicle in that area.³²⁷

³¹³ An authorised person is an officer of the Customs Department, a protective service officer or special protective service officer of the Australian Federal Police or an employee of the airport-operator company for the airport.

³¹⁴ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) regs 106BA(3), 106BA(3)(d)(i).

³¹⁵ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 106BA(3)(c)(i).

³¹⁶ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 106BA(3)(c)(ii).

³¹⁷ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 106BA(3)(c)(iii).

³¹⁸ In addition to the New South Wales, Victorian, and Western Australian airports outlined.

³¹⁹ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 108.

³²⁰ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 109.

³²¹ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 110.

³²² *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 111.

³²³ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 113.

³²⁴ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) regs 116, 117.

³²⁵ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) regs 118, 119.

³²⁶ ‘Emergency vehicle’ is defined as a police, ambulance or a fire service vehicle; reg 105 *Airports (Control of On-Airport Activities) Regulations 1997* (Cth).

³²⁷ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) regs 118, 119.

In the event a driver of a vehicle is asked (by an officer of The Department, protective service officer or special protective service officer of the Australia Federal Police (AFP) or an employee of the airport) to move from a no parking/standing area and they do not, the airport may fine the driver – 3 penalty units – \$330.³²⁸

Airside vehicle operation

To ensure the safe operation of airside vehicles a person must not take a vehicle airside unless that person is:

- authorised to drive airside; or
- is escorted by an employee of the airport.³²⁹

In the event a person driving a vehicle disobeys orders given to him or her in this regard, the airport may fine that person – 5 penalty units – \$550.³³⁰

Authorities to Drive Airside (ADA) are authorities issued by an airport to a driver for the purpose of driving in certain airside areas of an airport.³³¹ An Authority for the Use Airside (AUA) is an authority issued by the airport authorising a vehicle to be used on the airside. ADA's are mandatory for drivers and AUA's are mandatory for vehicles traversing airside areas.



An airport is required to set out in their Vehicle Control Handbook the criteria to be applied when determining whether or not to grant an ADA to a driver.³³² The Vehicle Control Handbook for the airport must also set out the application process to obtain an AUA³³³ and the withdrawal process.³³⁴

An airport must issue a card or other suitable evidence to a driver granted an ADA.³³⁵ An Aviation Security Identification Card ('ASIC') is issued to an individual on the authority of The Department which allows access to and identification of persons on duty in security restricted areas of airports (refer page 101 of this Guide).

All authorised drivers should act in accordance with the rules laid out by the airport in their Vehicle Control Handbook. It is recommended the Vehicle Control Handbook include a provision outlining that all ADA holders must show proof of their ADA/ASIC to an employee of the airport on demand³³⁶ as well as rules regarding the use of radio communications equipment or other signalling equipment.³³⁷

³²⁸ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 120.

³²⁹ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 123.

³³⁰ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 123(2).

³³¹ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 123. These are to be included in the Vehicle Control Handbook.

³³² *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 125. In accordance with reg 135 airports' decisions with respect to this regulation will be subject to review by the AAT. This should be borne in mind when issuing reasons for decisions.

³³³ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 127. The handbook must define what constitutes the airside of the regulated airport: reg 107. In accordance with reg 135 airports decisions with respect to reg 127 will be subject to review by the AAT. This should be borne in mind when issuing reasons for decisions.

³³⁴ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 133.

³³⁵ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 125 (4).

³³⁶ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 125 (5).

³³⁷ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) regs 125(6), 127(4)(a).

An authorised person may ask the driver of a vehicle to show them the driver's ADA or the AUA for the vehicle or the driver's ASIC.³³⁸ Failure to comply constitutes an offence – 1 penalty unit – \$110.³³⁹

Authorised persons are empowered to direct the driver of vehicles to be removed from the airside where that vehicle is being operated in a manner likely to be dangerous to a person or property or in a manner likely to interfere with the operation of the airport.³⁴⁰ If the direction is not complied with, or the driver of the vehicle cannot be found, the authorised person may move the vehicle to a place within the airport approved for the purpose by the airport.³⁴¹

Airports are able to withdraw a person's ADA or a vehicle's AUA if the person operates the vehicle on the airside other than in accordance with the driver's ADA, the vehicle's AUA, the relevant Vehicle Control Handbook, or in a manner likely to cause damage or injury.³⁴²

The rules by which an airport must withdraw an ADA or AUA should be set out in the airports Vehicle Control Handbook.³⁴³ Usually when an airport considers an ADA or AUA should be withdrawn, it must ask the holder of the ADA to show cause why it should not be withdrawn. When an ADA is withdrawn, the holder of the ADA should be informed in writing as soon as practicable.³⁴⁴ When an AUA is withdrawn, the owner of the vehicle should be informed in writing as soon as practicable.³⁴⁵

When setting out the criteria for issuing an AUA or ADA, this can be subject to conditions an airport thinks necessary.



Facts:

The case of *Re Steven Hammond and Archerfield Airport Corporation*³⁴⁶ clarifies the conditions airports can impose with an ADA or AUA.

This case concerned an aircraft maintenance engineer (the applicant) who provided services at the Archerfield Airport (the airport). The applicant did not have an onsite premise and serviced aircrafts from his van.

In order to conduct his business, the applicant required an 'Authority to Drive Airside' and an 'Airside Vehicle Permit'³⁴⁷ (collectively 'the permits'). The applicant was initially issued the permits when the airport was owned by the Commonwealth and under this regime, there were no time limits on the permits.

³³⁸ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 129(2).

³³⁹ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 129(3).

³⁴⁰ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 131(1).

³⁴¹ *Airports (Control of On-Airport Activities) Regulations 1997* reg 131(4).

³⁴² *Airports (Control of On-Airport Activities) Regulations 1997* reg 133(1).

³⁴³ *Airports (Control of On-Airport Activities) Regulations 1997* reg 138. In accordance with reg 135 airports decisions with respect to this regulation will be subject to review by the AAT. This should be borne in mind when issuing reasons for decisions.

³⁴⁴ *Airports (Control of On-Airport Activities) Regulations 1997* reg 133(4).

³⁴⁵ *Airports (Control of On-Airport Activities) Regulations 1997* reg 134(4). In accordance with reg 135 airports decisions with respect to this regulation will be subject to review by the AAT. This should be borne in mind when issuing reasons for decisions.

³⁴⁶ [2008] AATA 395.

³⁴⁷ Now known as 'Authority to Use Airside' permit.

In 1998, a 24 month time limit was placed on the permits and sometime thereafter, the airport was privatised.³⁴⁸ Over the course of the following years, the applicant continued to act as if he had authority to use his vehicle airside, taking no steps to renew the permits. Similarly, the airport did nothing to either encourage or discourage this practice.

In May 2006, the airport required the applicant to apply for new permits but upon his application, refused to provide the applicant with the permits unless he applied for a commercial licence at an annual fee of \$2500 plus GST. The applicant appealed the airport's decision in the AAT on the basis the airport was not entitled to impose such a requirement.

Decision:

The AAT found the airport was entitled to impose such a condition, with the source of the airport's entitlement being the *Airports (Control of On-Airport Activities) Regulations 1997* (Cth), which stated that permits may be issued 'subject to any other conditions that the airport-operator company thinks necessary'.³⁴⁹

In concluding that the condition imposed was reasonable, the AAT explained that the airport, having paid a considerable amount for their interest in the land, was entitled to 'impose a fee upon those who would use (the airport's) land for the purposes of earning income where those persons are otherwise not compensating (the airport) for the use being made of its land'.³⁵⁰

Gambling

Gambling activities, that is, a game of chance, mixed game of chance and skill, or a lottery (whether involving the use of a machine or otherwise)³⁵¹, are prohibited in airports.



Any person engaged in a gambling activity in an airport is committing an offence – 10 penalty units – \$1100.³⁵²

The exception to this is where permission to gamble is granted by The Department. It is important to note the conditions upon which gambling may be authorised, so as to avoid misinforming potential lessees.

³⁴⁸ Archerfield Airport Corporation became the lessee from the Commonwealth of the Archerfield Airport on 18 June 1998.

³⁴⁹ As per Deputy President P E Hack SC at paras 36, 37 and 38. The *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) sets the criteria for deciding whether to grant the permits: regs 125(7), 127(5).

³⁵⁰ As per Deputy President P E Hack SC at para 41.

³⁵¹ *Airports Act 1996* (Cth) s 173.

³⁵² *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 137.

The Department may give permission to a person to engage in a gambling activity at an airport when that person:

- has a continued gambling authority, that is, an ‘old gambling authority’³⁵³ that continues to have effect according to its terms;
- is permitted to engage in a gambling activity;
- is a purchaser for value and in good faith, of the whole of the business to which such an authority or permission applies;
- is the executor of the estate, or the trustee in bankruptcy, of an individual who has been previously mentioned above; or
- is the liquidator of a corporation of those individuals listed above.³⁵⁴

The entity/persons interested in running gambling activities at an airport (as listed) must make a written application to The Department. In that application, the facts or circumstances that entitle the applicant to engage in gambling activities must be outlined.³⁵⁵

Where a gambling permission is granted, there are a variety of terms and conditions that will be imposed, such as:

- a gambling permission must not be granted for longer than five years;
- the person being granted the gambling permission must specify the airport at which the gambling authority or permission will be carried on;
- the precise nature of the gambling activity to be carried out must be specified;
- the Secretary of The Department may choose to impose conditions that limit the time or days on which the permitted gambling is to be carried on and the number or type of gambling allowed; and
- the Secretary of The Department requires the holder of an authority to gamble to prohibit particular kinds of people (such as children) from taking part in gambling activities.³⁵⁶

In the event The Department grants permission to a person to engage in gambling activities, the person will be notified in writing:

- when the permission commences;
- when it ceases;
- the scope of the gambling activity allowed;
- the airport the gambling activity may be carried on; and
- conditions that may apply to the carrying on of that gambling activity.³⁵⁷

Before cancelling a gambling authority or permission, The Department must give to the holder of a continued gambling authority or gambling permission a show cause notice if there are reasonable grounds for believing that there are facts or circumstances that would justify the cancellation of a holder’s authority or permission. The show cause notice must outline the reasons justifying the cancellation and invite the holder to detail in writing why the authority or permission should not be cancelled.³⁵⁸

³⁵³ An ‘old gambling authority’ means an authority (however described, and however conferred, and including an authority that is part of the terms of a lease or licence) given, before the commencement of the airport lease for a regulated airport, by the Federal Airport Corporation of the Commonwealth to a person to engage in a gambling activity at the airport: *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 136.

³⁵⁴ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 139A.

³⁵⁵ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 139B(1).

³⁵⁶ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 139D.

³⁵⁷ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 139E.

³⁵⁸ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 139H.

Grounds for cancelling a gambling authority or permission include:

- unauthorised gambling activities;
- where conditions of the authority or permission have been breached; and
- where there is relevant State law that would justify cancelling the authority or permission.³⁵⁹

The holder of an authority to gamble may also request the permission or authority is cancelled.³⁶⁰

Review of decisions

The Department decisions with respect to gaming will be subject to review by the AAT which should be borne in mind when reasons for decisions are given.³⁶¹

Smoking

Non-smoking areas in airports are those specifically identified in State smoking laws as being no-smoking areas. Airports may also choose to mark areas as no-smoking at their discretion.³⁶² Airports need to ensure areas marked out as no-smoking areas are clearly signed.³⁶³



It is mandatory that smoking is prohibited within 15 metres of an aircraft or where smoking is likely to create a fire hazard endangering an aircraft or the airport.³⁶⁴ A person caught smoking in a no-smoking area may be fined – 5 penalty units – \$550.³⁶⁵

Price and quality regulation

The regulation of airport service pricing is undertaken by:

1. imposing legislative requirements on airports under the *Airports Act 1996* (Cth) which establishes foundations for the appropriate financial transparency and reporting obligations required from airports; and
2. financial monitoring facilitated by the ACCC.

Following the privatisation of airports, the Commonwealth Government implemented a pricing oversight regime for Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford-Smith) airports. The regulatory regime was subject to a Productivity Commission inquiry which uncovered that while the current pricing system allowed effective commercial agreements to be struck between airlines and airports, the regime needed to further ensure accountability and transparency in the provision and pricing of airport services.

As a result, the ACCC has developed certain guidelines to ensure the subject airports are financially accountable. Many of the ACCC's guidelines stem from the reporting requirements within the auspices of the *Airports Act 1996* (Cth).

³⁵⁹ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 139I.

³⁶⁰ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 139J.

³⁶¹ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 139K.

³⁶² *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) reg 141(1).

³⁶³ *Airports (Control of On-Airport Activities) Regulations* (Cth) reg 141(2).

³⁶⁴ *Civil Aviation Regulation* (Cth) reg 289.

³⁶⁵ *Airports (Control of On-Airport Activities) Regulations* (Cth) reg 142.

In short, the ACCC is required to:

- ensure the economically efficient operation of airports;
- minimise compliance costs on airport operators and the Government; and
- facilitate commercially negotiated outcomes in airport operations, benchmarking comparisons between airports and competition in the provision of services within airports.³⁶⁶

To ensure this, while the ACCC is ‘empowered’ to monitor the prices, costs and financial returns relating to the supply of airport and related services at **all** airports, it is only the Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford-Smith) airports that are subject to the ACCC’s monitoring at present.³⁶⁷

In order to ensure accountability and transparency in the provision and pricing of airport services, the ACCC is drafting a single airport reporting guideline which will replace the various ACCC reporting guidelines to date. The new guideline will cover the following, and is outlined in detail below:

- price monitoring and financial reporting;
- quality of service monitoring; and
- monitoring of car parking prices, costs and profits.

Price monitoring and financial reporting

Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford-Smith) airports are required to prepare audited accounts (with supporting records)³⁶⁸ and provide written reports for the ACCC’s review.³⁶⁹ In addition, they are required to have accounts audited by an approved auditor.³⁷⁰ Approved auditors are to be registered in accordance with the *Corporations Act 2001* (Cth).³⁷¹

When providing any accounting information to the ACCC, full and detailed documentation of the accounting principles and policies used to prepare that information is also discoverable. The Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford-Smith) airports are also expected to include a statement affirming the disclosed accounting principles and policies have been used to prepare the accounting information.³⁷² The accounting principles and policies adopted by an airport must comply with the Australian Accounting Standards Board (AASB) (where applicable).

³⁶⁶ Review of Price Regulations of Airports Services, Productivity Commission Inquiry Report No 40, 14 December 2006, Australian Government Productivity Commission.

³⁶⁷ *Airports Regulations 1997* (Cth) reg 7.01. Refer to Appendix 7 and 8 for a list of airport services and facilities.

³⁶⁸ For further details on what is to be included in the audited accounts refer to Accounts and Financial Statements on page 66 of this guide.

³⁶⁹ *Airports Act 1996* (Cth) s 139.

³⁷⁰ *Airports Act 1996* (Cth) s 142.

³⁷¹ *Airports Act 1996* (Cth) s 144. Registration is set out in pt 9.2 of the *Corporations Act 2001* (Cth). Under those requirements an applicant can only become a registered auditor when he/she has satisfied all the components of an auditing competency standard approved by the Australian Securities and Investments Commission or has had practical experience in auditing. ASIC must deem the applicant capable of performing the duties of an auditor by ensuring the applicant is a fit and proper person to be registered as an auditor.

³⁷² Airports Reporting Guideline, ‘Information Requirements under Part 7 of the *Airports Act 1996* (Cth) and s 95ZF of the *Trade Practices Act 1974* (Cth)’, revised March 2004 (2.2). Using information provided under s 95ZF, the ACCC released a report in March 2009 monitoring price, costs and profits for Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford-Smith) airports for 2007–08. The report was addressed ‘Airport Monitoring Report 2007–08 Price, Financial Performance and Quality of Service Monitoring.’

Within 90 days after the end of an accounting period, an airport required to provide the ACCC written reports must provide the ACCC with a copy of their accounts, statements and audit certificate.³⁷³ The records must then be retained for five years after the end of the period to which the records relate.³⁷⁴

Where an airport is required to provide the ACCC written reports, it should provide, by way of a report or notes to the Regulatory Accounting Statements, the following details:

- any change in accounting principles adopted, including any change in the rate or method of charging depreciation in the accounts of the airport;
- any material changes in the method of asset valuation;
- any material item appearing in the accounts of the airport for the first time or not usually included in the accounts of the airport;
- any absence from the accounts of the airport of any material item usually included in the accounts of the airport; and
- the adequacy of provisions in the nature of reserves made in the accounts of the airport.³⁷⁵

Accounts and financial statement

The Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford-Smith) airports are required to provide the ACCC with written reports and prepare consolidated accounts and financial statements in accordance with the Auditing and Assurance Standards Board.³⁷⁶ In addition they are required to prepare consolidated financial statements for the operations in relation to the airport; this includes all financial statements relating to 'non-aeronautical services and facilities' (refer to **Appendix 7**) and 'aeronautical services and facilities' (refer to **Appendix 8**).

Financial statements for operations at airports required to provide the ACCC with written reports, must include profit and loss accounts as well as balance sheets with current asset items except cash, non-current asset items except intangibles and current or non-current liabilities.³⁷⁷ Current legislation³⁷⁸ only requires such airports to keep financial reports in relation to aeronautical-related services and facilities. However, in an attempt to ensure full and proper records are provided to the ACCC, the ACCC will request both aeronautical services and facilities and non-aeronautical services and facilities records are available when monitoring airport records.

'Aeronautical services and facilities' means those services and facilities at an airport that are necessary for the operation and maintenance of civil aviation at the airport. It includes all those passenger-related services and facilities as outlined in **Appendix 7**, and aircraft-related services and facilities as outlined in **Appendix 8**.³⁷⁹

'Non-aeronautical services and facilities' means those services and facilities provided at an airport that are not aeronautical services and facilities.³⁸⁰ For example, these include services and facilities relating to the provision of a high-quality of service to certain passengers or that are not necessary for the efficient operation of civil aviation.³⁸¹

³⁷³ *Airports Regulations 1997* (Cth) s 7.06.

³⁷⁴ *Airports Regulations 1997* (Cth) s 7.08.

³⁷⁵ Airports Reporting Guideline, 'Information Requirements under Part 7 of the Airports Act 1996 (Cth) and s 95ZF of the Trade Practices Act 1974 (Cth)', revised March 2004 (2.2)

³⁷⁶ An Auditing and Assurance Standards Board accounting standard is an accounting standard made by the Australian Accounting Standards Board under s 334 of the *Corporations Act 2001* (Cth).

³⁷⁷ *Airports Regulations 1997* (Cth) reg 7.03(2B).

³⁷⁸ *Airports Regulations 1997* (Cth) reg 7.03.

³⁷⁹ *Airports Regulations 1997* (Cth) reg 7.02A.

³⁸⁰ *Airports Regulations 1997* (Cth) reg 7.02.

³⁸¹ *Airports Regulations 1997* (Cth) reg 7.02A(3).

In addition, such airports may also be required to give the ACCC written reports about the airport at the end of each financial year³⁸² with details including the total average staff equivalent of the persons employed at the airport concerned with the provision of airport services and facilities and non-airport services and facilities.³⁸³



In the event an airport is subject to a requirement to give the ACCC a written report and does not do so, it will be deemed to have committed an offence – 50 penalty units – \$5500.³⁸⁴

The auditor's certificate

An approved auditor, on the completion of auditing the accounts of an applicable airport required to provide the ACCC written reports, is required to attach their auditor's certificate to their report.

The auditor's certificate must set out:

- whether the airport has kept financial records sufficient to enable a financial statement to be prepared and audited;
- whether all information, explanation and assistance has been provided so the audit could be completed;
- whether the accounts and financial statements comply with the *Airports Act and Regulations 1997* (Cth) and relevant accounting standards and whether they are a true and fair reflection of the airport's operations;
- why the accounts and financial statements do not comply with the Act or Regulations if they do not do so; and
- details that should be reported to the ACCC.³⁸⁵

Records

The Brisbane, Melbourne (Tullamarine), Perth, Sydney (Kingsford-Smith), Adelaide, Alice Springs, Canberra, Gold Coast, Darwin, Hobart, Launceston and Townsville airports must all keep records as outlined in **Appendix 11**.



It is an offence for an airport to keep incorrect records. An airport employee that does so will face six months imprisonment.³⁸⁶ An airport that prepares an account or statement incorrectly commits an offence – 150 penalty units – \$165 000.³⁸⁷ Any person that gives a certificate in relation to airport accounts and statements which is false or misleading or omits any matter or thing without which the certificate is misleading, will face six months imprisonment.³⁸⁸

Landside charges for services

Airports are said to have been granted considerable flexibility in pricing. The ACCC believes this has caused a significant increase in aeronautical revenues per passenger.

There are a variety of services for which airports charge a fee including:

- aircraft refuelling facilities;
- check in counter facilities; and
- ground handling and airside freight handling.

³⁸² *Airport Regulations 1997* (Cth) reg 7.07.

³⁸³ *Airport Regulations 1997* (Cth) reg 7.07.

³⁸⁴ *Airports Act 1996* (Cth) s 145.

³⁸⁵ *Airports Regulations 1997* (Cth) reg 7.05.

³⁸⁶ *Airports Act 1996* (Cth) s 228(2).

³⁸⁷ *Airports Act 1996* (Cth) s 230.

³⁸⁸ *Airports Act 1996* (Cth) s 231.

Currently there are no specific legislative requirements monitoring the pricing of these airport services. The Commonwealth Government has recognised this and in 2006, a Productivity Commission Inquiry was endorsed to review price regulation of these airport services at Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford-Smith) airports. On 14 December 2006, the findings of this inquiry were handed down. Whilst these recommendations are not yet in force, the ACCC has signalled its intention to use the recommendations from this Inquiry as a basis for future reporting guidelines. The following recommendations were made:

Aircraft refuelling facilities

Fuel levies are effectively an economic rent on the land the airport makes available for aircraft refuelling services and facilities. It was said in the 2006 inquiry that,

*‘if price monitoring is to be a credible instrument for identifying instances of inappropriate airport behaviour in setting charges, it should encompass all services for which airports are likely to have significant power’.*³⁸⁹

The inquiry recommended refuelling services be included in revenues and costing accounts to be delivered to the ACCC.

Check-in counter facilities

Check-in counter facilities include common-use counters and terminal space. Currently, the Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford-Smith) airports are the only airports subject to the ACCC’s price monitoring of this service.³⁹⁰

Records from check-in counter facilities are required to be kept in accordance with the quality of service monitoring requirements (refer to Quality of Service Monitoring, see below).

Ground handling and airside freight handling

Ground handling services include cleaning and catering, provision of power and fuel, and loading and unloading of baggage and freight. While airports do not generally derive revenue from such services, privatised airports have indicated an intention to charge an access fee for ground handling services in future. Although revenues and costs associated with ground handling services are not required to be included in an airports financial reports (if any), it may be the subject of future ACCC monitoring.³⁹¹

Quality of service monitoring

The ACCC has the power to monitor and evaluate the quality of airport services and facilities which aims to measure whether airports are providing services in an efficient way.³⁹² Currently only the Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford-Smith) airports are monitored by the ACCC, however these airports, as well as the Alice Springs, Canberra, Darwin, Hobart, Launceston and Townsville airports are required by legislation to keep quality of service records.

Appendix 11 sets out the specific matters about which the aforementioned airports must keep records; such records being intended to result in improved quality of service.³⁹³

³⁸⁹ Australian Government Productivity Commission, *Review of Price Regulations of Airports Services*, Productivity Commission Inquiry Report No 40, 14 December 2006 at [111].


³⁹⁰ *Airports Regulations 1997* (Cth) reg 8.01(1)(a)

³⁹¹ Section 155 of the *Airports Act 1996* (Cth) empowers the ACCC to monitor ground handling services and airside freight handling.

³⁹² Australian Competition & Consumer Commission, ‘Draft Guidelines for quality of service monitoring at airports’, 2008 at 8.

³⁹³ *Airports Regulations 1997* (Cth) reg 8.03.

When providing records to the ACCC, the Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford-Smith) airports must have their records verified by statutory declaration.³⁹⁴

 Quality of service records must be kept for a period of five years after the end of the financial year to which the record relates. Failure to do so is an offence – 50 penalty units – \$5500.³⁹⁵ The Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford-Smith) airports are required to give a copy of the records for a financial year to the ACCC within one month after the end of the financial year.³⁹⁶

To further enhance transparency, it has been argued that the current legislative requirements are not sufficient.^{396a} The Government has recognised this and is developing a consultation paper on the proposed changes to the current *Airports Regulations 1997* (Cth). Recently the ACCC released Guidelines for airport quality of service monitoring which confirm the ACCC will consider quality of service from the perspective of passengers and major airport users, particularly airlines.^{396b} The ACCC's focus is to be on aspects of quality that relate to the prices charged for services for which the airport may have significant market power. These services are predominately airport services relating to movement of passengers and freight. Airports may be provided with a more concrete set of guidelines when a full review of Australia's airport economic regulatory regime is undertaken in 2012.

Airport car parking monitoring

The ACCC's concern is that airports could use their supposed monopoly position to charge excessive prices for parking. The ACCC is responsible for monitoring car parking prices, costs and profits at the Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford-Smith) airports. The ACCC is currently developing information requirements for airport car parking monitoring.³⁹⁷

In addition, fees for public and staff car parking, charges for taxi holding and feeder services are classified as aeronautical-related and are subject to price monitoring. However, as they are classified as non-aeronautical under the relevant provisions of the *Airports Act 1996* (Cth), they are not required to be included in the financial report. Whilst costs and profits from car parking are not required to be included in annual or auditors reports, the ACCC may still request car parking prices, costs and profits for their review.

OPERATIONS, SERVICES, AND PRICING CHAPTER SUMMARY TABLE

TABLE 1: Penalty provisions

	Legislation	Section	Description	Penalty for non-compliance
Liquor	<i>Liquor Act 1992</i> (Qld)	s 153	A licensee must not let or sublet all of the licensed premises or enter into a franchise or management agreement for all of the licensed premises without the Chief Executive's approval	40 penalty units (\$4000)

³⁹⁴ *Airports Regulations 1997* (Cth) reg 8.03.

³⁹⁵ *Airports Regulations 1997* (Cth) reg 8.03(1).

³⁹⁶ *Airports Regulations 1997* (Cth) reg 8.02(2).

^{396a} Australian Government Productivity Commission, *Review of Price Regulations of Airports Services*, Productivity Commission Inquiry Report No 40, 14 December 2006 at [111].

^{396b} Australian Competition & Consumer Commission, *Airport quality of service monitoring guideline* (2008) <<http://www.accc.gov.au/content/index.phtml/itemId/833051>> at 1 March 2009.

³⁹⁷ Direction 31 to *Trade Practices Act 1974* (Cth) pt VIIA.

TABLE 1: Penalty provisions (Cont'd)

	Legislation	Section	Description	Penalty for non-compliance
Vehicle Movement	<i>Airports (Control of On-Airport Activities) Regulations 1997 (Cth)</i>	reg 108	A taxi driver must not leave the taxi unattended (more than 3 metres from the closest point of the taxi) in a taxi zone on the landside of an airport if a traffic control device that indicates that taxi drivers must not leave their taxis applies to that taxi zone	NSW, VIC, Brisbane Airport, WA, Gold Coast Airport: 3 penalty units (\$330) Tas and Townsville Airport 2 penalty units (\$220)
	<i>Airports (Control of On-Airport Activities) Regulations 1997 (Cth)</i>	reg 109	Drivers of taxis, hire car or public buses on the landside of an airport required to show their authority card to an authorised person if asked to do so	3 penalty units (\$330)
	<i>Airports (Control of On-Airport Activities) Regulations 1997 (Cth)</i>	reg 110	Drivers of vehicles at an airport must comply with directions from an authorised person	3 penalty units (\$330)
	<i>Airports (Control of On-Airport Activities) Regulations 1997 (Cth)</i>	reg 118	A person must not park in a designated no-parking area or limited no-parking area	3 penalty units (\$330)
	<i>Airports (Control of On-Airport Activities) Regulations 1997 (Cth)</i>	reg 119	A person must not park in a no-standing area	3 penalty units (\$330)
	<i>Airports (Control of On-Airport Activities) Regulations 1997 (Cth)</i>	reg 120	Drivers of vehicles must move from no-parking and no-standing areas when asked by an officer of The Department, protective service officer or special protective service officer of the Australian Federal Police	3 penalty units (\$330)

	Legislation	Section	Description	Penalty for non-compliance
	<i>Airports (Control of On-Airport Activities) Regulations 1997 (Cth)</i>	reg 123(2)	A person must not take a vehicle onto, or operate a vehicle on, the airside of a regulated airport unless the person holds an ADA and the vehicle is the subject of an AUA or the vehicle is escorted by an authorised person in accordance with the Airside Vehicle Control Handbook	5 penalty units (\$550)
	<i>Airports (Control of On-Airport Activities) Regulations 1997 (Cth)</i>	reg 129(3)	A driver must comply with the request of an authorised person to show an authorised person the driver's ADA, AUA for vehicle or the driver's ASIC	1 penalty unit (\$110)
Gambling	<i>Airports (Control of On-Airport Activities) Regulations 1997 (Cth)</i>	reg 137	A person must not engage in a gambling activity on a regulated airport	10 penalty units (\$1100)
Smoking	<i>Civil Aviation Regulation (Cth)</i>	reg 289	A person must not smoke or procure a naked flame within 15 metres of an aircraft or a non-smoking area. A person must not do any act likely to create a fire hazard endangering an aircraft or an aerodrome	10 penalty units (\$1000)
	<i>Airports (Control of On-Airport Activities) Regulations 1997 (Cth)</i>	reg 142	A person must not smoke in a no-smoking area if the area is an area for which there is a sign of the kind required by subreg 141 (1)	5 penalty units (\$550)
Accounts and Financial Statements	<i>Airports Act 1996 (Cth)</i>	s 145	Certain airports must provide the ACCC with written financial reports, consolidated accounts and financial statements	50 penalty units (\$5500)
Records	<i>Airports Act 1996 (Cth)</i>	s 230	Airports must prepare and maintain accurate accounts and statements	150 penalty units (\$165 000)
Quality of Service Monitoring	<i>Airports Regulations 1997 (Cth)</i>	reg 8.03	Airports must prepare and keep quality of service records for five years after the end of the financial year to which the record relates	50 penalty units (\$5500)

Appendix 7¹:

Passenger-Related Services and Facilities

- Public areas in terminal, public amenities, lifts, escalators and moving walkways
- Necessary departure and holding lounges, and related facilities
- Aerobridges and buses used in airside areas
- Flight information and public-address systems
- Facilities to enable the processing of passengers through customs, immigration and quarantine
- Check-in counters and related facilities (including any associated queuing areas)
- Terminal access roads and facilities in landside areas (including lighting and covered walkways)
- Security systems and services (including closed circuit surveillance systems)
- Baggage make-up, handling and reclaiming facilities
- Space and facilities, whether in landside or airside areas, that are necessary for the efficient handling of arriving and departing aircraft (eg airline crew-rooms and airline operations centres)

Appendix 8²:

Aircraft-Related Services and Facilities

- Runways, taxiways, aprons, airside roads and airside grounds
- Airfield and airside lighting
- Aircraft parking sites
- Ground handling (including equipment storage and refuelling)
- Aircraft refuelling (including a system of fixed storage tanks, pipelines and hydrant distribution equipment known as a Joint Under Hydrant Installation or JUHI)
- Airside freight handling and staging areas essential for aircraft loading and unloading
- Navigation on an airfield (including nose-in guidance systems and other visual navigation aids)
- Airside safety and security services and facilities (including rescue and fire-fighting services and perimeter fencing)
- Environmental hazard control
- Services and facilities to ensure compliance with environmental laws
- Sites and building used for light or emergency aircraft maintenance

¹ *Airports Regulations 1997* (Cth) reg 7.02A.

² *Airports Regulations 1997* (Cth) reg 7.02A.

Appendix 9³:

Queensland airport leases with liquor licences:

Airport	Premises	Liquor Licence
Archerfield	Royal Queensland Aero Club	Club Liquor Licence
Mount Isa	Vinance Pty Ltd	General Liquor Licence
Gold Coast	F.H.A.B Limited	Club Liquor Licence
Townsville	Bencol Pty Ltd/Steven Ayles	Club Liquor Licence

Appendix 10⁴:

The following penalties can be enforced against those who violate an Australian Road Rule:

Rule or Subrule	Description of rule	Penalty unit payable						
		NSW ⁵	VIC ⁶	Brisbane Airport ⁷	WA ⁸	TAS ⁹	Gold Coast Airport ¹⁰	Townsville Airport ¹¹
167	No stopping signs	6 (\$660)	5 (\$550)	3 (\$300)	5 (\$250)	4 (\$480)	3 (\$300)	2 (\$200)
168(1)	No parking signs	3 (\$330)	3 (\$330)	3 (\$300)	3 (\$150)	2 (\$240)	3 (\$300)	1 (\$100)
169	No stopping on a road with a yellow edge line	6 (\$660)	5 (\$550)	3 (\$300)	5 (\$250)	4 (\$480)	3 (\$300)	2 (\$200)
170(1), (2), (3)	Stopping in or near an intersection	3 (\$330)	5 (\$550)	2.5 (\$250)	5 (\$250)	4 (\$480)	3 (\$300)	2 (\$200)
172(1)	Stopping on or near a pedestrian crossing	9 (\$990)	5 (\$550)	5.5 (\$550)	5 (\$250)	4 (\$480)	5 (\$500)	2 (\$200)

³ *Airports (Control of On-Airport Activities) Regulations 1997* (Cth) div 4.2.

⁴ *Airports (Control of On-Airport Activities) Regulations 1997* sch 2.

⁵ *Crimes (Sentencing Procedure) Act 1999* (NSW) s 17. One penalty unit is \$110.

⁶ *Monetary Units Act 2004* (Vic) s 5. One penalty unit is \$110.

⁷ *Penalties and Sentences Act 1992* (Qld) s 5. One penalty unit is \$100.

⁸ *Road Traffic Act 1974* (WA) s 5(1)(b). One penalty unit for road rule infringements is \$50.

⁹ *Penalty Units and Other Penalties Act 1987* (Tas) s 4A(3). One penalty unit is \$120.

¹⁰ *Penalties and Sentences Act 1992* (Qld) s 5. One penalty unit is \$100.

¹¹ *Penalties and Sentences Act 1992* (Qld) s 5. One penalty unit is \$100.

Appendix 10 (Cont'd):

Rule or Subrule	Description of rule	Penalty unit payable						
		NSW ⁵	VIC ⁶	Brisbane Airport ⁷	WA ⁸	TAS ⁹	Gold Coast Airport ¹⁰	Townsville Airport ¹¹
176(1)	Stopping on a clearway	9 (\$990)	5 (\$550)	5.5 (\$550)	5 (\$250)	4 (\$480)	3 (\$300)	2 (\$200)
178	Stopping in an emergency lane	6 (\$660)	5 (\$550)	5.5 (\$550)	5 (\$250)	4 (\$480)	3 (\$300)	2 (\$200)
179(1), (2)	Stopping in a loading zone	3 (\$330)	3 (\$330)	3 (\$300)	3 (\$150)	2 (\$240)	3 (\$300)	2 (\$200)
180(1)	Stopping in a truck zone	3 (\$330)	3 (\$330)	3 (\$300)	3 (\$150)	2 (\$240)	3 (\$300)	2 (\$200)
181(1)	Stopping in a works zone	3 (\$330)	3 (\$330)	3 (\$300)	3 (\$150)	2 (\$240)	2 (\$200)	2 (\$200)
182(1)	Stopping in a taxi zone	3 (\$330)	3 (\$330)	3 (\$300)	3 (\$150)	2 (\$240)	3 (\$300)	2 (\$200)
183(1)	Stopping in a bus zone	3 (\$330)	3 (\$330)	5.5 (\$550)	5 (\$250)	2 (\$240)	3 (\$300)	2 (\$200)
184(1)	Stopping in a minibus zone	3 (\$330)	3 (\$330)	3 (\$300)	5 (\$250)	2 (\$240)	3 (\$300)	2 (\$200)
185(1)	Stopping in a permit zone	3 (\$330)	3 (\$330)	3 (\$300)	5 (\$250)	2 (\$240)	3 (\$300)	2 (\$200)
186(1)	Stopping in a mail zone	3 (\$330)	3 (\$330)	3 (\$300)	5 (\$250)	2 (\$240)	3 (\$300)	2 (\$200)
189(1)	Double parking	3 (\$330)	3 (\$330)	2.5 (\$250)	3 (\$150)	4 (\$480)	3 (\$300)	2 (\$200)
197(1)	Stopping on a path, dividing strip or nature strip	3 (\$330)	5 (\$550)	2.5 (\$250)	5 (\$250)	2 (\$240)	2 (\$200)	1 (\$100)
198(1), (2)	Obstructing access to and from a footpath or driveway	3 (\$330)	3 (\$330)	2.5 (\$250)	3 (\$150)	2 (\$240)	2 (\$200)	2 (\$200)

Rule or Subrule	Description of rule	Penalty unit payable						
		NSW ⁵	VIC ⁶	Brisbane Airport ⁷	WA ⁸	TAS ⁹	Gold Coast Airport ¹⁰	Townsville Airport ¹¹
202	Stopping on a road with motor bike parking sign	3 (\$330)	3 (\$330)	3 (\$300)	5 (\$250)	2 (\$240)	3 (\$300)	2 (\$200)
203(1)	Stopping in a parking area for people with disabilities	9 (\$990)	5 (\$550)	5.5 (\$550)	3 (\$150)	4 (\$480)	5 (\$500)	2 (\$200)
205	Parking for longer than indicated	3 (\$330)	3 (\$330)	2.5 (\$250)	3 (\$150)	2 (\$240)	3 (\$300)	1 (\$100)
207(2)	Parking where fees are payable	3 (\$330)	3 (\$330)	2.5 (\$250)	3 (\$150)	2 (\$240)	3 (\$300)	2 (\$200)
208(1)	Parallel parking on a road (except in a medium strip area)	3 (\$330)	3 (\$330)	2.5 (\$250)	3 (\$150)	2 (\$240)	2 (\$200)	1 (\$100)
209(2)	Parallel parking in a median strip parking area	3 (\$330)	3 (\$330)	2.5 (\$250)	3 (\$150)	2 (\$240)	2 (\$200)	1 (\$100)
210(1)	Angle parking	3 (\$330)	3 (\$330)	2.5 (\$250)	3 (\$150)	2 (\$240)	2 (\$200)	1 (\$100)
211(1), (2), (3)	Parking in parking bays	3 (\$330)	3 (\$330)	2.5 (\$250)	5 (\$250)	2 (\$240)	2 (\$200)	1 (\$100)
212(1), (2)	Entering and leaving a median strip parking area	3 (\$330)	3 (\$330)	3 (\$300)	3 (\$150)	2 (\$240)	2 (\$200)	1 (\$100)

Appendix 11¹²:

Matters about which airports must keep records:

	Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford-Smith) Airports	Adelaide, Alice Springs, Canberra, Darwin, Gold Coast, Hobart, Launceston and Townsville Airports
Aircraft parking	Number of aircraft parking bays on 30 June in the year	Number of aircraft parking bays on 30 June in the year
		Total area (in square metres) of designated bay area on 30 June in the year
Aerobridges	Number of passengers using aerobridges for embarkation in the year	Number of airport operator managed aerobridges on 30 June in the year
	Total number of passengers embarking in the year	Number of passengers using airport-operator managed aerobridges for embarkation in the year
	Percentage of passengers using aerobridges for embarkation during the year	Number of passengers using airport-operator managed aerobridges for disembarkation in the year
	Number of passengers using aerobridges for disembarkation in the year	
	Total number of passengers disembarking in the year	
	Percentage of passengers using aerobridges for disembarkation during the year	
	Number of aerobridges on 30 June in the year	
Check-in	Number of hours during the year when more than 80% of check-in desks are in use	Number of airport-operator managed check in desks on 30 June in the year
	Total number of hours during the year when any check-in desks are open	
	Percentage of hours during the year when more than 80% of the total number of check-in desks are in use	
	Number of check-in desks on 30 June in the year	

¹² *Airports Regulations 1997* (Cth) sch 3, pts 1, 2.

	Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford-Smith) Airports	Adelaide, Alice Springs, Canberra, Darwin, Gold Coast, Hobart, Launceston and Townsville Airports
Government inspection (inbound)	Number of inbound immigration desks on 30 June in the year	
	Number of baggage inspection desks on 30 June in the year	
Government inspection (outbound)	Number of outbound immigration desks on 30 June in the year	
Security clearance	Number of security clearance systems on 30 June in the year	Type (manual or automated) of any airport-operated baggage security clearance facilities on 30 June in the year
		Number of airport-operator managed people in security clearance facilities on 30 June in the year
		Number of airport-operator managed baggage security clearance facilities on 30 June in the year
Gate lounges	Number of seats in gate lounges on 30 June in the year	Number of airport-operator managed gate lounges on 30 June in the year
		Number of seats in airport-operator managed gate lounges on 30 June in the year
Baggage systems (outbound)	Total number of bags handled by baggage handling equipment in the year	Type (manual or automated) of any airport-operator managed baggage handling equipment on 30 June in the year
	Total number of hours during the year the baggage handling equipment is in use	If any airport-operator managed baggage handling facility is automated – total number of bags processed in the year by the facility
	Capacity of baggage handling equipment (in bags per hour) on 30 June in the year	If any airport-operator managed baggage handling facility is automated – total number of hours during the year the facility is in use

Appendix 11 (Cont'd):

	Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford-Smith) Airports	Adelaide, Alice Springs, Canberra, Darwin, Gold Coast, Hobart, Launceston and Townsville Airports
Baggage systems (inbound)	Capacity of the baggage reclaim system (in bags per hour) on 30 June in the year	Type (manual or automated) of any airport-operator managed baggage handling facility on 30 June in the year
		If any airport-operator managed baggage handling facility is automated – total number of bags processed in the year by the facility
		Total area (in square metres) provided by the airport operator for baggage reclaim on 30 June in the year
Flight Information Display		Type and number of airport-operator provided flight information displays on 30 June in the year
		Number of locations for airport-operator provided flight information displays on 30 June in the year
Car Parking	Total throughput of the car park (in vehicles) in the year	Distance (in metres) between the nearest public car park and the terminal entrance nearest to that car park on 30 June in that year
	Number of days car park is open during the year	Number of parking spaces available to the public (including disabled parking) on 30 June in the year
	Number of car parking spaces available to the public (including disabled parking) on 30 June in the year	

SAFETY

Safety regulation

The Manual of Standards (MOS) are a set of specifications, which have the effect of law, in respect to aviation safety in pursuance of the *Civil Aviation Safety Regulations 1998* (Cth) (CASR) reg 139.015. CASR pt 139 sets out the regulatory regime of airports used by aeroplanes conducting air transport operations under CASR pt 121A and pt 121B. The MOS sets out the standards and operating procedures for certified, registered and other airports used in air transport operations. Rules for certified and registered airports (refer to **Appendix 12 (a) and (b)**) differ under the MOS.³⁹⁸

Where there is a difference between a standard prescribed in the Internal Civil Aviation Organisation (ICAO) standards and one in the MOS, the MOS standard shall prevail.³⁹⁹ An airport is not absolved from complying with the MOS by dint of other standards and procedures prescribed by other government or statutory authorities. Where another statutory standard conflicts with the MOS, the matter must be referred to CASA for resolution.⁴⁰⁰

Nothing in CASR pt 139 affects the operation of the *Airports (Building Control) Regulations 1996* (Cth) (refer to page 12 of this Guide), the *Airports (Protection of Airspace) Regulations 1996* (Cth) (refer to page 79 of this Guide), or the *Airports (Control of On-Airport Activities) Regulations 1997* (Cth)⁴⁰¹ (refer to page 79 of this Guide).

The MOS will change from time to time and ‘unless specifically directed by CASA, existing aerodrome facilities do not need to be immediately modified in accordance with the new standards until the facility is replaced or upgraded to accommodate a more demanding aircraft’.⁴⁰² An existing airport facility at a certified aerodrome that does not comply with the MOS must be identified and recorded in the Aerodrome Manual.⁴⁰³

An airport should continue to comply with the standard that was applicable to it unless otherwise directed by CASA.⁴⁰⁴

The seven key safety issues that are dealt with by this Guide are as follows:⁴⁰⁵

1. Certified and registered airports;
2. Safety Management System;
3. Animal and Bird hazard management;
4. Drug and Alcohol Management Plan;
5. Aerodrome Emergency Plan;
6. Airport inspections;
7. Aerodrome manuals.

³⁹⁸ *Manual of Standards* pt 2.1.1.2. Reference should also be made to pt 2.1.5.1 for the ICAO Aerodrome Reference Code for the applicable airport and aircraft.

³⁹⁹ *Manual of Standards* pt 1.1.3.1.

⁴⁰⁰ *Manual of Standards* pt 2.1.4.1.

⁴⁰¹ *Civil Aviation Safety Regulations 1998* (Cth) reg 139.035.

⁴⁰² *Manual of Standards* pt 2.1.2.1.

⁴⁰³ *Manual of Standards* pt 2.1.2.3.

⁴⁰⁴ *Manual of Standards* pt 2.1.2.2.

⁴⁰⁵ Certified and registered airports should refer to the detailed text of the MOS and CASR (Parts 139.E–H), as they pertain to such issues as obstacles and hazards, radio communications, ARFFS, airport environs, operating standards, works safety, and parking, etc which is beyond the scope of this Guide.

Certified and registered airports

Certified airports may have been given a certificate subject to certain conditions that CASA considers necessary in the interests of safety. A certified airport must not contravene a condition of the airport certificate⁴⁰⁶, which is likely to lead to a show cause notice.⁴⁰⁷ While a certificate or registration may be suspended or cancelled if CASA believes on reasonable grounds that a condition has been breached or the airport facilities, operations or maintenance, are not of the standard necessary in the interests of the safety of air navigation. This power also applies where the certified or registered airport fails to provide CASA access to the airport.⁴⁰⁸



CASA does not unilaterally suspend or cancel a certificate or registration, but issues a show case notice setting out the facts and circumstances that CASA believe would justify the suspension or cancellation. A certified or registered airport has 30 days after the date of the notice to reply in writing and show cause why the certificate should not be suspended or cancelled.

A certified airport may be exempted from compliance with specified provisions of the CASR or specified standards set out in the MOS conditional on:

- CASA taking into account any relevant considerations relating to the interests of the safety of air navigation; and
- the airport complying with any conditions that CASA specifies in the instrument as being necessary in the interests of the safety of air navigation.⁴⁰⁹

Safety Management System

The ICAO has defined an aerodrome Safety Management System (SMS) as a:

‘System for the management of safety at an aerodrome, including the organisational structure, responsibilities, procedures, processes, and provisions for the implementation of aerodrome safety policies by an aerodrome operator, which provides for control of safety at, and the safe use of, the aerodrome’.

An SMS will be applicable at certified airports and also expressly including airports used by aircraft engaged in international operations.⁴¹⁰ The standards are to be applied in a manner commensurate with the type and level of aircraft activities at the particular airport.⁴¹¹ Safety culture and ongoing commitment of senior management are essential ingredients for a successful SMS, along with the setting of safety objectives, clear responsibilities, ongoing hazard identification and reporting, training and performance measurement.⁴¹² While the regulatory framework of an SMS does rely on the prescriptive provisions of the MOS and CASR, it is very much based on a risk assessment and goal driven approach.

⁴⁰⁶ *Civil Aviation Safety Regulations 1998* (Cth) reg 139.060.

⁴⁰⁷ *Civil Aviation Safety Regulations 1998* (Cth) reg 139.070.

⁴⁰⁸ *Civil Aviation Safety Regulations 1998* (Cth) reg 139.025.

⁴⁰⁹ *Civil Aviation Safety Regulations 1998* (Cth) reg 139.020.

⁴¹⁰ *Civil Aviation Safety Regulations 1998* (Cth) reg 139.250.

⁴¹¹ *Manual of Standards* pt 10.1.1.3.

⁴¹² *Manual of Standards* pt 10.1.4.2.

Reference should be made to CASA Advisory Circular AC 139-16 for more details on developing an SMS for airports. An SMS seeks to encapsulate and compliment an airport's existing occupational health and safety risk management approach and embrace the safety issues applicable to the general public and industry people using the facility. Because of this approach, an SMS should never be a generic document, but an airport specific program based on a decisive risk assessment of an individual airport's characteristics.

The SMS does not necessarily generate a need for an additional set, or duplication of documents. The SMS requirements should compliment the procedures set out in the aerodrome manual.⁴¹³

Animal and Bird Hazard Management

An airport must regularly monitor and record the presence of birds or animals on or in the vicinity of the airport environs.⁴¹⁴ Monitoring personnel must be suitably trained for this purpose.

A bird or animal hazard management plan (comprising regular inspections as discussed on page 88 of this Guide) must be produced (and included in the Aerodrome Manual) where either the operator confirms existence of a bird or animal hazard to aircraft operations, or when CASA makes such a direction.⁴¹⁵ The management plan must be prepared by a suitably qualified person (such as an ornithologist or a biologist, etc.), and must address:

- hazard assessment, including monitoring action and analysis;
- pilot notification;
- liaison and working relationships with land use planning authorities;
- on-airport bird and animal attractors which provide food, water or shelter;
- suitable harassment methods; and
- an ongoing strategy for bird and animal hazard reduction, including provision of appropriate fencing.

The bird and animal hazard management plan must be reviewed for effectiveness, on a regular basis, at least as part of each 'technical inspection' (discussed on page 89 of this Guide).

Birds or animals may be assessed as presenting either:

- an ongoing hazard to aircraft; or
- a short term/seasonal hazard.

Where the former applies to an airport, the hazard must be notified to the Aeronautical Information Service (AIS) in writing, to include an appropriate warning notice in the En-route Supplement Australia (ERSA). Where the latter applies, an additional warning must be given to pilots by Notice to Airmen (NOTAM).

For the definition of and use of firearms for bird and animal hazard management, refer to page 107 of this Guide.



Any bird strike incident must be reported to the ATSB.⁴¹⁶

⁴¹³ *Manual of Standards* pt 10.1.4.3.

⁴¹⁴ *Manual of Standards* pt 10.14.

⁴¹⁵ *Manual of Standards* pt 10.14.1.2.

⁴¹⁶ *Manual of Standards* pt 10.2.2.1.

In recent years, there has been an ongoing trend concerning the heightened awareness amongst aviation stakeholders to ensure a risk managed approach to wildlife hazard management is implemented.

This trend is ever apparent for major licensed airports around Australia. The importance of the environment and the maintenance of natural habitats is invariably of fundamental concern for aerodrome airports.

With no cases having been decided on this issue in Australia, below is a review of international case law.

**Facts:**

In the US decision of *Hawaiian Airlines Inc and Underwriters at Lloyd's and Certain Insurance Companies, London v United States of America*⁴¹⁷, the plaintiff's aircraft flew into and struck a flock of birds immediately before touch down. The plaintiff sought damages against the airport on the basis of negligence for:

- permitting conditions to exist at the airport that encouraged the nesting of birds;
- permitting birds to nest at or near the airport; and
- failing to adequately warn flight crews.

Decision:

The court held the defendant airport was subject to a duty to

'use proper care, precaution and diligence in providing and maintaining the airfield in a reasonably safe condition for the purposes to which it is adopted'.

The court accepted that a problem exists at almost every airport with birds and that efforts must be made to prevent incursion from birds nesting in the area and from roosting or sitting on runways and runway approaches. The court held that programs must be planned and put into effect to prevent birds from assembling in and around airports. The airport was not negligent in this case as it had a bird control program in operation, which included:

- personnel being on duty at the airport at all material times to inspect and report bird incursion;
- the use of a special vehicle equipped with radio and loudspeaker system, radio to control tower tapes and other equipment;
- the use of a shot gun for culling and scaring birds;
- inspection of dead birds and reporting requirements; and
- published notices of bird activity were published to pilots.

⁴¹⁷ 1981 U.S. Dist. LEXIS 14874; 16 Av. Cas.(CCH) P17,744.



Facts:

The court in *Howard H. RAPP & Anor & Eastern Airlines Inc & Ors*⁴¹⁸, found for the plaintiff in its claim for damages after its four engine turbo-prop aircraft ingested a bird. There, the suit was against the airport regulator and the operator for its failure to remove the ponds, weeds and refuse area from near the airport (which was a known attractant to birds), and for failing to provide protection or inspection when they knew or should have known that birds in flight were a hazard and could cause damage to aircraft.

Decision:

The court found the airport negligent for failing to devise a system whereby aircraft would not be cleared for take-off when birds were a known hazard without first inspecting for birds before the take off and for failing to remove the ponds, weeds and refuse area.



Facts:

In *Safeco Insurance Co of America v City of Watertown, South Dakota & Ors*⁴¹⁹, the plaintiff's Sabreliner reached take off speed and lifted off when it encountered a flock of Franklin gulls, which were ingested into its engines. The evidence in the airport operations manual stated there were no present problems with birds which was accepted by the regulatory body.

The defendant airport had a duty to use reasonable care to ensure its airport was free from hazards or at least to warn of them (including birds). The airport argued that unless birds were habitually and predictably in and around the airport (i.e. attending every day to the same place at the same time in the same number), that there was no reportable or quantifiable bird problem.

Decision:

The court accepted the evidence of witnesses that gulls were in substantial quantities from early spring to late fall (during the time of loss). Despite the defendant's evidence of its daily airport inspections contrary to the evidence of witnesses, the court held the defendant liable because it failed to warn of the bird incursion danger to the plaintiff which the court held was the proximate cause of the loss.

⁴¹⁸ 264 F. Supp. 673; 1967 U.S. Dist. LEXIS 9147.

⁴¹⁹ 529 F. Supp. 1220; 1981 U.S. Dist. LEXIS 17884.

**Facts:**

In *Insurance Company of North America v Asplundh Aviation Inc*⁴²⁰, the plaintiff's aircraft ingested a sea gull during take off. The defendant airport had evidence of undertaking physical inspections of the airport daily by two employees. Sea gulls had been seen in and around the airport approximately 75% of the time during inclement weather and on stormy days; the bird hazard was rated as 7/10.

The defendant airport had a duty to exercise reasonable care and control to protect its invitees from dangers which might reasonably be anticipated to arise from conditions on the premises. It knew of the acute bird problem at the airport and accepted it owed a duty to remedy the bird problem or at least warn unsuspecting pilots of the peril. The defendant's employees would drive around in a vehicle and use a horn to scare birds away. However this was only of limited and temporary success as the birds got used to the horn and would come back a while later.

Decision:

The court held that it was impossible to eliminate the bird hazard problem, but accepted that remedial measures were available such as removing food supplies, operating mobile bird scanning patrols with scare devices throughout the airport, and issuing warnings to pilots.

The court held the defendant airport was not in breach of its duty of care. The court put the emphasis more on the pilot by suggesting that if they were on notice of the bird hazard, they could take precautionary measures to avoid bird strikes such as changes in route and altitude assignments, checking runways personally before take off, and requesting airport employees to employ scare devices upon arrival and departure.

The court held the proximate cause of the loss was the plaintiff's co-pilot's failure to warn the pilot that he had seen sea gulls on the runway immediately before the strike.

The cases above clearly show that courts will follow the reasonableness of the measures put in place by the airport – that is, the reasonableness of the airport's measures in assessing the hazard, if any, that animals or birds present to an airport and applicable aviation industry participants. In the cases where the airport was held liable, there was clear evidence that it had failed in certain aspects of its bird management regime and not acted proportionately with the risk. However, in the two cases where the airport was not held liable, they were able to show evidence of a system across all aspects of the airports bird hazard management, and even in circumstances where the strikes still occurred, the court accepted they had effected all reasonable efforts to control – but not necessarily eliminate – the hazard.

Drug and Alcohol Management

Applicable airports should ensure the development, implementation and enforcement of a Drug and Alcohol Management Plan (DAMP), and should also note the powers of CASA to perform drug and alcohol tests on relevant persons at airports.⁴²¹

⁴²⁰ 574 F. Supp 373; 1983 U.S. Dist. LEXIS 126965.

⁴²¹ *Civil Aviation Safety Regulations 1998* (Cth) reg 99.005.

DAMP

Both certified and registered airports (refer **Appendix 12 (a) and (b)**) are expressly required to have a DAMP and must continue to have a compliant DAMP for the period the airport has employees performing an applicable safety-sensitive aviation activity, or where there are employees available to perform such activities.⁴²²



Certified and registered airports must ensure their DAMP is developed and implemented within six months from 22 September 2008 – 50 penalty units – \$5500.⁴²³

An airport should ensure its DAMP is made available to employees that perform safety-sensitive aviation activities⁴²⁴ and include:

- a drug and alcohol education program;
- a drug and alcohol testing program;
- a drug and alcohol response program; and
- identify, and provide the contact details for each airport personnel who is the DAMP contact officer and DAMP supervisor.⁴²⁵

An airport must ensure its employees and DAMP supervisors performing safety-sensitive aviation activities attend a drug and alcohol education program.⁴²⁶ This requirement applies to:

- persons who begin work for the organisation after 22 September 2008, before commencing safety-sensitive duties or acting as DAMP supervisor; or
- persons working for the organisation on or before 22 September 2008, by March 2009; or
- persons working for the organisation who, after 22 September 2008, have attended the program – within 30 months of the person's last attendance at the program.

An airport should encourage each of its applicable employees performing safety-sensitive aviation activities to disclose if he or she has consumed a level of alcohol, or is taking any drug, that may affect his or her ability to carry out such activities.

⁴²² Which include such activities as any activity undertaken by a person, other than as a passenger, in an aerodrome testing area, activities undertaken by an airport security guard or a screening officer (per page 111 of this Guide) in the course of the person's duties as a guard or officer, and the loading and unloading of trolleys containing baggage for loading onto aircraft and the driving of such trolleys: *Civil Aviation Safety Regulations 1998* (Cth) regs 99.015, 99.030, 99.035(2).

⁴²³ *Civil Aviation Safety Regulations 1998* (Cth) reg 99.030.

⁴²⁴ *Civil Aviation Safety Regulations 1998* (Cth) reg 99.040.

⁴²⁵ *Civil Aviation Safety Regulations 1998* (Cth) reg 99.045.

⁴²⁶ *Civil Aviation Safety Regulations 1998* (Cth) reg 99.080.

For each DAMP reporting period (or part of a reporting period), during which the airport implemented its DAMP, information that must be provided to CASA includes:⁴²⁷

- the number of the employees who performed safety-sensitive aviation activities at least two or more times in the 90 days preceding the end of the reporting period;
- the number of such employees who attended a drug and alcohol education program during the period, including the number of employees who attended such a program for the first time and for a second or subsequent time;
- the number and type of drug or alcohol tests undertaken under the DAMP during the period;
- the results of the tests, including the number of positive test results that a DAMP medical review officer has determined could be as a result of legitimate therapeutic treatment or some other innocuous source;
- the date and time the tests under the DAMP were conducted;
- the role that each applicable employee tested was undertaking at the time of being tested; and
- if testing was conducted following an accident or serious incident, information about the date, time and location of the accident or serious incident and the testing conducted following the accident or serious incident.



An airport must review its DAMP once every five years, beginning on the date on which the DAMP was developed and at any other time CASA directs to ensure compliance.⁴²⁸ CASA may audit an airport to ensure the appropriate development, implementation and enforcement of a DAMP and this may comprise a request for information and records demonstrating the airport has developed and implemented a DAMP, a copy of the DAMP and any other information and records specified by CASA that are relevant to the audit.⁴²⁹ To ensure compliance by an airport of its DAMP, CASA may direct the airport to change a provision in the DAMP, prepare a new DAMP, submit any proposed changes to the DAMP, or submit a newly prepared DAMP to CASA – 50 penalty units – \$5500.⁴³⁰

CASA drug and alcohol testing

A CASA approved tester may undertake a drug or alcohol test and may require the employee to produce identification (most relevantly, an ASIC) and request further details from the employee such as his or her date of birth, address, telephone number or DAMP employer. The CASA approved tester may require the employee to stop performing (or stop being available to perform) safety-sensitive aviation activities for the time it takes to take a sample for testing *and* to conduct a drug or alcohol test on the sample. Accordingly, this means the employee may be required to remain in the tester's presence during this time.⁴³¹

Aerodrome Emergency Plan

Aerodrome emergency planning is the process of preparing an airport to cope with an emergency of the worst type that might conceivably occur with respect to size, location, timing and weather occurring at the airport or in its vicinity.⁴³² The objective of the planning is to ensure a timely and effective response to an emergency, particularly in respect of saving lives and maintaining aircraft operations.⁴³³

⁴²⁷ *Civil Aviation Safety Regulations 1998* (Cth) reg 99.100.

⁴²⁸ *Civil Aviation Safety Regulations 1998* (Cth) reg 99.085.

⁴²⁹ *Civil Aviation Safety Regulations 1998* (Cth) reg 99.090.

⁴³⁰ *Civil Aviation Safety Regulations 1998* (Cth) reg 99.095.

⁴³¹ *Civil Aviation Safety Regulations 1998* (Cth) reg 99.125.

⁴³² *Manual of Standards* pt 10.8.1.4.

⁴³³ *Manual of Standards* pt 10.8.1.1.

An airport must establish and chair an Aerodrome Emergency Committee (AEC), including agencies on and off the airport that could assist in an emergency.⁴³⁴ On-airport agencies could include air traffic services units, rescue and fire fighting units, airport administration, aircraft operators and security services. Off-airport agencies include fire brigades, police, medical and ambulance services, hospitals, defence forces, ATSB, SES, transport authorities, volunteer rescue services, welfare agencies, Government authorities, maritime services and refuelling agents.

The AEC must develop the Aerodrome Emergency Plan (AEP), including procedures for coordinating the responses of assisting agencies. In essence, an AEP must include organisational and procedural arrangements and action plans for an aircraft crash, local standby and full emergency situations (i.e. the activation sequence whereby local standby does not require a response from off-aerodrome agencies whereas a full emergency does),⁴³⁵ bomb scare, disabled aircraft, hazardous material incident, fire and natural disaster, or medical emergency.⁴³⁶

An AEP should be reviewed at least once every 12 months to ensure its currency and adequacy.⁴³⁷ The plan itself should be commensurate with the scale and type of aircraft operations, the surrounding geography and other activities conducted at the airport⁴³⁸ and contain particulars of:⁴³⁹

- the composition of the airport emergency committee and contact details for the emergency service organisations represented on the committee;
- a description of the role of each emergency service organisation involved in the plan;
- the activation, control and coordination of the emergency service organisations during an emergency;
- the airport's emergency facilities and arrangements for keeping them in readiness;
- the operational response to an emergency, including arrangements for airport access and assembly areas;
- the response to a local stand-by call out;
- the response to a full emergency call out;
- the arrangements to return the airport to operational status after an emergency;
- the arrangements for periodic review and testing of the AEP;
- arrangements for water rescue for those airports located near water;⁴⁴⁰
- discrete roles of the emergency operations centre and the forward command post, highlighting the physical location of the police co-ordinator;⁴⁴¹ and
- a grid map (or maps) of the airport and its immediate vicinity, which include detailed location of primary and secondary access gates. This information is to be made available to all responding agencies.⁴⁴²

⁴³⁴ *Manual of Standards* pt 10.7.1.1.

⁴³⁵ *Manual of Standards* pt 10.7.1.5.

⁴³⁶ *Manual of Standards* pt 10.7.1.4.

⁴³⁷ *Manual of Standards* pt 10.7.1.2.

⁴³⁸ *Manual of Standards* pt 10.8.1.3.

⁴³⁹ *Civil Aviation Safety Regulations 1998* (Cth) reg 139.095 (a)(ii).

⁴⁴⁰ *Manual of Standards* pt 10.7.1.8.

⁴⁴¹ *Manual of Standards* pt 10.8.5.2.

⁴⁴² *Manual of Standards* pt 10.7.1.6.

Because CASA does not regulate AEP responding agencies and how they conduct their functions, it is the responsibility of the AEC to ensure the level and availability of emergency equipment and services are adequate for the airport.⁴⁴³ Unless an airport has activated its emergency plan in a real emergency within two years, AEP exercises must be carried out at least once over the same period.⁴⁴⁴ This requirement is also commensurate with the size and scale of operations at the airport. While the standards set a requirement of testing the AEP once every two years, the MOS suggests such exercises be held annually, with speciality emergency exercises (such as rescue and fire fighting services and plans involving communications systems), being held at more frequent intervals than the full-scale exercise.⁴⁴⁵

Documents recording reviews and/or exercises including real emergencies must be kept and retained for at least three years.⁴⁴⁶



While not a part of this Guide, where a rescue and fire fighting service (RFFS) is established at an airport, the airport and the RFFS provider must work together to ensure they achieve the required outcome identified in MOS Part 139H – *Standards Applicable to the Provision of Aerodrome Rescue and Fire Fighting Services*.⁴⁴⁷

Airports are encouraged to ensure that individual participants directly involved in an AEP continuously review their roles to ensure they know their responsibilities and that all the information in the plan is current.⁴⁴⁸

Airport inspections

Serviceability inspections at certified airports

A certified airport must undertake a serviceability inspection to ensure it is safe for aircraft operations.⁴⁴⁹ A checklist of contents of the inspection must be developed, commensurate with the size and complexity of the airport⁴⁵⁰ and the inspection must include:⁴⁵¹

- an inspection of the movement area to check its surface condition (including for the presence of foreign objects);
- an inspection of markings, lighting, wind direction indicators and ground signals;
- an inspection for any obstacles infringing the take-off, approach and transitional surfaces;
- an inspection for any birds or animals on or near the movement area (as part of the bird or animal hazard management plan discussed on page 81 of this Guide);
- an inspection of any measures to control the inadvertent entry of persons or animals into the movement area (including airport fencing);
- an empirical assessment of the bearing strength of unrated runway pavements;
- an empirical assessment of the runway strip or each runway strip where the runway concerned is not marked and the whole runway strip may be used for aircraft operations;
- an inspection of the airport's frequency confirmation system (if any); and
- a check of whether any NOTAMS for the airport are current and accurate.

⁴⁴³ *Manual of Standards* pt 10.7.1.7.

⁴⁴⁴ *Manual of Standards* pt 10.7.1.3.

⁴⁴⁵ *Manual of Standards* pts 10.8.4.1, 10.8.4.2.

⁴⁴⁶ *Manual of Standards* pt 10.7.2.1.

⁴⁴⁷ *Manual of Standards* pt 10.8.1.4A.

⁴⁴⁸ *Manual of Standards* pt 10.8.3.2.

⁴⁴⁹ *Civil Aviation Safety Regulations 1998* (Cth) reg 139.220.

⁴⁵⁰ *Manual of Standards* pt 12.1.3.1.

⁴⁵¹ *Civil Aviation Safety Regulations 1998* (Cth) reg 139.220.

Beyond the particulars of the procedures for carrying out serviceability inspections, including the use of a checklist, for reporting any changes to airport information or for requesting the issue of a NOTAM that are outlined in a certified airport's manual, the MOS is applicable to serviceability inspections as follows:

- while airport serviceability inspections are essentially visual checks, the process must include appropriate remedial actions where there is an immediate effect on the safety of aircraft operations. If the identified fault cannot be remedied before the next aircraft operation, the matter must be reported to the NOTAM office;⁴⁵²
- the operator of a certified airport is required to arrange for airport serviceability inspections to be carried out each day and additional serviceability inspections must be conducted after significant weather phenomena such as strong or severe wind, wind gusts or heavy rain/storm, or when requested by Air Traffic Control or by CASA;⁴⁵³
- any significant object (i.e. aircraft parts or bird strike carcasses) found in the course of the inspection must be reported immediately to Air Traffic Control, where appropriate, and to the ATSB;⁴⁵⁴
- for an airport with daily regular public transport operations, serviceability inspections must be carried out daily, preferably before the scheduled operations;⁴⁵⁵
- if it appears from a serviceability inspection that a particular facility at the airport requires a technical inspection, the operator must ensure the necessary technical inspection of the facility is conducted as soon as practicable.⁴⁵⁶

Technical inspections at certified airports

A technical inspection is undertaken on airport facilities to ensure any deterioration that could make a facility unsafe for aircraft operations is detected, and includes:⁴⁵⁷

- an instrument survey of the approach, take-off and transitional surfaces;
- an inspection and testing of the airport lighting and electrical reticulation systems, including the visual approach slope indicator;
- an electrical testing of any earthing points at the airport;
- an inspection and assessment of the movement area pavements and drainage;
- an inspection of signs on the movement area;
- an inspection of facilities at the airport used for any of the following:
 - airport emergencies;
 - the handling of hazardous materials;
 - bird and animal hazard management;
 - stand-by and emergency airport lighting;
- an inspection of airside vehicle control arrangements (if any);
- a check of the currency and accuracy of:
 - information published in AIP; and
 - operating procedures specified in the aerodrome manual for the airport.

⁴⁵² *Manual of Standards* pt 10.2.1.1.

⁴⁵³ *Manual of Standards* pts 10.2.1.2, 12.1.4.2; *Civil Aviation Safety Regulations 1998* (Cth) reg 139.225.

⁴⁵⁴ *Manual of Standards* pt 10.2.2.1.

⁴⁵⁵ *Manual of Standards* pt 12.1.4.1.

⁴⁵⁶ *Civil Aviation Safety Regulations 1998* (Cth) reg 139.235.

⁴⁵⁷ *Manual of Standards* pt 10.18.

Beyond the particulars of the procedures for carrying out technical inspections that are outlined in a certified airport's manual, the MOS and CASR are applicable to technical inspections as follows:

- airport technical inspections must be carried out (not necessarily all at once) at intervals of not more than 12 months and when required as a result of the findings of the serviceability inspections (above);⁴⁵⁸
- technical inspection should identify any shortcomings or areas for improvement and must include a plan(s) for corrective action.⁴⁵⁹ An airport's progress in actioning any shortcomings identified from the technical inspection will be audited by CASA;⁴⁶⁰
- records of technical inspections must be kept for at least three years after the (or part of the) inspection to which the record relates was conducted;⁴⁶¹
- a certified airport must ensure a technical inspection is conducted by a person or persons with appropriate technical qualifications and experience, which may depend on the subject of the inspection (i.e. inspections on pavements, movement areas and drainage must be by someone qualified in civil engineering or with appropriate technical experience; an electrical engineer or a licensed electrician for lighting and electrical facilities; and a relevantly qualified or experienced surveyor for obstacle limitation surfaces).⁴⁶²

Safety inspections at registered airports

Instead of a registered airport undertaking technical inspections as outlined, a registered airport must arrange for a safety inspection of the airport to be conducted at least once each year by an approved person.⁴⁶³ A written report must be produced following a safety inspection detailing:

- the information (i.e. details of the movement area, details of runway distances available, aerodrome lighting, ground services, special conditions and procedures) published in AIP-ERSA or given to air transport operators is accurate;
- airport operating procedures (i.e. airport works and inspections, recording of notices given to the NOTAM Office and AIS or to air transport operators), are appropriately dealt with by the registered airport;
- the competency of the reporting officer; and
- details relating to the movement area (i.e. dimensions and surface conditions of runways, taxiways and aprons, airport lighting, wind direction indicators, airport markings and signs, obstacle limitation surfaces etc.) are checked.⁴⁶⁴

Within 30 days after receiving the report, the registered airport must give to CASA a copy of the report and a statement as to when and how the airport intends to do the remedial work if the report identifies any such work as necessary.



Subject to CASA providing reasonable notice, a certified or registered airport must allow CASA to conduct tests of airport facilities, equipment or operating procedures at the airport for the purpose of ensuring the safety of aircraft. Such access must also be to any part of the airport or facilities, equipment or records.⁴⁶⁵

⁴⁵⁸ *Manual of Standards* pt 10.18.1.2; *Civil Aviation Safety Regulations 1998* (Cth) reg 139.235.

⁴⁵⁹ *Manual of Standards* pts 10.18.1.4, 10.18.1.5.

⁴⁶⁰ *Manual of Standards* pt 10.18.1.6.

⁴⁶¹ *Civil Aviation Safety Regulations 1998* (Cth) reg 139.235.

⁴⁶² *Civil Aviation Safety Regulations 1998* (Cth) reg 139.240.

⁴⁶³ For the treatment of an 'Approved Person' refer to *Civil Aviation Safety Regulations 1998* (Cth) regs 139.320–139.330.

⁴⁶⁴ *Civil Aviation Safety Regulations 1998* (Cth) reg 139.315.

⁴⁶⁵ *Civil Aviation Safety Regulations 1998* (Cth) reg 139.025.

Aerodrome manuals

A certified airport must have an aerodrome manual which both CASA and the airport has a copy of, in the latter case, available at the airport's principal place of business or at the airport available to authorised persons during normal business hours.⁴⁶⁶

To the extent such information is applicable to the particular certified airport, the aerodrome manual must include:⁴⁶⁷

- particulars of the airport site, including:
 - a plan of the airport showing the main facilities, boundaries and distance from the nearest city, town or other populous area;
 - the location of any facilities and equipment outside the boundaries; and
 - wind direction indicators.
- particulars of the airport administration and operating procedures, including:
 - the organisational structure of the airport;
 - the management positions responsible for the operation and maintenance of the airport;
 - contact details of the person who is the aerodrome manual controller and for the main persons responsible for airport operations and safety functions;
 - airport emergency plan (discussed on page 86 of this Guide);
 - lighting (i.e. particulars of the procedures for the inspection and maintenance of the airport lighting (including obstacle lighting) and the supply of stand-by power (if any));
- particulars of the procedures for reporting any changes to the airport information set out in AIP and procedures for requesting the issue of NOTAMs. This should also include details of the arrangements for reporting any changes that may affect aircraft operations to AIS and local air traffic services and recording the reporting of changes during and outside the normal hours of airport operation;
- particulars of the procedures for preventing the unauthorised entry of persons, vehicles, equipment, plant or animals, or other things that may endanger safety airside;
- particulars of the procedures for carrying out airport serviceability inspections, including details of the arrangements for carrying out the inspections during and after working hours, details of the intervals at which the inspections are carried out and the times of the inspections, the arrangements for keeping an inspection logbook and the place where the logbook is kept, details of the inspection checklist and the arrangements for communicating with air traffic control during the inspections;
- aerodrome technical inspections (discussed on page 89 of this Guide);
- Works safety (i.e. particulars of the procedures for planning and safely carrying out airport works, including works that may have to be carried out at short notice);
- aircraft and vehicle control;
- obstacle control and disabled aircraft removal;
- particulars of the procedures for the safe handling of hazardous materials on the airport with the names and contact details of the persons who are to receive and handle hazardous materials, the arrangements for special areas on the airport to be set up for the storage of flammable liquids (including aviation fuels) and any other hazardous materials, and the methods to be followed for the delivery, storage, dispensing and handling of these materials);
- protection of radar and navigational aids and low visibility operations; and
- information in relation to runways.

⁴⁶⁶ *Civil Aviation Safety Regulations 1998* (Cth) reg 139.090.

⁴⁶⁷ *Civil Aviation Safety Regulations 1998* (Cth) reg 139.095.

- particulars of the airport to be notified in AIP-ERSA;
- particulars of any condition to which the airport certificate is subject; and
- particulars of any direction given to the airport by CASA.

Where any of the above is not included in the manual because it is not applicable to the certified airport, the manual must include a statement to the effect that the information is not applicable and the reasons why it is not applicable. If CASA gives the certified airport an exemption in relation to the airport, the manual must also include any identifying number given to the exemption by CASA, the date on which the exemption came into effect and any condition subject to which the exemption is granted.

A certified airport must keep copies of the aerodrome manual for the aerodrome in a printed form, but may also keep copies in electronic form.⁴⁶⁸ The manual must be kept in such a way that the reader can understand when changes have been made to the information in the manual and whether the manual is up-to-date. In this regard, a certified airport must amend the manual whenever it is necessary to do so, to ensure the accuracy of the manual. An airport may receive and must comply with written directions from CASA requiring the manual to be updated. Equally, a certified airport must inform CASA in writing of any amendments to the manual within 30 days after the amendment.⁴⁶⁹ An aerodrome manual controller must ensure a record is kept of the persons who hold copies of the manual and that updates of information are distributed to those persons.

SAFETY CHAPTER SUMMARY TABLE

TABLE 1: Penalty provisions

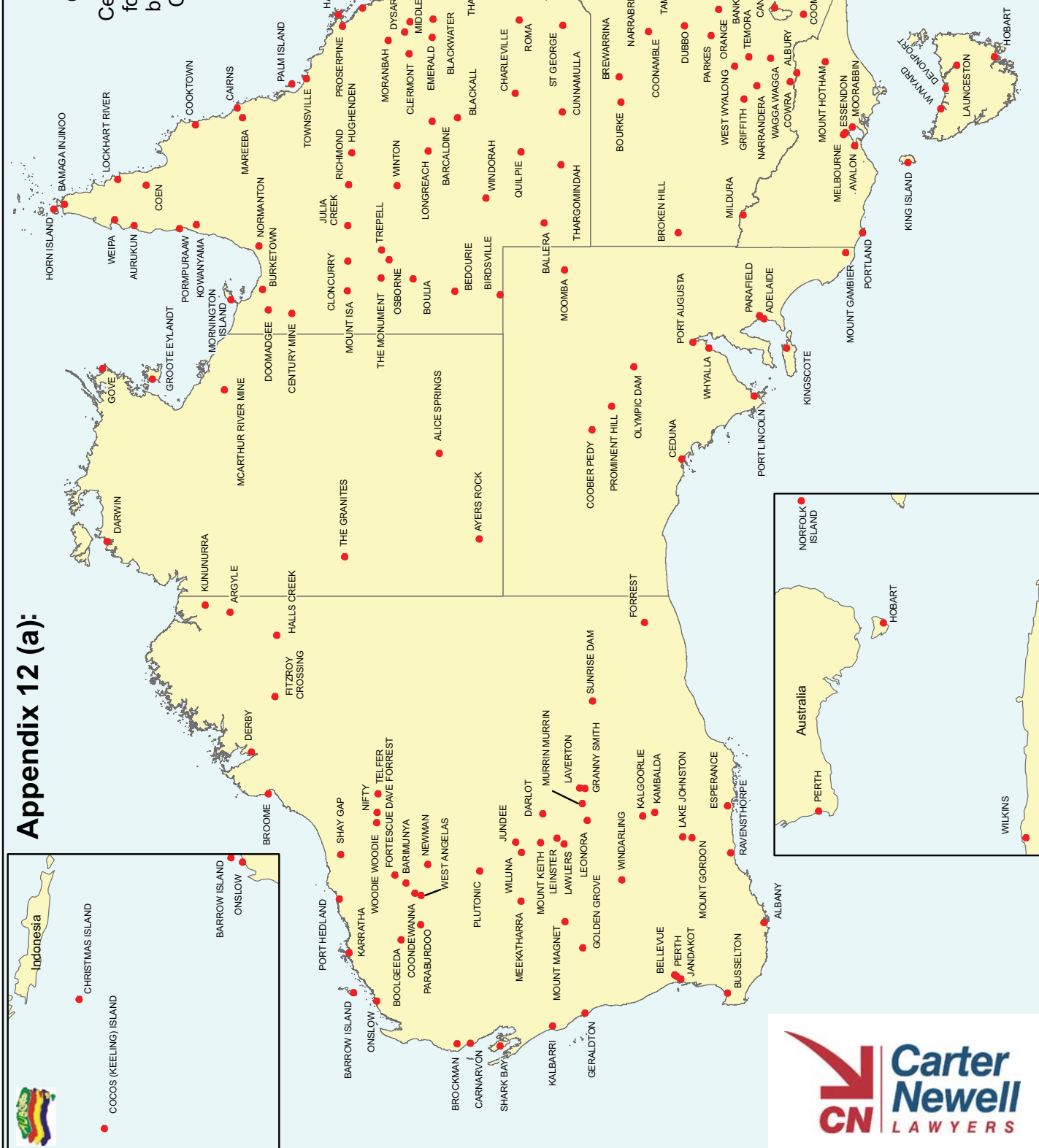
	Legislation	Section	Description	Penalty for non-compliance
Drug and Alcohol Management Plan	<i>Civil Aviation Safety Regulations 1998</i> (Cth)	reg 99.030	Certified and registered airports must ensure that their DAMP is developed and implemented within six months from 22 September 2008	50 penalty units (\$5500)
	<i>Civil Aviation Safety Regulations 1998</i> (Cth)	reg 99.085	An airport must review its DAMP once every 5 years, beginning on the date which the DAMP was developed and at any other time CASA directs to ensure compliance	50 penalty units (\$5500)
	<i>Civil Aviation Safety Regulations 1998</i> (Cth)	reg 99.125	Airports must comply with any direction from CASA to amend or replace its DAMP	50 penalty units (\$5500)

⁴⁶⁸ *Civil Aviation Safety Regulations 1998* (Cth) reg 139.100.

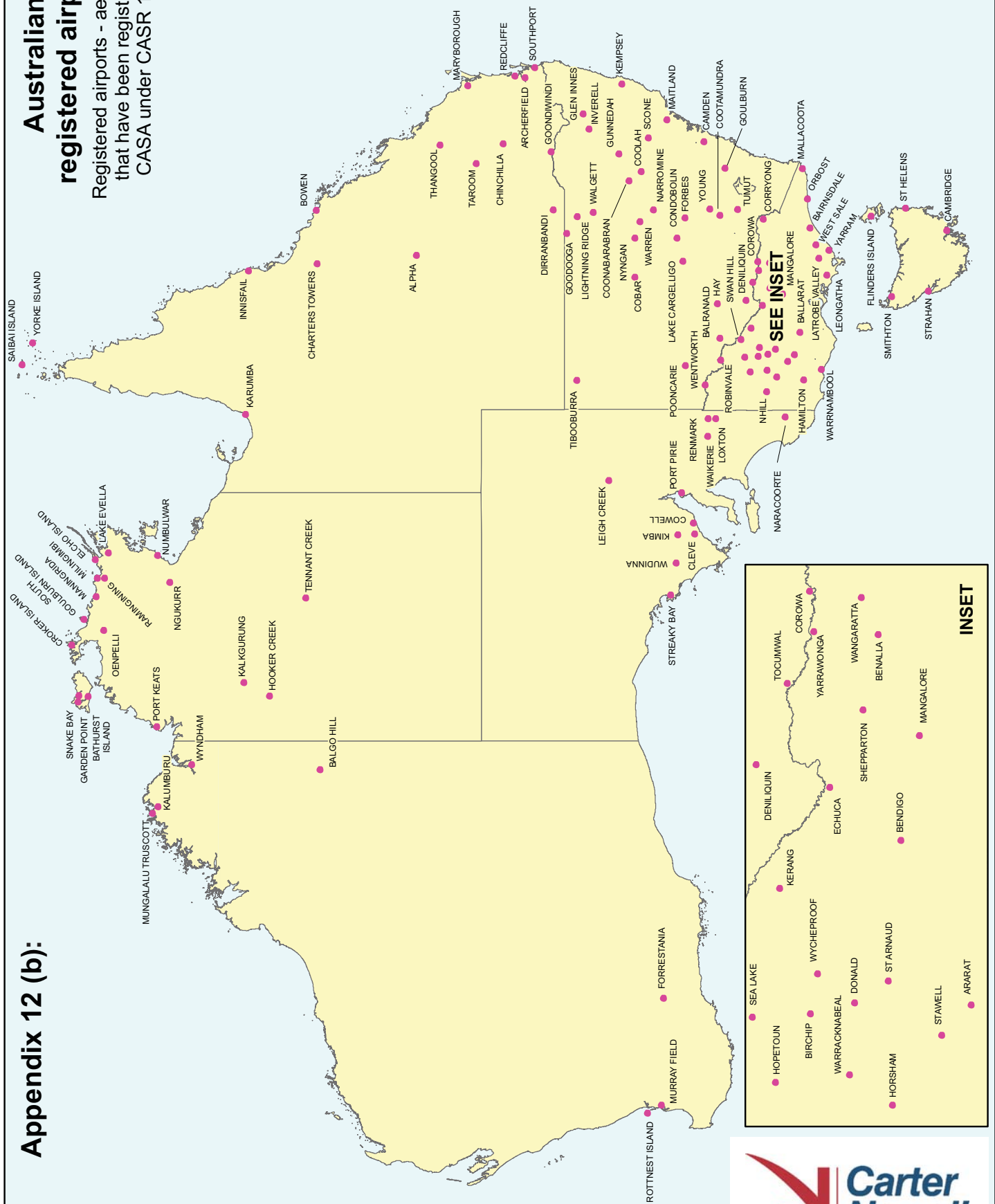
⁴⁶⁹ *Civil Aviation Safety Regulations 1998* (Cth) reg 139.110.

A map of the Indian Ocean region showing the locations of several islands. The map includes the eastern coast of Australia, the Indonesian archipelago, and the Indian Ocean. The islands shown are Christmas Island, Cocos (Keeling) Island, Barrow Island, and Onslow. Christmas Island is marked with a red dot and labeled. Cocos (Keeling) Island is marked with a red dot and labeled. Barrow Island and Onslow are marked with red dots and labeled. The map also shows the Indonesian archipelago and the eastern coast of Australia.

Certified airports - aerodromes for which the operators have been granted a certificate by CASA under CASR 139.050



Registered airports - aerodromes
that have been registered by
CASA under CASR 139.265



SECURITY

Security regulation

Regulation of security at any airport is based on the fundamental separation of uncontrolled or unauthorised people and objects from airside areas. While the crucial verge between airside and landside is a key focus of security regulation, the airport security regime goes well beyond the day-to-day control of people, vehicles and objects to also ensuring airports have adequate systems and processes in place to respond to a security risk and to ensure these events are captured and become disclosed to the relevant authorities.

This section of the Guide outlines the fundamental concepts and compliance requirements of airport security and the liaison necessary with external authorities and associated reporting requirements.

Airside and Landside

An airside area comprises physical barriers to control access to operational areas of a security controlled airport (refer **Appendix 13**).⁴⁷⁰ An airside generally comprises the following characteristics:

- effective access control points to permit authorised access to the airside area;
- patrolling, electronic surveillance or any other suitable measures to inspect the barriers for damage and to deter and detect unauthorised access to the airside area;
- if possible, illumination of the aircraft parking area while a prescribed aircraft is parked at night; and
- the erection of prescribed signs, the number of which should ensure a person approaching the barrier and looking towards the airside is able to see at least one of the signs no matter where he or she stands.

Any other areas within the boundaries of the airport not airside, is landside.

An airside or landside security zone and/or a special event zone is subject to stricter or more specialised controls than those applying generally to the airside or landside area, such as:

- controlling the movement of people, vehicles and goods within either landside or airside areas;
- restricting access to landside or airside security zones within landside or airside areas;
- providing cleared zones (i.e. a zone that may be entered only by persons who have received clearance);
- preventing interference with aircraft (including unattended aircraft); and
- ensuring the security of air traffic control facilities, fuel storage areas, general aviation areas, cargo and baggage handling facilities, navigational aids, fire stations and other emergency service facilities, and critical facilities and structures (i.e. a facility or structure which, if interfered with, could put the safe operation of an airport at risk).

⁴⁷⁰ An 'airside area' is otherwise defined in the *Air Navigation Regulations 1947* (Cth) as 'the parts of the airport (including runways, taxiways, aircraft movement areas, aircraft parking areas and aircraft maintenance areas) used for taking-off, landing, moving, parking and storing of aircraft, and any part of the airport that is adjacent to a part of the airport and into which a member of the public is not generally allowed to go unescorted': *Air Navigation Regulations 1947* (Cth) reg 56.

An airside or landside special event zone can be established upon application to The Department.⁴⁷¹

An airport must take precautions in respect to a landside security zone that is **not** a sterile area to ensure a person can enter the zone only if he or she is authorised to do so and properly displays⁴⁷² a valid Aviation Security Identification Card (ASIC) or Visitor Identification Card (VIC). The main additional requirement for a landside security zone (designated either as a fuel storage, air traffic control or navigational aids zone) is for the erection of appropriate signage.



The airport (or its employees or contractors) responsible for the airside or landside special event zone must ensure an unauthorised person who is in the airside special event zone does not move into either:


- a part of a landside or airside security zone that is outside the respective landside or airside special event zones; or
- a part of the airside area that is outside an airside special event zone that is in force.

A sterile area in a landside security zone of a security controlled airport (refer to **Appendix 13**) should comprise the following characteristics:

- at least one screening point;
- a barrier erected around the zone sufficient to prevent cleared persons in the zone coming into contact with persons who have not been cleared, and to prevent cleared persons getting access to anything from outside the zone that has not been cleared;
- appropriate measures to deter and detect unauthorised access to the zone;
- a person who enters the zone through a screening point is screened and cleared unless the person is of a class that is permitted to pass through a screening point without being screened;
- a person can enter the zone other than through a screening point only if he or she is of a class of persons permitted to do so;
- a vehicle and/or goods that enter the sterile area is screened and cleared;
- a cleared vehicle is able to enter the zone only if it is authorised to do so and it is driven by a person who is authorised to enter the area who properly displays a valid ASIC, or properly displays a valid VIC and is supervised by somebody who properly displays a valid ASIC;
- an inspection of the zone should be undertaken before use if it is not continuously used as a sterile area; and
- the erection of prescribed signs in such a way that anyone entering the area knows that it is a sterile area.


⁴⁷¹ Such an application must contain information detailing the name and contact details of the airport; a map showing the proposed airside special event zone including entry points into the zone and exit points out of the zone; a description of the proposed event to be held in the proposed airside special event zone; the period (or periods) during which the proposed airside special event zone will be in force, including dates, times and duration; an estimate of the number of people who will attend the event to be held in the proposed airside special event zone including an explanation of how that estimate was calculated; a description of any security risks with respect to the event to be held in the proposed airside special event zone; an explanation of how the security risks were identified; and details of the measures the airport will take to manage and mitigate security risks resulting from the event that will be held in the proposed airside special event zone: *Aviation Transport Security Regulations 2005* (Cth) reg 3A.02.

⁴⁷² Such that the card is attached to his or her outer clothing above waist height, at the front or side of his or her body and with the whole front of the card clearly visible. This is not satisfied if anything adhering to the card obscures a photograph or anything else on it: *Aviation Transport Security Regulations 2005* (Cth) reg 1.04.

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 Conduct in contravention of regulations restricting the use of both airside and landside security and event zones (such as that outlined on page 95 of this Guide) is an offence and punishable by enforcement order or an injunction (refer page 98 of this Guide).

Transport Security Program

A Transport Security Program (TSP) regulates aviation security according to the different physical and operational characteristics of an airport. A security controlled airport is required to develop a TSP to demonstrate an understanding of its roles and responsibilities in managing aviation security (refer to **Appendix 14** for a list of airports with TSPs).

- 
 A security controlled airport must have and comply with a TSP⁴⁷³ and commits an offence when operating an airport without such a program unless a reasonable excuse exists – 200 penalty units – \$22 000.⁴⁷⁴ In this context, a reasonable excuse may be unforeseen infrastructure damage caused by extreme weather.

Where both an airport and aircraft operator are in a situation of being required to have a TSP, they must ensure they respectively comply with each program if they have received notice of having a TSP. It is common for airport and aircraft operators to contract certain activities or lease land or buildings to another organisation. The obligation applies to airports which have a contractual relationship with the TSP holder/owner and who are identified in the TSP. Contravening this obligation does not constitute an offence.⁴⁷⁵ However, an airport may be subject to an enforcement order⁴⁷⁶ or an injunction.⁴⁷⁷

Airports are expected to have adequate contractual arrangements in place so that contractors are held accountable for actions or omissions which impact on aviation security. However, this provision recognises there may be some cases where it is more appropriate for the regulator to go directly to the source of the problem that is potentially compromising aviation security. This may be required where there is a commercial dispute between the parties. This aims to encourage compliance across the entire chain of authority, without undermining the principle that ultimate responsibility for program compliance rests with the TSP holder/owner (i.e. the airport). This clause responds specifically to a recommendation made by the ANAO Report on Aviation Security.⁴⁷⁸

An airport's TSP must be in writing, is in force for five years (unless otherwise specified) and must demonstrate that it:⁴⁷⁹

- is aware of the general responsibility to contribute to the maintenance of aviation security;
- has developed an integrated, responsible and proactive approach to managing aviation security;
- is aware of, and has the capacity to meet the specific obligations imposed;⁴⁸⁰ and
- has taken into account relevant features of the airport's operation in developing activities and strategies for managing aviation security.

⁴⁷³ Or multiple TSP's if applicable to an airport: *Aviation Transport Security Act 2004 (Cth)* ss 12, 14.

⁴⁷⁴ *Aviation Transport Security Act 2004 (Cth)* s 13.

⁴⁷⁵ *Aviation Transport Security Act 2004 (Cth)* s 15(3).

⁴⁷⁶ *Aviation Transport Security Act 2004 (Cth)* s 119.

⁴⁷⁷ *Aviation Transport Security Act 2004 (Cth)* s 124.

⁴⁷⁸ Revised Explanatory Memorandum, *Aviation Transport Security Bill 2003 (Cth)*.

⁴⁷⁹ *Aviation Transport Security Act 2004 (Cth)* ss 16, 17.

⁴⁸⁰ In accordance with the *Aviation Transport Security Act 2004 (Cth)*.

A TSP must comprise the following ten key characteristics:

1. The description of an airport which includes (in addition to its name and geographic location), the following details:
 - a reference to the closest population centre;
 - the types of aircraft operations that operate to and from the airport, including regular public transport, cargo, general aviation and joint-user facilities and other significant operations that may require security considerations;
 - the size of the airport;
 - a description of significant features affecting the security of the airport perimeter, such as waterways or residential areas;
 - a description of the airside and landside operations for which the airport has responsibility;
 - the hours during which the airport normally operates;
 - whether access into landside and airside areas and zones, and the internal security of such areas and zones, is controlled at all times;
 - details of procedures for security outside the airport's normal hours of operation; and
 - identities of all aviation industry participants that have a facility at, or are located within the airport that are required to have a TSP, and are covered by the airport's TSP or another aviation industry participant's TSP.
2. A map that shows the airside and landside areas and any airside security zones and landside security zones for which the TSP must set out security measures and procedures to monitor and control access to landside and airside security zones, including measures to detect and deter unauthorised access to those zones.⁴⁸¹ This map should also have a linear scale, a north point, the latitude and longitude of the airport, the location of regular and isolated aircraft parking positions, and details of the airport terminal(s) and apron(s) showing the location of all screening points and landside security zones including sterile areas (if a screened air service operates from the airport).
3. Details of how the airport will manage and co-ordinate security activities within the airport. This may comprise an outline of the role, structure, membership and protocol of the person or body responsible for security within the organisation, including employees and contractors. The TSP should include reference to the security contact officer (who must be an airport employee) whose role it is to facilitate the development, implementation, review and maintenance of the airport's TSP, and to undertake liaison with other aviation industry participants in relation to aviation security matters.⁴⁸² The TSP should set out the criteria for selecting this officer and any training to be undertaken.⁴⁸³
4. Details of how the airport will co-ordinate the management of security with other parties (including Commonwealth agencies) who have responsibilities for, or are connected with aviation. This may include identifying links with other relevant authorities and the communication systems or existence of contractual arrangements in place to support these relationships. This requirement also needs to include the mechanism for consultation between the airport and its employees or their representatives regarding security measures and procedures, and between the airport and relevant third parties, such as police, aircraft operators, tenants and lessees.⁴⁸⁴

⁴⁸¹ *Aviation Transport Security Regulations 2005* (Cth) reg 2.14(2).

⁴⁸² *Aviation Transport Security Regulations 2005* (Cth) pt 2 div 2.1.

⁴⁸³ *Aviation Transport Security Regulations 2005* (Cth) reg 2.22.

⁴⁸⁴ *Aviation Transport Security Regulations 2005* (Cth) reg 2.11(2).

5. Details of the technology and equipment to be used by the airport to maintain security. This may include the screening equipment used,⁴⁸⁵ the details of law enforcement officers and airport security guards,⁴⁸⁶ and the lighting, fencing and barriers used.
6. Details of how the airport will respond to aviation security incidents.⁴⁸⁷ This may include contingency plans and how those plans are to be exercised to ensure the airport is prepared to deal with an aviation incident, and the practices and procedures to be used by an airport to protect security compliance information (i.e. information indicating a failure to comply with the *Aviation Transport Security Act 2004* (Cth)). This may involve setting out how an airport ensures its employees recognise and treat sensitive information as confidential, the consequences of not complying with such procedures and the equipment used to store sensitive material. A TSP may also draw reference to a 'counter terrorist first response' service provider in respect to the supply of such forces for an airport⁴⁸⁸ (refer **Appendix 15**). The term 'first response' in relation to an act of terrorism, means initial action:
 - to evacuate endangered or potentially endangered persons; and
 - if the act has occurred or is occurring – to contain it; or
 - if the act is threatened or prospective – to deter or prevent it; and
 - to cordon the location of the act; and
 - to pass relevant information to emergency services that respond to the act and to other relevant government agencies.⁴⁸⁹
7. Details of how the security measures and procedures are to be used within the airport, including procedures to control access at the airport and maintain the integrity of access control systems, to deter and detect unauthorised access into the airside area, airside security zone, and landside security zone by people, aircraft, vehicles or things, to be applied to unattended aircraft; to assess, identify and respond to unknown substances; to investigate, secure, and remove unattended or suspect vehicles, aircraft or things, including baggage and cargo, and to ensure the security of passwords, keys and key lists, electronic access cards and other security privileges.⁴⁹⁰

⁴⁸⁵ For a detailed outline of the TSP requirements for screening, clearing and checked baggage screening, reference is made to *Aviation Transport Security Regulations 2005* (Cth) regs 2.17, 2.18.

⁴⁸⁶ A security controlled airport from which screened air services do not operate (refer to page 111 of this Guide) must ensure it has access to the services of at least 1 airport security guard who meets the qualifications set out in reg 5.03(3) of the *Aviation Transport Security Regulations 2005* (Cth).

⁴⁸⁷ Security incidents are similarly defined by those offences outlined in the *Crimes (Aviation) Act 1991* (Cth) and within the scope of 'unlawful interference with aviation'.

⁴⁸⁸ *Aviation Transport Security Regulations 2005* (Cth) reg 3.27. 'Counter terrorist first response' are deterrence measures designed to deny information to terrorists and deter acts of terrorism, and if an act is threatened or prospective, to deter or prevent it, being measures that vary in accordance with the threat, and include, but are not limited to, continuous patrolling within the airport by members of a counter-terrorist first response force at all times when the airport is operational, with emphasis on, but not exclusively within terminals, approaches to terminals, and at barriers that separate the parts of the airport that are publicly accessible from airside areas, airside security zones and landside security zones of the airport in relation to movement of passengers to or from prescribed aircraft or loading and unloading of goods (including baggage and cargo) on a prescribed aircraft: *Aviation Transport Security Regulations 2005* (Cth) reg 3.28.

⁴⁸⁹ *Air Navigation Regulations 1947* (Cth) reg 71.

⁴⁹⁰ *Aviation Transport Security Regulations 2005* (Cth) reg 2.16.

8. Details of how the other aviation industry participants who are covered by, or operating under the airport's TSP and the consultation undertaken by the airport with such participants. The TSP must require the airport to maintain a system to enable all aviation industry participants that have a facility at, or are located within the airport, to be contacted if an aviation security incident occurs.⁴⁹¹ This may also require reference to the TSP of Airservices Australia which itself must set out a mechanism for consultation between it and any security controlled airports within which there are Airservices Australia facilities, and with security controlled airport employees (or their representatives), regarding security measures and procedures to be implemented.⁴⁹²



While liaison between aviation industry participants in relation to aviation security matters is mandated by legislation, it is an offence for a person to disclose to any other person any information about the content of an aviation industry participant's TSP without the consent of the participant – 50 penalty units – \$5500.⁴⁹³

9. An accompanying document attached to the TSP that provides:
- a statement outlining the local security risk context of the airport, including consideration of its location and seasonal and operational factors;
 - a list of general threats and generic security risk events to people, assets, infrastructure and operations; and
 - an outline of the people, assets, infrastructure and operations that need to be protected.⁴⁹⁴
10. An accompanying document attached to the TSP that provides the terms of reference and membership of the security committee or other consultative arrangement established to coordinate security activities.⁴⁹⁵ Such a security committee may be generally constituted by the same personnel involved in an airport's AEC, constituted under the MOS⁴⁹⁶ (refer to page 86 of this Guide).

A TSP must set out quality control procedures including a schedule of audits, the procedures for carrying out an audit (the records of which are required to be kept for seven years under the TSP), including a process for selecting auditors, the procedures for reviewing the TSP (the records of which are required to be kept for three years under the TSP), including a process for consultation during such a review, and a description of the circumstances that will require a review of the TSP, including those surrounding the occurrence of an aviation security incident.



A TSP must be approved by The Department and an airport may apply to the AAT for a review of decisions in respect to:⁴⁹⁷

- a refusal to approve a TSP;
- a direction for an airport to vary a TSP;
- a direction for an airport to revise a TSP;
- a refusal to approve alterations of a TSP;
- a cancellation of a TSP;
- a declaration that an airport or a part of an airport is a security controlled airport; or
- a determination that an airport has an adverse security status.

⁴⁹¹ *Aviation Transport Security Regulations 2005* (Cth) reg 2.13(8).

⁴⁹² *Aviation Transport Security Regulations 2005* (Cth) reg 2.79.

⁴⁹³ *Aviation Transport Security Regulations 2005* (Cth) reg 2.06.

⁴⁹⁴ *Aviation Transport Security Regulations 2005* (Cth) reg 2.10.

⁴⁹⁵ *Aviation Transport Security Regulations 2005* (Cth) reg 2.11(3).

⁴⁹⁶ *Manual of Standards* pt 10.7.1.1.

⁴⁹⁷ *Aviation Transport Security Act 2004* (Cth) s 126.

Where an airport has been required to vary a TSP, the alterations come into force at the time specified in the approval, else per the AAT's directions (if applicable).⁴⁹⁸

An airport can give The Department a revised TSP and upon approval, the revised TSP comes into force in place of any other TSP.⁴⁹⁹



Reference should be made to the fundamental security measures required of category 1 – 5 airports in establishing its TSP (refer **Appendix 16**).

Issuing ASICs and VICs

Each operator of a security controlled airport (**Appendix 13**) is an issuing body authorised to issue an Aviation Security Identification Card (ASIC) and a Visitor Identification Card (VIC) conditional on it having an ASIC program approved by The Department. An ASIC program should seek to:

- prevent unauthorised people entering security restricted areas at airports;
- ensure that somebody authorised to be in a security restricted area at an airport is adequately supervised while he or she is in the area;
- make it easier to identify people in security restricted areas at airports through the use of ASICs;
- ensure maximum recognition for ASICs issued by an airport by ensuring they are of a particular kind and nationally identical;
- ensure that somebody in a security restricted area at an airport has a lawful reason to be there; and
- preventing activities, in security restricted areas at airports, that could result in an unlawful interference with aviation.⁵⁰⁰

An ASIC program sets out procedures for:⁵⁰¹

- the issue and production of ASICs and VICs;
- the issue and production of temporary ASICs and VICs that are designed to be used on a single occasion and then destroyed;
- the design, distribution and storage of sample ASICs or VICs for training purposes;
- the safekeeping, secure transport and disposal of ASICs and VICs;
- the recovery and secure destruction of issued ASICs or VICs that are no longer required and ensuring same are returned to the airport;
- the security of records in relation to applicants for ASICs and VICs;⁵⁰²
- ensuring that persons properly display ASICs or VICs; and
- lost ASICs and VICs.


⁴⁹⁸ *Aviation Transport Security Act 2004 (Cth)* s 23A


⁴⁹⁹ *Aviation Transport Security Act 2004 (Cth)* s 22. It should be noted that the *Aviation Transport Security Act 2004 (Cth)* is taken not to have prevented more than one TSP from being in force at the same time for an airport, so long as those programs covered different operations or locations. If there was more than one TSP in force for an airport at any time, the *Aviation Transport Security Act 2004 (Cth)* is taken to have applied, in relation to each of those programs, as if it were the only program for the airport. If as at 17 November 2008, there is more than one TSP in force for an airport, then The Department is taken, at that time, to have given the airport a notice, under s 12(2) of the *Aviation Transport Security Act 2004, (Cth)* that specifies the operation or location covered by each of those programs.

⁵⁰⁰ *Air Navigation Regulations 1947 (Cth)* reg 79.

⁵⁰¹ *Aviation Transport Security Regulations 2005 (Cth)* reg 6.06.


⁵⁰² This would seek to include both the retention of records to demonstrate that it has complied with its ASIC program (*Aviation Transport Security Regulations 2005 (Cth)* s6.24), and also records relating to a register of each ASIC issued by the body: *Aviation Transport Security Regulations 2005 (Cth)* reg 6.23.

 It is an offence for an airport to not give effect to its ASIC program by such conduct that either fails to adhere to, or contravenes an ASIC program. An airport may seek an exemption from compliance with certain provisions of an ASIC program.⁵⁰³

 An airport must provide a written report to The Department within one month after the end of each financial year detailing the total number of ASICs issued that have not expired and have not been cancelled, and the number that have expired or been cancelled but have not been returned to the airport – 20 penalty units – \$2200.⁵⁰⁴

An airport may issue an ASIC to a person only if:⁵⁰⁵

- the person has an operational need for an ASIC;
- the person has confirmed his or her identity by showing the airport a primary identification document; and either (i) a secondary identification document, or (ii) two tertiary identification documents, and either (iii) the person has shown the airport an Australian birth certificate, Australian passport or Australian naturalisation certificate, or (iv) the airport is satisfied the person is not an unlawful non-citizen;
- the airport has received a notice from the Secretary responsible for administering the AusCheck scheme⁵⁰⁶, stating the person to be issued an ASIC does not have an adverse criminal record following an assessment of the AusCheck scheme;
- the airport has been notified in writing that a security assessment of the person has been made⁵⁰⁷, and the assessment was not adverse, or (if the assessment was qualified), the airport has received a notice from The Department that an ASIC may be issued because the person is not a threat to aviation safety; and
- the person is not otherwise disqualified from holding an ASIC.

 An airport commits an offence if an ASIC is issued in contravention of the above – 50 penalty units – \$5500.⁵⁰⁸ Moreover, an airport must not allow a person to be directly involved in the issue of ASICs if that person would not be eligible for the issue of an ASIC.

⁵⁰³ *Aviation Transport Security Regulations 2005* (Cth) reg 6.07.

⁵⁰⁴ *Aviation Transport Security Regulations 2005* (Cth) reg 6.25. A good example of the Joint Airport Investigation Team's role is in respect to 'Operation Galvano' which was an investigation into the use of expired ASICs; the investigation found 125 offences and 209 expired ASICs that had not been accounted for: *Australian Federal Police, Annual Report 2007–8*.

⁵⁰⁵ *Aviation Transport Security Regulations 2005* (Cth) reg 6.28.

⁵⁰⁶ In accordance with the *AusCheck Act 2007* (Cth).

⁵⁰⁷ In accordance with Part IV of the *Australian Security Intelligence Organisation Act 1979* (Cth).

⁵⁰⁸ *Aviation Transport Security Regulations 2005* (Cth) reg 6.28.



Facts:

The case of *Britten and Secretary, Attorney-General's Department*⁵⁰⁹, involves an application to the AAT following a refusal by an ASIC issuing body to provide Mr Britten with an ASIC.

Mr Jeffrey Britten purportedly fell foul of the ASIC security clearance requirements because he had a 'qualified criminal record' – that is, where a person has been convicted twice or more of aviation security-relevant offences, and did not receive a sentence of imprisonment for any of those convictions and did not receive any of those convictions within the 12 months ending on the date when the relevant background check was conducted.⁵¹⁰ Such a person may be issued an ASIC but must be made subject to a condition that a further background check be conducted within 12 months of the first.

When Mr Britten's issuing body applied to The Department for a background check (in accordance with the scheme created by the *AusCheck Act 2007* (Cth)) – it was informed of Mr Britten's guilty pleas in a Townsville Magistrates' Court some five years earlier to the possession of cannabis, production of cannabis, and possession of things used for the commission of a crime. Mr Britten was fined \$2000.

There was no dispute that the first two of these guilty pleas were convictions relevant to a defined aviation security-relevant offence.⁵¹¹

While there was also no dispute that these matters arose out of essentially the same course of conduct, the issue before the AAT was whether Mr Britten 'had been convicted twice or more of aviation-security-relevant offences'. The effect of this view was that The Department issued advice that Mr Britten had a qualified criminal record constituted by an 'unfavourable criminal history advice' as that expression is used in the *AusCheck Act 2007* (Cth).

Mr Britten sought a review of the decision to provide that advice and advanced the argument that he had not been convicted twice but that he has three convictions arising out of a single criminal act. Mr Britten argued the regulation does not use the expression 'two or more offences' but focuses upon the fact of a conviction.

Decision:

The AAT disagreed with Mr Britten and found that each guilty plea was a conviction and hence, he had been convicted twice which warranted the determination of his 'qualified criminal record'.

⁵⁰⁹ [2008] AATA 735 (22 August 2008).

⁵¹⁰ *Aviation Transport Security Regulations 2005* (Cth) reg 6.01(3).

⁵¹¹ An offence constituted by, amongst other things, the production, possession, supply, import or export of a substance that is a narcotic substance within the meaning of the *Customs Act 1901* (Cth) or a drug within the meaning of the *Customs (Prohibited Exports) Regulations 1958* (Cth): *Aviation Transport Security Regulations 2005* (Cth) reg 6.01(1).

**Facts:**

In *Travers and Secretary, Department of Transport and Regional Services*⁵¹², Mr Travers applied for an ASIC in order to work in a secure area of the Cairns airport where he was employed as an aircraft refueller. Mr Travers however, was rejected by the ASIC issuing authority, the Cairns Port Authority (CPA) on the basis he had some criminal convictions which amounted to 'an adverse criminal record'. The CPA was therefore precluded from granting an ASIC and The Department's discretionary power to grant an ASIC was declined. The AAT was asked to review that latter decision of The Department.

In 2005, Mr Travers was convicted of selling a dangerous drug (i.e. amphetamines), and was sentenced to 12 months imprisonment, wholly suspended for three years. The operational period of the suspended sentence was still in effect at the time of the AAT hearing.

Mr Travers presented with a number of good character referees from the community, some of whom had known him most of his life. The references also indicated the support of his employer.

The offences the subject of his convictions occurred when he was living in a rented apartment with drug addicts. Mr Travers had since returned to family life and was living with his parents at the time of the hearing.

Mr Travers was a qualified motor mechanic and aircraft refueller, and had worked in the Cairns area all of his life principally in the general aviation area. The AAT heard that if issued with an ASIC, Mr Travers would then be able to go within any airside area of the airport, other than the domestic or international aprons.

Decision:

The AAT stated that 'in arriving at a determination in relation to this application, one must be conscious of the issues to be taken into account under the *Aviation Transport Security Regulations 2005* (Cth) and with a heightened global awareness of security in recent years, particularly around airports and the aviation industry'.

The AAT accepted that Mr Travers clearly had aviation security relevant offences that were dealt with concurrently by the sentencing court and not as one offence following upon a previous conviction. The AAT felt Mr Travers was a young man who had moved away from home and was living with two persons, at least one of whom appears to have been a poor example. He succumbed to peer pressure in trying drugs and had the misfortune to be associated with a person who was under surveillance by the police.

The question for the AAT was what risk Mr Travers might now be if he was granted an ASIC and whether the circumstances of the offences suggest he should not be granted such a card. The AAT had regard to the totality of the evidence, the circumstances of the offences and the record of Mr Travers' work and family history. The AAT did not place much emphasis on the effect this decision would have on Mr Travers' livelihood which the AAT said was not a significant consideration in making a determination under the *Aviation Transport Security Regulations 2005* (Cth). The AAT also considered the Wheeler Review and that Cairns 'is an airport through which overseas drug trafficking or other offences might be channelled'.

⁵¹² [2007] AATA 1797 (24 September 2007).

Ultimately, and on the balance of probabilities, the AAT found that Mr Travers was not likely to be a risk greater than any other person in the community. The AAT concluded that Mr Travers' background, references and more recent pattern of life was not one which poses a greater risk to security of an airport than the average person in society. The AAT therefore ordered Mr Travers be granted an ASIC, with conditions comprising:

- the ASIC be issued for an initial period of two years;
- that Mr Travers be subjected to drug testing during this initial period, at the discretion of The Department, and at a frequency and at places reasonably directed;
- that a report be provided to The Department as to Mr Travers' good conduct and performance by his employer annually for the initial two-year period;
- these conditions be lifted at the end of that two-year period, provided that there have been no positive drug tests, satisfactory performance and no further criminal convictions in that period; and
- if these conditions are not satisfied for the duration of the two year period, the Secretary of The Department should extend or terminate this probationary period as they see fit.

An airport may issue a VIC to a person only if:⁵¹³

- he or she needs to enter the secure area of a security controlled airport for a lawful purpose;
- he or she will be supervised by the holder of a valid ASIC while in the area; and
- the VIC issued by an airport is not valid for longer than one month, or if a longer period than one month is permitted by the airport's ASIC program, the longer period (up to three months).



An airport commits an offence of strict liability if a VIC is issued in contravention of the above – 50 penalty units – \$5500.⁵¹⁴

An ASIC holder successfully supervises a VIC holder if they escort, accompany or watch the VIC holder at all times when the VIC holder is in the secure area. The ASIC holder must ensure the VIC holder stays within a particular part of the secure area and the ASIC holder is able to see if the person leaves the particular part of the area and the VIC holder has no access, while in that particular part, to an aircraft engaged in a prescribed air service, passengers boarding, or intending to board such an aircraft or anything being loaded, or to be loaded, on board such an aircraft.



It is an offence for an ASIC holder to leave a VIC holder unsupervised while they are in the secure area to which the VIC allows access – 5 penalty units – \$550.⁵¹⁵

⁵¹³ *Aviation Transport Security Regulations 2005* (Cth) reg 6.38.

⁵¹⁴ *Aviation Transport Security Regulations 2005* (Cth) reg 6.38.

⁵¹⁵ *Aviation Transport Security Regulations 2005* (Cth) reg 3.09.

Where an airport determines an ASIC or VIC was not issued by it in accordance with its ASIC program or the legislation, the airport must immediately cancel the ASIC or VIC. An ASIC or VIC must also be immediately cancelled when:⁵¹⁶

- it receives a direction from The Department to cancel an ASIC based on information that a person has an adverse criminal record or a qualified criminal record;
- The Department has notified the airport in writing that a security assessment of the holder was adverse;
- the airport determines the holder is or has become an unlawful non-citizen;
- the airport determines the holder has been convicted of an offence against pt 2 of the *Crimes (Aviation) Act 1991* (Cth) (discussed on page 109 of this Guide), any other 'aviation security relevant offence' for which he or she was sentenced to a term of imprisonment⁵¹⁷, or the holder no longer has an operational need to enter a secure area; or
- the holder contravenes a condition of the ASIC or VIC or the ASIC or VIC is permanently or temporarily altered or defaced.

An airport must ensure the airside area of an airport can be entered only by persons including:⁵¹⁸

- a person authorised to do so who properly displays a valid ASIC;
- a person properly displaying a valid VIC who is supervised by someone authorised to enter the area displaying an ASIC;
- an exempt person (that is, a person, or a person in a specified class, to whom The Department has given an exemption to not display an ASIC in a secure area (excluding at all times such exemption relating to persons passing through a screening point without being screened or entering a secure area otherwise than through a screening point),⁵¹⁹ and
- a vehicle driven by a person who is authorised to enter the area and who properly displays a valid ASIC or being driven by an exempt person.

⁵¹⁶ *Aviation Transport Security Regulations 2005* (Cth) reg 6.43.

⁵¹⁷ 'Aviation security relevant offences' include offences involving dishonesty; an offence involving violence or a threat of violence; an offence involving intentional damage to property or a threat of damage to property; an offence constituted by the production, possession, supply, import or export of a substance that is (a) a narcotic substance within the meaning of the *Customs Act 1901* (Cth); or (b) a drug, within the meaning of (i) the *Customs (Prohibited Exports) Regulations 1958* (Cth); or (ii) the *Customs (Prohibited Imports) Regulations 1956* (Cth); an offence against pt 5.3 of the *Criminal Code Act 1899* (Qld); an offence constituted by the production, possession, supply, import or export of explosives or explosive devices, and so on: *Aviation Transport Security Regulations 2005* (Cth) reg 6.01.

⁵¹⁸ *Aviation Transport Security Regulations 2005* (Cth) reg 3.15.

⁵¹⁹ *Aviation Transport Security Regulations 2005* (Cth) reg 3.08.



The Department may revoke a security controlled airport's authorisation as an issuing body if, in its opinion:

- the airport does not have a secure area;
- the airport's ASIC program is no longer adequate to give effect to a program purpose and it is unlikely any direction issued by The Department will make the program adequate for that purpose;
- allowing the airport's authorisation to continue would be likely to be a significant threat to aviation security;⁵²⁰ or
- the airport does not comply with a direction of The Department in respect to the ASIC program, or the airport fails to comply with its ASIC program. The Department here will have regard to the kind and seriousness of the contravention and whether the airport has previously contravened the legislation or a condition of its authorisation or ASIC program.⁵²¹

Weapons, firearms and prohibited items

A weapon includes such obvious items as a replica or imitation weapon, parts and ammunition for firearms, and also includes:⁵²²

- sharp items designed to be used primarily to inflict injury or to be used in self-defence (i.e. daggers, flick-knives, star knives etc.);
- blunt items designed to inflict injury or to be used in self-defence, things capable (with or without modification) of discharging projectiles for the purpose of disabling or incapacitating a person or animal (i.e. blow pipes, cross-bows, spear guns etc.);
- items designed to disable or incapacitate, or otherwise harm a person or animal (i.e. stun guns); and
- explosive or incendiary devices and flammable materials not ordinarily found around the home, biotoxins, infectious substances and chemical toxins.

A 'prohibited item' includes such items as:⁵²³

- sporting goods, kitchen utensils, tools, and other things with sharp edges or points capable of injuring a person (i.e. ice picks, rock climbing equipment, ski poles, darts, box cutters but excluding a safety razor);
- sharp things that are not weapons, but are capable (with or without modification) of causing harm by penetration (i.e. letter-openers, bodkins, pointed metal scissors, pointed metal nail files but excluding blunt-ended or round-ended scissors with blades less than 6 cm long and excluding a hypodermic needle if the person carrying it shows proof that it is medically necessary for the use of the person or another person who is in the person's care);
- blunt things able to be used to bludgeon or threaten to bludgeon a person (i.e. baseball, softball and cricket bats but excluding walking sticks, crutches and other mobility aids);
- household flammable goods (i.e. aerosol containers, including cans of spray paint but excluding alcohol, perfumes, matches, lighters and lighter fluid) an aerosol container (including one that contains a flammable substance) if it is for (a) personal (including cosmetic) use, or (b) a medical application (i.e. an asthma inhaler)); and
- things capable of being used to restrain a person (i.e. cable ties and handcuffs excepting of course if carried by a person who is escorting a person in custody, or if carried on an aircraft with the authority of its operator for the purpose of restraining a violent person).

⁵²⁰ The reference to aviation security, while not defined within the Act, would likely fall to a similar definition of 'unlawful interference with aviation' per pages xix and 110 of this Guide.

⁵²¹ *Aviation Transport Security Regulations 2005* (Cth) reg 6.19.

⁵²² *Aviation Transport Security Regulations 2005* (Cth) reg 1.09.

⁵²³ *Aviation Transport Security Regulations 2005* (Cth) reg 1.07.

An employee of an airport is authorised to have a weapon (not a firearm) in his or her possession in a secure area of a security controlled airport (i.e. within the landside security zone and/or airside area and security zones) if the weapon is a tool of trade⁵²⁴ and the airport employee takes reasonable precautions to ensure the weapon remains under control.⁵²⁵

Firearms in the airside area are permitted by appropriately licensed persons properly displaying a valid ASIC on the following basis:⁵²⁶

- persons engaged in controlling wildlife or other animals on the airport with the consent of the airport;
- a uniformed member of the staff of a private security contractor with the consent of the airport, who is in an armoured vehicle or is facilitating the movement of an armoured vehicle that displays the contractor's livery, or a vehicle that is accompanying such a vehicle and also displays the contractor's livery;
- a screening officer (or an authorised representative of an airline operator) who is carrying the firearm to or from an aircraft because the firearm has been accepted for carriage by the aircraft's operator or is being removed from the aircraft; or
- an officer of the Australian Customs Service and an air security officer.

A weapon can be taken through a screening point (but not a sterile area) by a screening officer on duty or an employee or contractor of the airport if the weapon has either been detected during screening or surrendered for the purpose of being carried in the hold of the aircraft and must move through the screening point to reach the place where the weapon is to be stored or released. The weapon should be carried in such a way that its presence is not apparent to members of the public.⁵²⁷

Similar restrictions apply to 'prohibited items', save for:

- a person being escorted in custody is authorised to carry a prohibited item through a screening point if the item is reasonably necessary in connection with the escort; and
- a person who suffers from a medical condition (or the person who is caring for another person who suffers from a medical condition) is authorised to carry a prohibited item through a screening point if the item is medically necessary for the purpose of treating the condition and the person shows a screening officer a medical certificate to that effect.⁵²⁸

⁵²⁴ This is where the weapon is required for a lawful purpose.

⁵²⁵ *Aviation Transport Security Regulations 2005* (Cth) reg 4.52.

⁵²⁶ *Aviation Transport Security Regulations 2005* (Cth) reg 4.54.

⁵²⁷ *Aviation Transport Security Regulations 2005* (Cth) reg 4.55.

⁵²⁸ *Aviation Transport Security Regulations 2005* (Cth) reg 4.64.

Criminal offences within an airport

Offences within the *Crimes (Aviation) Act 1991* (Cth)⁵²⁹ that relate strictly to regulated airports (**Appendix 17**) comprise acts of violence,⁵³⁰ acts that endanger the safety of an airport,⁵³¹ and threats.⁵³²

A person is guilty of an offence if a substance or thing is used to commit an act of violence against anyone at a regulated airport and such act causes or is likely to cause serious injury or death and endangers or is likely to endanger the 'safe operation of the airport or the safety of anyone at the airport'.⁵³³

Equally, and where such an act endangers or will likely endanger the safe operation of a regulated airport or the safety of anyone within, a person commits an offence when:

- the facilities of a regulated airport are destroyed or seriously damaged;
- an aircraft not in service at a regulated airport is destroyed or seriously damaged; and
- services of a regulated airport are disrupted.⁵³⁴

An offence is committed where a person, who is not a law enforcement officer, an on-duty member of the Australian Defence Force, or a person otherwise authorised, holds a weapon or prohibited item in their possession in an airside area, landside security or event zone. A person also commits an offence when having a weapon on their possession when passing through a screening point in an airport.⁵³⁵

A person must not threaten⁵³⁶ to destroy, damage or endanger the safety of a regulated airport or threaten to kill or injure any person within the airport.⁵³⁷ Such a threat includes an act by a person who makes a statement or communicates information that is known to be false, to the effect of or from which it can be reasonably inferred that a plan, proposal, attempt or conspiracy is made to:

- take control by force of a regulated airport;
- destroy, damage or endanger the safety of a regulated airport; or
- to kill or injure anyone within the limits of a regulated airport.

⁵²⁹ The *Crimes (Aviation) Act 1991* (Cth) enacts as Australian law the 1988 Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Sch 3. *Crimes (Aviation) Act 1991* (Cth)). This Protocol supplements the existing 1971 Montreal Convention and seeks to characterise certain acts of violence as criminal offences when performed at (inter alia) member state's international airports. This Act also enacts as Australian law other international Conventions relating to offences comprising hijacking, sabotage and unlawful interference, seizure or control of an aircraft. These provisions are dealt with briefly in this Guide due to the scope of such offences potentially affecting regulated airports whilst aircraft are still taxiing or within an airport's airspace.

⁵³⁰ *Crimes (Aviation) Act 1991* (Cth) s 26.

⁵³¹ *Crimes (Aviation) Act 1991* (Cth) s 27.

⁵³² *Crimes (Aviation) Act 1991* (Cth) s 28.

⁵³³ *Crimes (Aviation) Act 1991* (Cth) s 26(1).

⁵³⁴ *Crimes (Aviation) Act 1991* (Cth) s 26.

⁵³⁵ Division 3 and 4 of pt 4 of the *Aviation Transport Security Act 2004* (Cth) also prescribe the strict liability offences of a person carrying a weapon or a prohibited item.

⁵³⁶ That is, to make a statement or do anything else indicating, or from which it could reasonably be inferred, that it is his or her intention to do that act: *Aviation Transport Security Act 2004* (Cth) s4. Section 24 also extends this concept to making a false statement or communicating information from which it can be reasonably inferred that a plan, attempt or conspiracy has been or will be deployed to hijack, destroy or damage an aircraft or kill or injure anyone on board. This includes making jokes about bombs in baggage and leaving articles of baggage unattended: *Aviation Transport Security Regulations 2005* (Cth) s9.01.

⁵³⁷ *Crimes (Aviation) Act 1991* (Cth) s 28.



Where an airport reasonably suspects that a person has committed an aforementioned offence (including those acts undertaken on board an aircraft still situated at a regulated airport), the airport:

- may cause the offender to be taken into custody;
- to accept delivery of the offender and cause the offender to be brought, as soon as practicable, before a magistrate; and
- cause the offender to remain in custody until brought before a magistrate.⁵³⁸

The scope of offences outlined above are effectively combined within the definition of ‘unlawful interference with aviation’ – that is, ‘taking control of an aircraft by force, or threat of force, destroying or causing damage to an aircraft, putting the aircraft or any person on board or outside the aircraft at risk (which includes placing anything on board an aircraft that affects safety), and committing an act at an airport, or causing any interference or damage, that puts the safe operation of the airport, or the safety of any person at the airport, at risk’. The definition of ‘unlawful interference with aviation’ is integral to the understanding and application of the *Aviation Transport Security Act 2004* (Cth). It determines the parameters of what unlawful interference with aviation is, how it may occur and the harm or threat this regime safeguards against. It covers conduct that threatens the safe operation of airports, and thus, behaviour which may cause harm to passengers, crew, ground personnel and the general public or damage to property. The term is based upon guidance from ICAO.⁵³⁹

Law enforcement officers

While the powers or obligations under the *Crimes (Aviation) Act 1991* (Cth) (as described above) are afforded to the regulated airport, these provisions would in reality contemplate the use of a law enforcement officer.

This is consistent with divs 3, 3A and 4 of pt 5 of the *Aviation Transport Security Act 2004* (Cth) which stipulates that an on-duty law enforcement officer at a security controlled airport (**Appendix 13**) comprises a member of the AFP, the State police force, and a protective service officer or special protective service officer.⁵⁴⁰

Such officers may enter, and remain in any part of a security controlled airport at any time. If an officer reasonably believes it necessary to safeguard against ‘unlawful interference with aviation’, the law enforcement officer may:

- stop a person who is in an airside area and conduct an:
 - ordinary search (i.e. a search of a person or of articles in the possession of a person that may include requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat, and an examination of those items); or
 - a frisk search (i.e. a search of a person conducted by quickly running the hands over the person’s outer garments; and an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person).
- require the driver of a vehicle to stop the vehicle or search the vehicle if its operation is believed to interfere with aviation;
- request the offender to leave the airport or designated security or event zone; or
- remove the offender and/or vehicle from the airport or designated security or event zone.

⁵³⁸ *Crimes (Aviation) Act 1991* (Cth) ss 30, 33.

⁵³⁹ Based on Doc 9713 pt 1 and 2 ICAO Vocabulary 2001 – act of unlawful interference A53.

⁵⁴⁰ *Australian Federal Police Act 1979* (Cth).

These powers apply to qualified customs officers, save for the power to remove persons from an airport. Such a power for a customs officer is limited to the physical restraint and detention of a person until a law enforcement officer can deal with the situation.



These powers do not apply to an airport screening officer (discussed below) nor to an airport security guard (a person who is not a law enforcement officer or eligible customs officer but wears a distinctive and recognisable uniform displaying an ASIC and has undertaken security guard training.⁵⁴¹ Such airport personnel can only physically restrain a person who is committing or has committed an offence and such restraint would ensure an offender is not in a cleared area or zone or to maintain the integrity of a landside security or event zone, an airside area, airside security or event zone.⁵⁴²

Screening

The principle purpose of screening is to prevent weapons and prohibited items from entering the cabin of an aircraft and to prevent explosive devices from entering the hold of an aircraft. This is done by screening persons, goods and vehicles so that persons and goods that ultimately board or are carried on an aircraft are segregated or kept secure for the purposes of boarding or being carried on an aircraft (refer to **Appendix 13** for airports that perform screening of passengers and checked baggage).⁵⁴³

A screening officer must be appropriately trained and qualified,⁵⁴⁴ properly display a valid ASIC whilst on duty at all times and wear a distinctive and recognisable uniform.

⁵⁴¹ *Aviation Transport Security Regulation 2005* (Cth) reg 5.03.

⁵⁴² The 24-hour unified presence of Australian Federal Police 'Commanders' at the Adelaide, Alice Springs, Brisbane, Cairns, Canberra, Darwin, Gold Coast, Hobart, Melbourne, Perth and Sydney airports is an all-encompassing role in their assumption of command and police control responsibilities. The use of AFP officers was introduced following the 2005 Wheeler Review and subsequent Unified Policing Model, which encapsulates police aviation liaison, intelligence, counter terrorism, prevention and response to airport crime and major criminal investigation (at the Brisbane, Sydney, Melbourne, Adelaide and Perth airports only). This Model also encapsulates the deployment of Protective Service Officers to regional airports.

⁵⁴³ Checked baggage is an article or possession of an aircraft passenger or crew member that has been checked in for a flight on the aircraft, is intended to be carried on board the aircraft or another aircraft and if carried in an aircraft, is not accessible to the passenger or crew member while the aircraft is in flight: *Aviation Transport Security Regulations 2005* (Cth) reg 1.03.

⁵⁴⁴ *Aviation Transport Security Regulations 2005* (Cth) reg 5.06.

A person (excluding a law enforcement officer, a screening officer, an ambulance, rescue or fire service officer who is responding to an emergency on the landside of the airport, and a member of the Defence Force who is responding to an event or threat of 'unlawful interference with aviation') must be screened and cleared before boarding an aircraft. This requirement applies only to aircraft that operates a screened air service⁵⁴⁵ and when the person is a passenger on, or a member of the crew⁵⁴⁶ of the aircraft.⁵⁴⁷ The person's carry-on baggage must also be cleared.⁵⁴⁸

An authorised person permitted to carry out screening at a security controlled airport should detect, to the extent it is technically possible to do so, on a person, or in a person's belongings, or in stores entering a sterile area, any weapons or prohibited items, and any explosives in 'checked baggage'.⁵⁴⁹

While a screening officer may consider it necessary, in order to screen a person properly, to remove an item of clothing, the officer can only make a request of the person and must not require the person to remove any clothing, or remove or cause the removal of any of the person's clothing.⁵⁵⁰

If a person undergoes a screening procedure and the results of that procedure indicate that additional screening procedures are necessary in order to screen the person properly, a screening officer may request the person to undergo a frisk search. Such a search can only be undertaken with consent and to the extent necessary to complete the proper screening of the person.⁵⁵⁰

If such a request is made and the person refuses to comply with the request (for either a frisk search or a request to remove an article of clothing), and refuses to be screened in a private room by a screening officer of the same sex as the person, or to remove the item of clothing during screening or undergo a frisk search, and the refusals mean that it is not possible to screen the person properly, the screening officer must refuse to allow the person to pass through the screening point.⁵⁵⁰

A screening officer is not permitted to open an item of checked baggage without the consent of a person who is entitled to possession of the item, or of the person who checked the item in, unless a reasonable attempt is first made to find a person who is entitled to possession of the item, or the person who checked the item in and no such person is found.⁵⁵¹

⁵⁴⁵ A screened air service is undertaken by an aircraft that is either (a) operating an RPT international air service, (b) an RPT open charter operation, (c) an RPT jet aircraft operating a domestic air service, or (d) an aircraft that departs from the same airport apron (per the airport's TSP) as an aircraft described in (a) – (c) and is scheduled to depart within the 'operational period' of such aircraft. The 'operational period' for a departing aircraft at the Adelaide, Brisbane, Melbourne, Perth, Sydney, Cairns, Canberra, Gold Coast or Darwin airports is the period beginning 2 hours before and 30 minutes after the aircraft's scheduled and actual departure times respectively. The 'operational period' for a departing aircraft at any other security controlled airport is the period beginning 30 minutes before and 30 minutes after the aircraft's scheduled and actual departure times respectively. The 'operational period' for an arriving aircraft is the period beginning 30 minutes before and 30 minutes after the aircraft's scheduled and actual arrival time: *Aviation Transport Security Regulations 2005* (Cth) reg 4.01.

⁵⁴⁶ Save for where a member of an aircraft's crew is taken to continue to be cleared if he or she, since he or she was last screened, has continuously been in the airside of an airport at which there is a sterile area (and if the sterile area is not continuously in operation, while the area was in operation); or in the sterile area of an airport; or on board an aircraft that operates a screened air service.

⁵⁴⁷ *Aviation Transport Security Regulations 2005* (Cth) reg 4.08.

⁵⁴⁸ *Aviation Transport Security Regulations 2005* (Cth) reg 4.15.

⁵⁴⁹ 'Checked baggage' is an article or possession of a passenger or crew member that (a) has been checked in for a flight on the aircraft, (b) is intended to be carried on board the aircraft or another aircraft; and (c) if carried in an aircraft, is not accessible to the passenger or crew member while the aircraft is in flight: *Aviation Transport Security Regulations 2005* (Cth) reg 1.03.

⁵⁵⁰ *Aviation Transport Security Act 2004* (Cth) ss 95, 95A, 95B, 95C.

⁵⁵¹ *Aviation Transport Security Regulations 2005* (Cth) reg 4.39.



Facts:

Plaintiff Ms Barnes in the case of *Barnes v United States*⁵⁵², was a prospective passenger to be screened for security purposes and allegedly sustained wrist injuries when preparing to enter airport security. Ms Barnes alleged the security officers requested she remove her shoes before walking through the metal detector and that because no chair was provided, she lost her balance and fell.

Ms Barnes sued the United States for damages and loss.

Decision:

The court held:

- there was no duty to provide Ms Barnes a chair;
- there was no evidence the cause in fact of her injuries was the absence of a chair; and
- there was no evidence the absence of a chair proximately caused the injuries alleged.

The court focused on the issue of the State's duty of care, and specifically whether the defendant could have reasonably known or should have known of some probability of an occurrence of injury. The court held that it was not reasonably foreseeable that the plaintiff would fall and injure herself while trying to remove her shoes at the security checkpoint. The airport's security personnel were not aware of any previous similar incidents despite thousands of passengers being subject to the same requirement. Nor did the court find any basis to accept the defendant should reasonably have been aware that Ms Barnes was at a particular risk of falling. Ultimately, Ms Barnes failed because no duty of care was found to exist in the provision of a chair to assist in the removal of her shoes.

Incident and information reporting



An airport commits an offence if it becomes aware of an aviation security incident⁵⁵³ and fails to report the incident as soon as possible, save for where the airport reasonably believes the recipient of the report already knows of the incident – 200 penalty units – \$22 000.⁵⁵⁴

Where an incident relates to another airport, the incident must be reported to that other airport.⁵⁵⁵ Where an incident relates to an aircraft, it must be reported to the aircraft operator. An incident that relates to an airport must be reported to The Department and the AFP or the State police. Where an incident occurs in a part of an airport under lease or license, it must be reported to the applicable lessee or licensee except where the incident relates to the airport in general and is not specifically directed at the leased or licensed part.



The duties above are as equally applicable to an airport security guard, screening officer or an employee of an airport operator.⁵⁵⁶ If a person reports an aviation security incident and the report does not comply with any requirements that are in force when the report is made, the report is taken not to have been made.⁵⁵⁷

⁵⁵² 2006 U.S. Dist. Lexis 49629.

⁵⁵³ An 'unlawful interference with aviation' per pages xix and 110 of this Guide.

⁵⁵⁴ *Aviation Transport Security Act 2004* (Cth) pt 6 div 3.

⁵⁵⁵ *Aviation Transport Security Act 2004* (Cth) s 104.

⁵⁵⁶ *Aviation Transport Security Act 2004* (Cth) ss 102, s106.

⁵⁵⁷ *Aviation Transport Security Act 2004* (Cth) s 107.

Security inspections at airports

CASA may appoint an officer to investigate a material issue within the *Civil Aviation Act 1988* (Cth) or *Civil Aviation Regulations 1988* (Cth).⁵⁵⁸ For the purpose of determining whether such legislation (including a Civil Aviation Order) is being complied with, CASA's investigator may, with the consent of and after producing their identity card for inspection by an airport, enter and exercise inspection powers⁵⁵⁹ within the airport.



A CASA investigator who is on or in an airport that they entered under a warrant may require anyone on or in the airport to answer any questions put by the investigator and produce any books, records or documents requested by the investigator. Failure to comply without a reasonable excuse is an offence – 30 penalty units – \$3300.⁵⁶⁰ It is not a reasonable excuse for a person to refuse or fail to answer a question or produce a book, record or document on the ground that to do so would tend to incriminate the person. The answer to any such interrogatory is not (save for certain exceptions) admissible in evidence against the person in any criminal proceedings.⁵⁶¹

An airport may also be subject to inspections by a protective services officer to enter and inspect an airport or any area, building or vehicle. This inspection may be in respect to equipment in that airport, area, building or vehicle and to observe operating procedures implemented by the airport, to discuss the procedures with the airport employees and to inspect a document or record made or kept by the airport.⁵⁶²



This power can be carried out on the airport at any time and without notice at an airport or an area, a building or a vehicle within that airport, else, at any reasonable time after giving notice to the airport – 50 penalty units – \$5500.⁵⁶³

ATSB investigations at airports

For the purposes of an ATSB investigation, an airport is effectively included within the definition of an accident site, being a site:

- containing an aircraft or any of its wreckage;
- where there is an impact point associated with the accident; or
- if the accident involved destruction or serious damage to property (other than the aircraft), a site containing that property or any of its wreckage together with such area around the airport as the ATSB determines to be reasonably necessary to facilitate the investigation of the accident and securing the site.⁵⁶⁴

⁵⁵⁸ *Civil Aviation Act 1988* (Cth) s 32AA.

⁵⁵⁹ The power to search the airport, power to inspect, examine, and take samples of any substance or thing on or in the airport, power to photograph, or make sketches of the airport and any substance or thing on or in the airport: *Civil Aviation Act 1988* (Cth) s 3.

⁵⁶⁰ *Civil Aviation Act 1988* (Cth) s32AJ.

⁵⁶¹ *Civil Aviation Act 1988* (Cth) s 32AJ(3); *Wilson v Deputy State Coroner* (1995) 124 FLR 388 at 403.

⁵⁶² *Air Navigation Regulations 1947* (Cth) reg 53.

⁵⁶³ *Air Navigation Regulations 1947* (Cth) reg 53.

⁵⁶⁴ *Transport Safety Investigation Act 2003* (Cth) s 3.


An airport is expressly included as a ‘responsible person’ that must, if it has knowledge of an ‘immediately reportable matter’⁵⁶⁵ (and unless it reasonably believes another responsible person, such as the aircraft operator or fire and rescue personnel etc., has already reported the incident), report the incident to the ATSB as soon as is reasonably practicable.⁵⁶⁶ In actuality, an airport would be best to treat the need to report such an incident immediately. This reporting requirement (albeit of a lesser standard comprising a written report within 72 hours) also applies to ‘routine reportable matters’ which generally applies to less serious or severe incidents than those encapsulated by the definition of ‘immediately reportable matters’.⁵⁶⁷

The ATSB can investigate an accident involving aircraft registered in Australia or owned by the State (save for aircraft used in the military, customs or police services of a foreign country) where:⁵⁶⁸

- a person dies or suffers serious injury as a result of an occurrence associated with the operation of aircraft;
- the aircraft is destroyed, seriously damaged or is abandoned, disabled, stranded or missing in operation as a result of an occurrence associated with the operation of the aircraft (including a near-accident); or
- any property is destroyed or seriously damaged as a result of an occurrence associated with the operation of the aircraft.

Where an airport investigation is to be undertaken, the ATSB (along with any delegate of the ATSB) must notify an airport of the purpose of entry and produce the ATSB’s identity card for inspection by the airport.⁵⁶⁹

Where the ATSB considers it necessary to do so for the purposes of an investigation and with notice in writing, it may require a person to answer questions (if necessary under oath), and require a person to produce specified evidence.⁵⁷⁰

 A person commits an offence when dealing with the ATSB if they fail to attend, refuse to take an oath or make an affirmation when required, refuse or fail to answer a question, or fail to produce to the ATSB the specified evidence in accordance with the request – 30 penalty units – \$3300.⁵⁷¹

The ATSB may enter any airport with voluntary consent. The ATSB may enter an airport without the airport’s consent and without obtaining a warrant if:

- the ATSB believes on reasonable grounds it is necessary to do so; and
- the investigation is in respect of an ‘immediately reportable matter’ (refer to footnote 565).

⁵⁶⁵ An ‘immediately reportable matter’ involves the death of, or a serious injury to (i) a person on board an aircraft or in contact with the aircraft or anything attached to the aircraft or anything that has become detached from the aircraft, or (ii) a person who has been directly exposed to jet blast; a missing aircraft; an aircraft suffering serious damage, or the existence of reasonable grounds for believing an aircraft has suffered serious damage; an aircraft being inaccessible and the existence of reasonable grounds for believing that an aircraft has been seriously damaged; or breakdown of separation standards, being a failure to maintain a recognised separation standard (vertical, lateral or longitudinal) between aircraft that are being provided with an air traffic service separation service: *Transport Safety Investigation Regulations 2003* (Cth).

⁵⁶⁶ *Transport Safety Investigation Act 2003* (Cth) s 18.

⁵⁶⁷ *Transport Safety Investigation Act 2003* (Cth) s 19.

⁵⁶⁸ *Transport Safety Investigation Act 2003* (Cth) s 21.

⁵⁶⁹ *Transport Safety Investigation Act 2003* (Cth) ss 29, 30.

⁵⁷⁰ *Transport Safety Investigation Act 2003* (Cth) s 32.

⁵⁷¹ *Transport Safety Investigation Act 2003* (Cth) s32.

Before entering an airport, the ATSB must take reasonable steps to give to the airport written notice setting out its rights and obligations.⁵⁷²

An airport (in relation to which an investigation warrant is being executed), must provide the ATSB and any delegate of the ATSB with all reasonable facilities and assistance for the effective exercise of the powers above.⁵⁷³

Once within an airport, the ATSB can:⁵⁷⁴

- search the airport, and anything on the airport, for evidential material;
- make photos, video recordings, sound recordings or other records of the airport or evidential material;
- make copies of evidential material found on the airport;
- examine, take measurements of, conduct tests on, or take samples of evidential material;
- operate equipment on the airport in order to access evidential material;
- in the case of evidential material that is equipment, operate the evidential material;
- remove evidential material from the airport with the consent of:
 - the owner of the material if it is practicable to do so;
 - if it is not practicable to obtain the consent of the owner of the material—the occupier of the airport;
- secure evidential material, pending the obtaining of a warrant to seize it; and,
- take equipment and material onto the airport, and use it for any of the above purposes.



For the purpose of protecting evidence that might be relevant to an investigation, the ATSB may direct that specified things, or things in a specified class of things, must not be removed or interfered with except with the permission of the ATSB. A person who contravenes this faces a maximum penalty of imprisonment for 12 months unless he or she can prove that such conduct was to ensure the safety of persons, animals or property, to remove deceased persons or animals from the airport, to move an aircraft or the wreckage of an aircraft to a safe place, or to protect the environment from significant damage or pollution.⁵⁷⁵

Police powers during an emergency

The person who initially assumes co-ordination of an emergency situation at an airport should hand over the role when police arrive.⁵⁷⁶ The police represent the Coroner at a crash site and may be authorised to direct the custody, transport and storage of deceased persons. The Coroner is responsible for determining the cause of death and it may rely on CASA and the ATSB in this regard.⁵⁷⁷ The police are required to account for all people on board a crashed aircraft.⁵⁷⁸ In discharging this function, it will normally be necessary to secure the crash site area and impose control over persons entering and leaving the site. The police may also be given the responsibility of guarding any aircraft wreckage on behalf of ATSB.⁵⁷⁹

⁵⁷² *Transport Safety Investigation Act 2003* (Cth) ss 33, 34.

⁵⁷³ *Transport Safety Investigation Act 2003* (Cth) s 37.

⁵⁷⁴ *Transport Safety Investigation Act 2003* (Cth) s 36.

⁵⁷⁵ *Transport Safety Investigation Act 2003* (Cth) s 43.

⁵⁷⁶ *Manual of Standards* pt 10.8.7.1.

⁵⁷⁷ *Manual of Standards* pt 10.8.7.2.

⁵⁷⁸ *Manual of Standards* pt 10.8.7.3.

⁵⁷⁹ *Manual of Standards* pt 10.8.7.4.

Enforcement

Where The Department reasonably believes an airport has failed to comply with certain requirements (such as in respect to the use of categorised airside or landside zones, incident reporting or TSP requirements (as above)) it may, by written notice to the airport, require the airport to give such non-compliance information to The Department.⁵⁸⁰

Where The Department reasonably believes an order is necessary to safeguard against ‘unlawful interference with aviation’, it can issue an enforcement order (which must be clearly relevant to and proportionate with the stated contravention) on an airport in respect to either a specified activity which it seeks to prohibit or restrict, or directing the airport to take certain action.⁵⁸¹

The order remains in force for the period (if any) specified in the order or until it is revoked by The Department.

➔ The Department must at intervals of not more than three months, review the enforcement order, and after each review, confirm, vary or revoke the order by instrument in writing. An airport should see an enforcement order revoked (or varied) unless The Department is satisfied the order is still needed to safeguard against ‘unlawful interference with aviation’.

➔ An airport or person can become the subject of a Federal Court injunction on application of The Department if he or she engaged, is engaging or is proposing to engage in any conduct that will contravene the *Aviation Transport Security Act 2004* (Cth).⁵⁸²

SECURITY CHAPTER SUMMARY TABLE

TABLE 1: Penalty provisions

	Legislation	Section	Description	Penalty for non-compliance
Transport Security Program	<i>Aviation Transport Security Act 2004</i> (Cth)	s 13	A security controlled airport must have and comply with a TSP	200 penalty units (\$22 000)
	<i>Aviation Transport Security Regulations 2005</i> (Cth)	reg 2.06	A person must not disclose any information about the content of an aviation industry participant’s TSP without the consent of the participant	50 penalty units (\$5500)
Issuing ASICs and VICs	<i>Aviation Transport Security Regulations 2005</i> (Cth)	reg 6.07	An issuing body must not fail to give effect to its ASIC program	50 penalty units (\$5500)

⁵⁸⁰ *Aviation Transport Security Act 2004* (Cth) s 109.

⁵⁸¹ *Aviation Transport Security Act 2004* (Cth) s 119.

⁵⁸² *Aviation Transport Security Act 2004* (Cth) s 124.

TABLE 1: Penalty provisions (Cont'd)

	Legislation	Section	Description	Penalty for non-compliance
	<i>Aviation Transport Security Regulations 2005 (Cth)</i>	reg 6.25	An airport must provide a written report to The Department within 1 month after the end of each financial year detailing the total number of ASICs issued that have expired or cancelled and the number that have not expired or not cancelled	20 penalty units (\$2200)
	<i>Aviation Transport Security Regulations 2005 (Cth)</i>	reg 6.28	An issuing body may only issue an ASIC to eligible persons that have show sufficient identification documents	50 penalty units (\$5500)
	<i>Aviation Transport Security Regulations 2005 (Cth)</i>	reg 6.38	An issuing body or its agent may issue a VIC to a person if and only if he or she needs to enter the secure area of a security controlled airport for a lawful purpose and under supervision by the holder of a valid ASIC while in the area	50 penalty units (\$5500)
	<i>Aviation Transport Security Regulations 2005 (Cth)</i>	reg 3.09	A person who is the holder of an ASIC, and has supervised a person who holds a VIC into the secure area to which the VIC allows access, must not leave the holder of the VIC unsupervised while the holder of the VIC is in the area unless the supervision of the VIC holder is taken over by another ASIC holder	
Criminal Offences within an Airport	<i>Crimes (Aviation) Act 1991 (Cth)</i>	s 26(1)	a person is guilty of an offence if a substance or thing is used to commit an act of violence against anyone at a regulated airport and such an act causes or is likely to cause serious injury or death and endangers or is likely to endanger the safe operation of the airport or the safety of anyone at the airport	15 years imprisonment

	Legislation	Section	Description	Penalty for non-compliance
	<i>Crimes (Aviation) Act 1991 (Cth)</i>	s 26	A person commits an offence when facilities of a regulated airport are destroyed or seriously damaged, an aircraft not in service at a regulated airport is destroyed or seriously damaged and services of a regulated airport are disrupted	10 years imprisonment
Incident and Information Reporting	<i>Crimes (Aviation) Act 1991 (Cth)</i>	s 28(1)	A person must not threaten to destroy, damage or endanger the safety of a Commonwealth Aerodrome, or kill anyone inside the aerodrome	2 years imprisonment
	<i>Crimes (Aviation) Act 1991 (Cth)</i>	s 28(2)	A person must not make a false statement which can reasonably be inferred as indicating the existence of a plan, attempt, conspiracy or threat to take control of, damage or destroy a Commonwealth aerodrome, or kill or injure anyone within the limits of a Commonwealth aerodrome	2 years imprisonment
	<i>Aviation Transport Security Act 2004 (Cth)</i>	s 101	An aviation industry participant who is an aircraft operator commits an offence if the participant fails to report an aviation security incident they are aware of as soon as possible	200 penalty units (\$22 000)
	<i>Aviation Transport Security Act 2004 (Cth)</i>	s 102	A person with incident reporting responsibilities commits an offence if the participant fails to report an aviation security incident they are aware of as soon as possible	100 penalty units (\$11 000)
	<i>Aviation Transport Security Act 2004 (Cth)</i>	s 103	An employee commits an offence if the employee fails to report an aviation security incident they are aware of as soon as possible.	50 penalty units (\$5500)
	<i>Aviation Transport Security Act 2004 (Cth)</i>	s 107	If a person reports an aviation security incident, that report must comply with any requirements that are in force when the report is made, otherwise the report is taken not to have been made	No penalty provision applicable

TABLE 1: Penalty provisions (Cont'd)

	Legislation	Section	Description	Penalty for non-compliance
Security Inspections at Airports	<i>Civil Aviation Act 1988</i> (Cth)	s 32 AJ	A CASA investigator who is on or in an airport that he or she has entered under a warrant may require anyone on or in the airport to answer any questions put by the investigator and produce any books, records or documents requested by the investigator	30 penalty units (\$3300)
	<i>Air Navigation Regulations 1947</i> (Cth)	reg 53	Except with reasonable excuse, a person referred to in subregulation (2) must allow an authorised person to exercise a power given to the officer by subregulation (3)	50 penalty units (\$5500)
ATSB Investigations at Airports	<i>Transport Safety Investigation Act 2003</i> (Cth)	s 32	A person commits an offence when dealing with the ATSB if they fail to attend, refuse to take an oath or make an affirmation when required, refuse or fail to answer a question, or fail to produce to the ATSB the specific evidence in accordance with the request	30 penalty units (\$3300)
	<i>Transport Safety Investigation Act 2003</i> (Cth)	s 43	For the purpose of protecting evidence that might be relevant to an investigation, the ATSB may direct that specified things, or things in a specified class of things, must not be removed or interfered with except with the permission of the ATSB	12 months imprisonment
Enforcement	<i>Aviation Transport Security Act 2004</i> (Cth)	s 124	If a person is engaged, is engaging or is proposing to engage in any conduct in contravention of this Act, the Federal Court may, on the application of the Secretary, grant an injunction restraining the person from engaging in the conduct or requiring the person to do an act or thing	No penalty



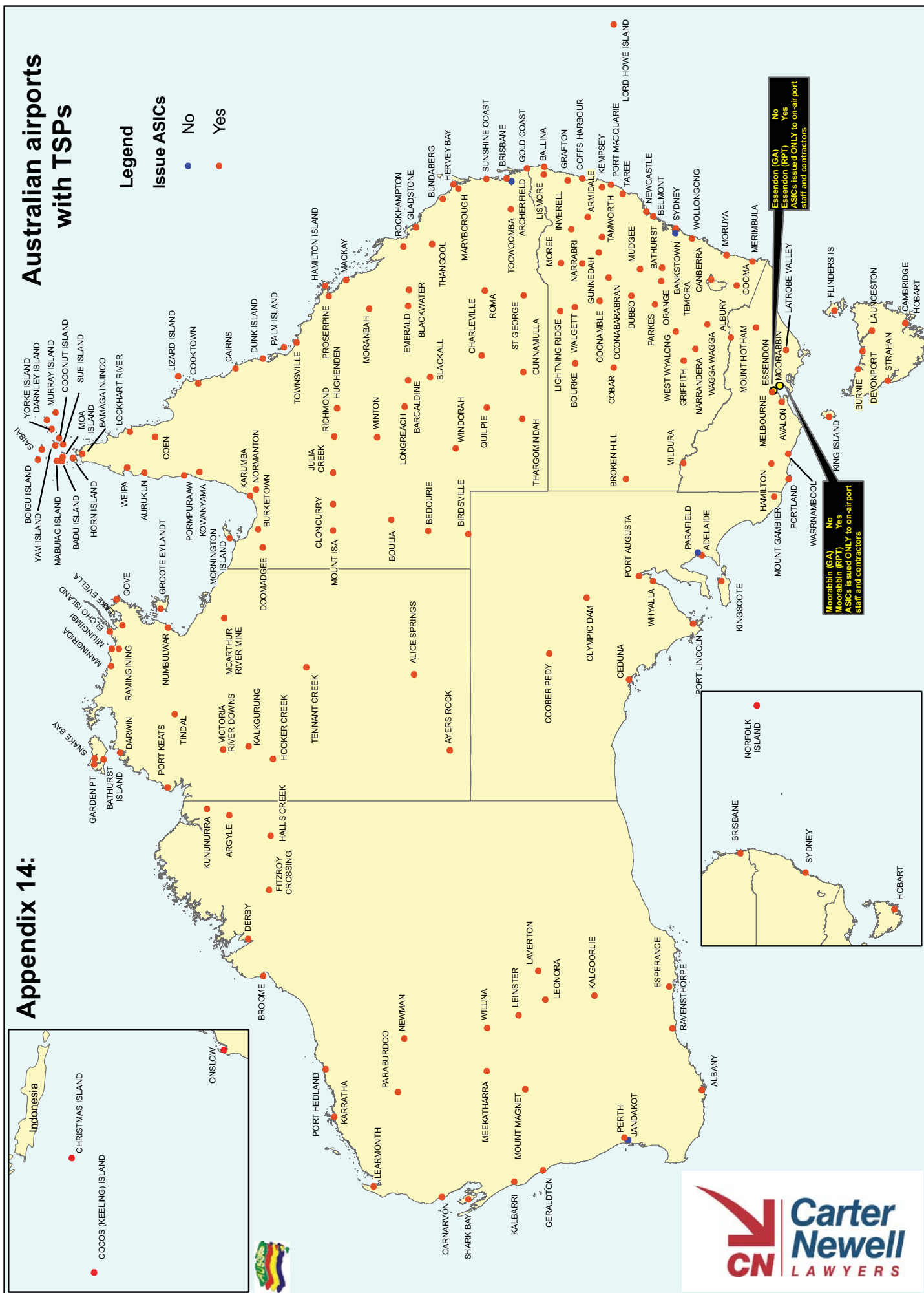
Appendix 13:

Australian security controlled airports performing screening

CHRISTMAS
ISLAND



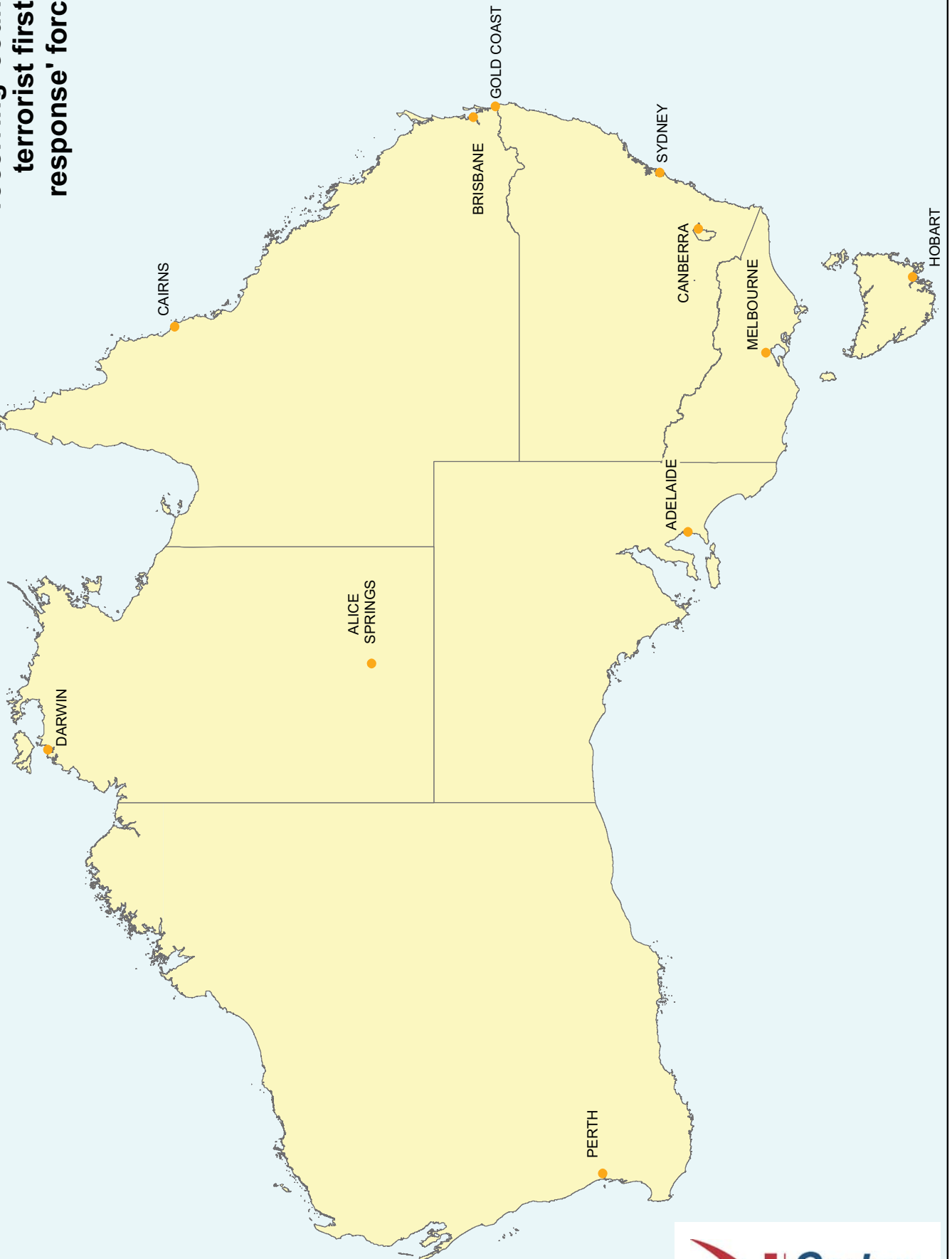
Australian airports with TSPs





Appendix 15:

Australian airports receiving 'counter terrorist first response' forces



Appendix 16:

Airport categorisation is an administrative process performed by The Department which assesses the underlying risk of an ‘*act of unlawful interference*’ being committed at an airport (i.e. the risk of conduct that threatens the safe operation of airports, and thus, behaviour which may cause harm to passengers, crew, ground personnel and the general public or damage to property). Such a risk varies between different airports which is why the effect of categorising an airport is to enliven a requirement for category specific security measures. Such security measures are based on the category of airport, with category 1 requiring the highest or most vigorous level of security, and category 5, the lowest level.¹

A map of categorised airports is set out on page 126:

Security Measures	Airport Category				
	1	2	3	4	5
Security force to have additional powers of arrest and proficiency in investigation and application of intelligence information	Yes	Yes	No	No	No
Continuous patrolling in terminal and at airside barriers	Yes	Yes	Yes if The Department requires	No	No
Availability of at least 2 trained dogs and handler	Yes	No	No	No	No
Patrolling at cargo/ baggage areas or access to airside	Yes	Yes	Yes if The Department requires	No	No
At least 2 security staff at screening points for international flights	Yes	Yes	Yes if The Department requires	No	No
At least 1 security staff at screening point for non-international flights	Yes	Yes	Yes if The Department requires	No	No
Continuous security control centre when airport in operation	Yes	No	No	No	No
Continuous patrolling of surface movement areas of airport	Yes	No	No	No	No

¹ *Aviation Transport Security Act 2004 (Cth); Aviation Transport Security Regulations 2005 (Cth).*

Security Measures	Airport Category				
	1	2	3	4	5
All persons to identify themselves before entering a security restricted area	Yes	Yes	Yes	Yes	Yes
Continuous control of vehicle and pedestrian access to a security restricted area	Yes	Yes	Yes	No	No
Identifying and preventing unauthorised access by persons and vehicles entering airside controlled or other important security areas	Yes	Yes	Yes	Yes	Yes
Illumination of aircraft parking area when RPT aircraft is parked overnight	Yes	Yes	Yes	No	No
Erection/maintenance of fencing between surface movement area of airport and an adjacent part of the airport other than a security restricted area	Yes	Yes	Yes	Yes	No
Storage for baggage and other cargo (including mail) that is intended to be carried in the hold of the aircraft	Yes	Yes if The Department requires	Yes if The Department requires	No	No
Airport security coordinator	Yes	Yes	Yes	Yes	No
Meeting of airport security committee	Yes (at least 2 monthly)	Yes (at least 3 monthly)	Yes (at least 3 monthly)	Yes (at least 6 monthly)	No
Police force presence at times convenient or on request	Yes	Yes	Yes	Yes	Yes



Appendix 16:

Category 1 - 5 Australian airports

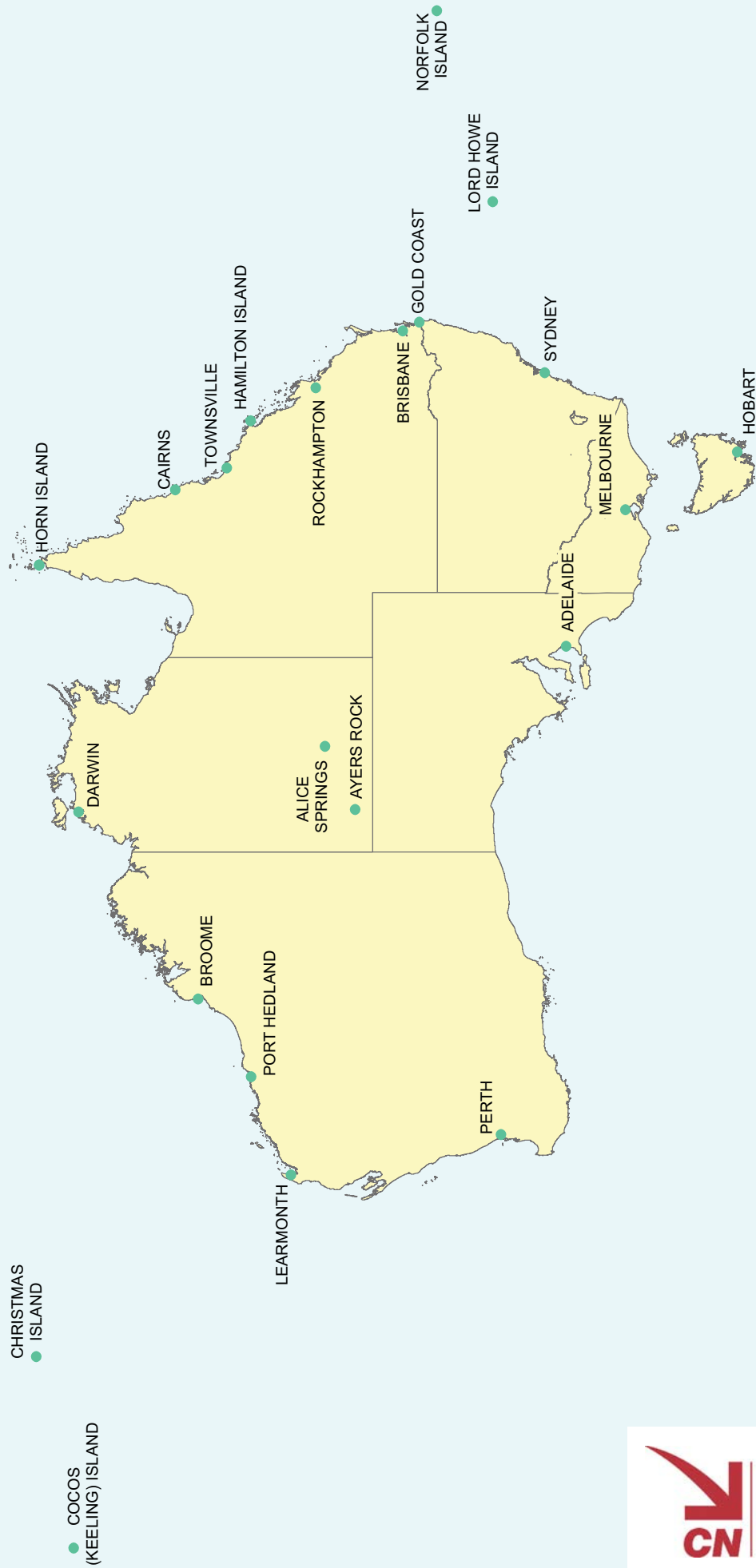
CHRISTMAS
ISLAND





Appendix 17:

Australian airports where the application of the *Crimes* (*Aviation*) Act 1991 (*Cth*) occurs



Environment Strategy

The ‘core regulated airports’ in **Appendix 18** must have in place both an ‘Airport Master Plan’ and ‘Environment Strategy’⁵⁸³ and must also comply with the environmental standards set by regulations.⁵⁸⁴

An airport’s Environment Strategy is supportive of (and is always used in conjunction with) its Master Plan (refer page 25 of this Guide). The Environment Strategy is also used in conjunction with the Major Development Plan (refer page 26 of this Guide). All three documents (and all documents drafted in accordance with them) are part of an airport’s environmental regime⁵⁸⁵ and accordingly, must promote the objective of continuous environmental improvement.⁵⁸⁶

An airport’s Environment Strategy is a key element of its environment regulatory regime and should be developed with the aim of:

- ensuring all operations at the airport are undertaken in accordance with relevant environmental legislation and standards;
- establishing a framework for assessing compliance at the airport with relevant environmental legislation and standards; and
- promoting the continual improvement of environmental management at the airport.⁵⁸⁷

⁵⁸³ *Airports Act 1996* (Cth) ss 4, 115. An ‘Environment Strategy’ is also known as an ‘Environment Management Strategy/System’ (EMS) or an ‘Airport Environment Strategy’ (AES). Throughout this paper, all references to ‘Environment Strategy’ should be taken to incorporate these terms and should be interpreted to mean ‘Environment Strategy’ as defined under s 115 of the *Airports Act 1996* (Cth).

⁵⁸⁴ *Airports Act 1996* (Cth) ss 132, 133.

⁵⁸⁵ All references throughout this section to the ‘airport’s environmental regime’ should be taken to refer to the airport’s overall environmental regime for compliance as set out in the airport’s Master Plan, Major Development Strategy and Environment Strategy.

⁵⁸⁶ *Airports Act 1996* (Cth) s 115.

⁵⁸⁷ *Airports Act 1996* (Cth) s 115(2), pt 6 div 2. Given the Regulations are made under the *Airports Act*, the environmental management practices set out must also aim for continuous environmental improvement: *Airports Act 1996* (Cth) s 115(2).

Contents of an Environment Strategy

An airport's Environment Strategy must include the following matters:

- the airport's objectives for the management of the airport and airport site;⁵⁸⁸
- the 'environmentally significant areas' within the airport site identified by the airport, in consultation with State, Territory and Federal conservation bodies (this may include areas such as creeks, rivers, or habitats for flora and fauna; discussed below);⁵⁸⁹
- the 'sources of environmental impact' associated with airport operations identified by the airport;⁵⁹⁰
- proposed studies, reviews and monitoring in connection with environmental impact of airport operations (including time frames for completion of works or operations);⁵⁹¹
- proposed measures for preventing, controlling or reducing environmental impact (including time frames for completion of these methods);⁵⁹² and
- details of consultations undertaken in preparing the Environment Strategy (including the outcome of the consultations).⁵⁹³

When identifying 'environmentally significant areas' and 'sources of environmental impact', the airport should consider:

- specific duties relating to noise, air, water, soil, culture and heritage; and
- matters of national environmental significance⁵⁹⁴, heritage estates⁵⁹⁵ and Aboriginal cultural heritage⁵⁹⁶ (all of these are discussed below).



Airports should identify not only environmentally significant areas susceptible to contamination or those areas already contaminated, but also areas that require or are worthy of preserving. This is because airports have general duties to 'avoid' environmental pollution, 'prevent' offensive noise and to 'preserve' habitats.⁵⁹⁷ These duties will be discussed in further detail below in the context of developing an Environment Strategy with respect to noise, air, water, soil, culture and heritage.

⁵⁸⁸ *Airports Act 1996* (Cth) s 116(2)(a); *Airports (Environment Protection) Regulations 1997* (Cth) reg 3.06. An 'Airport Site' means a place that is declared by the regulations to be an airport site that is a Commonwealth place and is 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). The boundaries of an airport site include all buildings on the site: *Airports Act 1996* (Cth) s 5.

⁵⁸⁹ *Airports Act 1996* (Cth) s 116(2)(b); *Airports (Environment Protection) Regulations 1997* (Cth) reg 3.07.

⁵⁹⁰ *Airports Act 1996* (Cth) s 116(2)(c); *Airports (Environment Protection) Regulations 1997* (Cth) reg 3.08.

⁵⁹¹ *Airports Act 1996* (Cth) ss 116(2)(d)-(e); *Airports (Environment Protection) Regulations 1997* (Cth) reg 3.09.

⁵⁹² *Airports Act 1996* (Cth) ss 116(2)(g)-(h); *Airports (Environment Protection) Regulations 1997* (Cth) reg 3.10.

⁵⁹³ *Airports Act 1996* (Cth) s 116(2)(h).

⁵⁹⁴ Defined in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

⁵⁹⁵ In accordance with the *Australian Heritage Council Act 2003* (Cth) and the *Queensland Heritage Act 1992* (Qld).

⁵⁹⁶ In Queensland, 'Aboriginal cultural heritage' is defined as 'a significant Aboriginal area, object or evidence of archaeological or historical significance of Aboriginal occupation in Queensland': *Aboriginal Cultural Heritage Act 2003* (Qld) s 8.

⁵⁹⁷ *Airports (Environment Protection) Regulations 1997* (Cth) regs 4.01, 4.04 and 4.06.

Approval process for an Environment Strategy

Airports must adhere to the approval process for an Environment Strategy by developing a 'draft Environment Strategy' and a 'final Environment Strategy'.

The draft Environment Strategy is prepared by an airport after taking into account public comments and is then submitted to the Minister of The Department for approval.

A 'final Environment Strategy' is the draft Environment Strategy that has been approved by the Minister of The Department.⁵⁹⁸

Applicable airports must comply with the approval process in the following manner:

1. *Advise the State or Territory Government*

Before the airport gives the Minister of The Department a draft Environment Strategy, it must advise the following people, in writing, of their intention to do so:

- the State or Territory Minister/authority (for continuity, any reference to 'the Minister' for the remainder of this chapter refers to the relevant 'State or Territory Minister/authority') with responsibility for town planning or use of land; and
- each local government body with responsibility for an area surrounding the airport.⁵⁹⁹

2. *Publish a notice for public comment*

The airport must publish a Notice in a newspaper circulating generally in the relevant State or Territory and on the airport's website, and the Notice must:

- state that the airport has prepared a preliminary version of the draft Environment Strategy;
- invite members of the public to give written comments about the preliminary version within 60 business days after the publication of the Notice;
- advise that copies of the preliminary Environment Strategy will be available for inspection and purchase by members of the public during normal office hours throughout the period of 60 business days after the publication of the Notice; and
- specify the place(s) the copies will be available for inspection and purchase.

In the newspaper publication, the airport must specify that the preliminary version of the draft Environment Strategy will be available, free of charge, to members of the public on the airport's website throughout the 60 day period, and specify the address of the airport's website.⁶⁰⁰

The airport must make copies of the preliminary version available for inspection and make copies free of charge on their website in readily accessible format in accordance with their Notice published in the newspaper.⁶⁰¹

⁵⁹⁸ *Airports Act 1996* (Cth) s 128. A final Environment Strategy is not a legislative instrument.

⁵⁹⁹ *Airports Act 1996* (Cth) s 124(1A).


⁶⁰⁰ *Airports Act 1996* (Cth) s 124(1).

⁶⁰¹ *Airports Act 1996* (Cth) s 124(1).

3. *Provide the draft Environment Strategy to the Minister*

The airport must provide the draft Environment Strategy to the Minister along with the following:


- a copy of the written advice provided to the relevant State or Territory Government departments;
- a written certificate signed on behalf of the airport listing the names of those to whom the advice was given;⁶⁰²
- a written statement signed on behalf of the airport listing the names of the persons who were consulted during the development of the Environment Strategy and summarising the views expressed by the persons consulted;⁶⁰³ and
- if members of the public or persons to whom the advice was provided above have given written comments about the preliminary version, the airport should provide the Minister with:
 - copies of those comments; and
 - a written certificate signed on behalf of the airport listing the names of those members of the public, summarising the comments, and demonstrating the airport has had due regard to those comments in preparing the draft Environment Strategy.⁶⁰⁴

 An airport commits an offence if the airport does not provide the Minister with a draft Environment Strategy or engages in conduct other than to prepare a draft Environment Strategy to submit to the Minister – 250 penalty units – \$27 500.⁶⁰⁵

4. *The Minister's Response*

The Minister may approve the strategy, refuse to approve the strategy or request more material for making the decision.⁶⁰⁶

If the Minister neither approves, nor refuses to approve the strategy before the end of the period of 50 business 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.⁶⁰⁷

 While developing its Environment Strategy, the airport should keep in mind that the Minister must have regard to the following matters when deciding whether to approve the Environment Strategy (but may also consider other matters):

- the extent to which the strategy achieves the purpose of a final Environment Strategy;⁶⁰⁸
- the effect that carrying out the Environment Strategy would likely have on:
 - the standard of air, water and soil quality; and
 - biota or habitat; natural or heritage values; and sites of significance to Aboriginal or Torres Strait Islander people;
 - noise exposure levels; and
- details of consultations undertaken in preparing the Environment Strategy (including the outcome of the consultations).⁶⁰⁹

⁶⁰² *Airports Act 1996* (Cth) s 124(1B).

⁶⁰³ *Airports Act 1996* (Cth) s 125(2).

⁶⁰⁴ *Airports Act 1996* (Cth) s 124(2).

⁶⁰⁵ *Airports Act 1996* (Cth) s 120(2).

⁶⁰⁶ *Airports Act 1996* (Cth) s 125A.

⁶⁰⁷ *Airports Act 1996* (Cth) s 126(5).

⁶⁰⁸ *Airports Act 1996* (Cth) s 115(2).

⁶⁰⁹ *Airports Act 1996* (Cth) s 126(3).

5. *Publish the Final Environment Strategy*

Within 50 business days of the Minister approving the strategy, the airport must publish a Notice in a newspaper circulating in the relevant State or Territory and on the airport's website stating the strategy has been approved, is available for purchase, where it will be available for purchase, and that copies are available on the airport's website free of charge.⁶¹⁰



The airport commits an offence if it does not publish such a Notice within the time required or engages in conduct other than to prepare a draft Environment Strategy to submit to the Minister – 250 penalty units – \$27 500.⁶¹¹

6. *Comply with Environment Strategy*

The airport must 'take all reasonable steps' to ensure compliance with its Environment Strategy.⁶¹² A contravention of this duty is not an offence, but may be grounds for an injunction.⁶¹³

After its approval, the Environment Strategy runs for a minimum period of five years.⁶¹⁴



The period for each Environment Strategy must follow on immediately from the expiry of the previous strategy. This means that where an Environment Strategy is in force for an airport, the airport must give the Minister the new draft Environment Strategy before the expiry of the original with enough time for the new Environment Strategy to be approved and commence – 250 penalty units – \$27 500.⁶¹⁵

If there is no final Environment Strategy for the airport in force at the time the airport lease is acquired or granted, the airport must give the Minister a draft Environment Strategy within 12 months.⁶¹⁶ If a lease is transferred, the new lessee is taken to have adopted the previous strategy as its own.⁶¹⁷

An airport may replace its Environment Strategy before the expiry of the previous strategy. In doing so, it must comply with the approval process and provide a draft environment strategy that is expressed to replace the previous strategy.⁶¹⁸

Minor variations may also be made to the Environment Strategy but must be submitted to the Minister for approval.⁶¹⁹

⁶¹⁰ *Airports Act 1996* (Cth) s 131.

⁶¹¹ *Airports Act 1996* (Cth) s 131(3).

⁶¹² *Airports Act 1996* (Cth) s 130.

⁶¹³ *Airports Act 1996* (Cth) s 130(2).

⁶¹⁴ *Airports Act 1996* (Cth) ss 117, 122.

⁶¹⁵ *Airports Act 1996* (Cth) s 121(1).

⁶¹⁶ *Airports Act 1996* (Cth) s 120(1).

⁶¹⁷ *Airports Act 1996* (Cth) s 127.

⁶¹⁸ *Airports Act 1996* (Cth) s 123.

⁶¹⁹ *Airports Act 1996* (Cth) s 129.

General environmental duty

The core regulated airports (**Appendix 18**) are responsible for compliance with environmental duties in their capacity as an ‘operator of an undertaking at an airport.’⁶²⁰ An ‘undertaking’ at an airport includes the operation of a business, the carrying out of any activity, dealing, operation, process, or work, and the operation of any facility, plant, machine or equipment. It is not relevant whether the undertaking is carried on for profit, is authorised by an airport, or is otherwise lawfully authorised.⁶²¹ An undertaking does *not* include:⁶²²

- the function of the airport as sub-lessor or licensor;
- the function of the airport in managing the airport; or
- any vicarious liability that an airport may be found to have in relation to the carrying on of an undertaking by a person who is a sublessee or licensee of part of the airport.

‘Works’ means work that is performed in connection with the relevant undertaking. It should be given its natural and ordinary meaning in the way that ‘work’ is required for undertakings, operations and activities at airport sites.⁶²³

Where works or undertakings ‘affect or have the potential to affect’ the environment at a regulated State or Territory airport,⁶²⁴ it is an offence for any airport to engage in such conduct,⁶²⁵ either directly or indirectly, which results in:

- environmental nuisance (which takes the form of smoke, dust or odour) – 50 penalty units – \$5500;⁶²⁶
- material environmental harm – 200 penalty units – \$22 000;⁶²⁷ or
- serious environmental harm – 500 penalty units – \$55 000.⁶²⁸

‘Environmental pollution’ occurs when the air, soil or water contains a substance (or pollutant) which is beyond acceptable limits. Similarly, noise pollution relates to noise above acceptable limits (discussed below).⁶²⁹

⁶²⁰ An ‘operator of an undertaking at an airport’ is a person (or persons) carrying out an undertaking at an airport or directing and controlling an undertaking at an airport and may not necessarily be the airport itself, but may be (for example) a tenant or contractor at the airport: *Airports (Environment Protection) Regulations 1997* (Cth) reg 1.07.

⁶²¹ *Airports (Environment Protection) Regulations 1997* (Cth) reg 1.07(1).

⁶²² *Airports (Environment Protection) Regulations 1997* (Cth) reg 1.07(2).

⁶²³ *Airports (Environment Protection) Regulations 1997* (Cth) regs 4.04, 4.05.

⁶²⁴ While Queensland’s *Environmental Protection Act 1994* (Qld) does not apply to airports with respect to its environmental harm duties, it helps to illustrate terms that are undefined under the Federal Act. In Queensland, it is an offence for a ‘person’ to ‘unlawfully’ or ‘wilfully and unlawfully’ cause environmental harm: *Environmental Protection Act 1994* (Qld) ss 437, 438, 440. This is less onerous than the obligation under the *Airports Act 1996* (Cth) but applies to natural persons and not airports.

⁶²⁵ The relevant conduct applies to an act or omission of a person, even if the act or omission was not the sole cause of the pollution concerned: *Airports Act 1996* (Cth) ss 131B(3), 131C(3), 131D(3).

⁶²⁶ *Airports Act 1996* (Cth) s 131D, pt 6 div 2.

⁶²⁷ *Airports Act 1996* (Cth) s 131C, pt 6 div 2.

⁶²⁸ *Airports Act 1996* (Cth) s 131B, pt 6 div 2.

⁶²⁹ *Airports Act 1996* (Cth) pt 6. State environmental protection legislation has no effect on the airports mentioned in Appendix 18. Additionally, state legislation in Queensland does not apply to any airports with respect to its environmental harm duties. However, in terms of environmental harm, state legislation can illustrate terms that are undefined under the *Airports Act 1996* (Cth).

Even if pollution is being generated, an airport will be ‘assumed’ to be complying with the duty to avoid polluting so long as the levels generated are in accordance with ‘acceptable limits’ (refer to page 148 of this Guide with respect to Authorisation).⁶³⁰

‘Serious environmental’ harm occurs if:

- the pollution harms or has the potential to harm an area which is identified in the final Environment Strategy as environmentally significant; or
- the effect of the pollution is or has the potential to be of high impact and irreversible; or
- the pollution results or has the potential to result in substantial harm to public health or public safety; or
- the pollution results or has the potential to result in substantial damage to property.⁶³¹

‘Material environmental harm’ occurs if:

- the pollution harms or has the potential to harm the environment; and
- the effect of the pollution is or has the potential to result in significant impact (more than nuisance but less than serious harm); or
- the pollution results or has the potential to result in harm (other than serious harm) to public health or to public safety; or
- the pollution results or has the potential to result in damage to property (other than minor damage).⁶³²

‘Environmental nuisance’ occurs if:

- an area that consists of or is included in an airport site is affected by pollution; and
- that pollution takes the form of smoke, dust or odour or the effect of the pollution is of low impact and transient; or
- 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.⁶³³

⁶³⁰ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.02. ‘Acceptable limits’ is the quantity or rate of contamination set out in the Schedules of the *Airports (Environment Protection) Regulations 1997* (Cth).

⁶³¹ *Airports Act 1996* (Cth) s 131B. In Queensland, environmental harm as applied to individuals is considered to be serious if it costs more than \$50 000 (in either actual or potential property damage, or to restore the environment, or prevent or minimise the harm) or if the harm is widespread, irreversible or affects an area of high conservation value or special significance: *Environmental Protection Act 1994* (Qld) s 17.

⁶³² *Airports Act 1996* (Cth) s 131C. In Queensland, environmental harm as applied to individuals is considered ‘material’ if it results in costs of more than \$5000 in either actual or potential property damage, or to restore the environment, or prevent or minimise the harm: *Environmental Protection Act 1994* (Qld) s 16.

⁶³³ *Airports Act 1996* (Cth) s 131D. In Queensland, environmental nuisance as applied to individuals is ‘unreasonable interference or likely interference with an environmental value caused by aerosols, fumes, light, noise, odour, particles or smoke; or an unhealthy, offensive or unsightly condition because of contamination’: *Environmental Protection Act 1994* (Qld) s 15.

In their capacity as operators of an undertaking, regulated airports also have a positive duty to avoid polluting, which is to take ‘all reasonable and practicable measures’ to prevent or minimise (if prevention is not possible) the generation of pollution.⁶³⁴ Whether a particular measure is ‘reasonable and practicable’ will depend on:

- the relevant environment’s sensitivity to pollution;
- the nature of pollution the undertaking is capable of generating and the potential harm;
- the current state of technical knowledge about preventing or minimising pollution; and
- all measures that might practicably be used to prevent or minimise the pollution, and the expected benefits and detriments.⁶³⁵



Failure to comply with what is defined above as ‘reasonable and practicable’ does not, of itself, constitute a contravention of the regulations. However, compliance with what is considered ‘reasonable and practicable’ may be enforced by the Airport Environmental Officer (AEO) should it consider it appropriate.⁶³⁶ Where there is a contravention of the duty to avoid polluting, the contravention does not constitute an indictable offence,⁶³⁷ but such contraventions may be subject to penalties or infringement notices.⁶³⁸

Airport Environmental Officer

For regulated airports (refer to **Appendix 18**), an AEO is appointed to assist the airport with the administration of the airport’s Environment Strategy for which the airport is accountable to The Department.⁶³⁹

The AEO retains overall responsibility for the enforcement of the *Airports Act 1996* (Cth) and Regulations through The Department; for this reason, the AEO is usually The Department representative on site.

Because an airport’s environmental regime (including its Master Plan and Environment Strategy) covers all planning and developments on airport sites, the AEO also works closely with the ABC in approving building activities on the airport site (refer page 12 of this Guide).

Noise

Master Plan/Major Development Plan

Airports must prevent ‘offensive noise’ occurring at the airport, which occurs when the noise is at a volume, or generated in a way, or under a circumstance that, in the opinion of the applicable AEO, ‘offensively intrudes’ on individuals, the community or a commercial amenity.⁶⁴⁰

⁶³⁴ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.01(1), pt 4 div 1.

⁶³⁵ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.01(2).

⁶³⁶ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.01(3). See also reg 7.01 which empowers the AEO to issue the airport an Environment Protection Order (i.e. a written notice compelling compliance with an environmental duty)

⁶³⁷ *Airports Act 1996* (Cth) s 245.

⁶³⁸ *Airports Act 1996* (Cth) s 138.

⁶³⁹ An AEO is required under the *Airports Act 1996* (Cth) to assist the airport with general compliance with the Act and the *Airports (Environment Protection) Regulations 1997* (Cth).

⁶⁴⁰ *Airports (Environment Protection) Regulations 1997* (Cth) reg 2.04. ‘Commercial amenity’ is not defined in the legislation, but given the context, it is likely to mean a business or place or premises required for commercial use.

In forming an opinion, an AEO must have regard to the following:

- excessive noise guidelines;⁶⁴¹
- volume, tonality and impulsive character (if any) of the noise;
- time of day, and duration of the noise;
- background noise levels at the time the noise is generated; and
- location in relation to the source of the noise of sensitive receptors⁶⁴² (or commercial receptors⁶⁴³ if there is no affected sensitive receptor).⁶⁴⁴

In order to comply with this duty, the airport must take 'all reasonable and practicable measures' to either prevent the generation of offensive noise, or if prevention is not reasonable or practicable, to minimise the generation of offensive noise from the airport works or undertakings.⁶⁴⁵

Whether a measure is 'reasonable and practicable' is a judgment to be made by the applicable AEO, having regard to:

- the circumstances in which a particular noise is generated and current standards in best-practice management of generation of noise in those circumstances;
- the current state of technical knowledge about preventing or minimising excessive noise being generated from an undertaking of the kind being operated; and
- all measures that might practicably be used to prevent or minimise the excessive noise, and the probable benefits and detriments (if any) that should be expected from the implementation of each measure.⁶⁴⁶

An airport is 'assumed' to be complying with this duty if:⁶⁴⁷

- a noise generated is not regarded as offensive under the acceptable limits;⁶⁴⁸ or
- the noise could be regarded as offensive, but is not more than an acceptable limit approved by the Minister as local standard;⁶⁴⁹ or
- the airport holds an authorisation and the noise is within the acceptable limit set by the authorisation and not generally inconsistent with the authorisation (refer to page 148 of this Guide).⁶⁵⁰

⁶⁴¹ These are the guidelines contained in sch 4 of the *Airports (Environment Protection) Regulations 1997* (Cth).

⁶⁴² 'Sensitive receptor' means a dwelling or an impermanent dwelling in a place designed, or reserved, for impermanent dwellings (for example, a caravan park or residential marina); or a hotel, motel or hostel, a child care institution, kindergarten, school, college, university or other educational institution, a hospital, medical centre or nursing home, or a building that is a church or similar place of worship: *Airports (Environment Protection) Regulations 1997* (Cth) sch 4, pt 2.

⁶⁴³ 'Commercial receptor' means a business operation, whether for profit, or not: *Airports (Environment Protection) Regulations 1997* (Cth) sch 4, pt 3.

⁶⁴⁴ *Airports (Environment Protection) Regulations 1997* (Cth) reg 2.04.

⁶⁴⁵ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.06(1).

⁶⁴⁶ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.06(2).

⁶⁴⁷ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.07.

⁶⁴⁸ As provided under *Airports (Environment Protection) Regulations 1997* (Cth) sch 4.

⁶⁴⁹ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.04.

⁶⁵⁰ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.09. With respect to an application under this part, the application must be advertised: reg 5.18.

Establishing a Noise Exposure Forecast in the Master Plan

An airport's Master Plan must consider aircraft noise intrusion and plan practical ways to manage their daily operations in order to minimise noise that is generated by existing and proposed aircraft operations.⁶⁵¹

As part of managing noise at airport sites, airports must establish an Australian Noise Exposure Forecast (ANEF). An ANEF is a numeric index which predicts cumulative exposure of communities near airports to aircraft noise over an annual period.⁶⁵²

An airport is required to identify (or provide a forecast of) areas that may be subject to significant noise intrusion levels. This noise exposure forecast of significantly affected areas is then to be endorsed by appropriately qualified persons (usually local council planning representatives).⁶⁵³

Airports must then plan to manage aircraft noise intrusion in areas that are forecast to be subject to exposure of 'significant ANEF levels' which is levels above 30 ANEF.⁶⁵⁴ The ANEF is to be incorporated into an airport's Master Plan and be endorsed by AirServices Australia.⁶⁵⁵



Facts:

In *Village Building Co Ltd v Canberra International Airport Pty Ltd*⁶⁵⁶, Village Building Co Ltd ('Village') owned land near the Canberra International Airport ('the Airport'). This land was zoned for rural and environmental uses but Village had applied to the relevant authorities to have the land rezoned for residential purposes.

The Airport had opposed this residential development on the grounds it would inevitably lead to noise complaints which would cause conflict between the airport and local community and generate pressure to constrain the operations of the airport.

The Airport planned to reduce noise levels over the northern areas of the airport and increase flight paths over the southern areas. It was therefore in the Airport's interest that the land owned by Village remained zoned for environmental and rural uses.

In accordance with its obligations under s 70 of the *Airports Act 1996* (Cth), the Airport engaged in the process of developing its draft Master Plan for forecasting and managing noise intrusion. Also in accordance with its obligations, once the ANEF had been approved by AirServices Australia, the Airport published forecasts of aircraft noise levels in the vicinity of the airport, including the land owned by Village, up to the year 2050.

Village formed the view that the airport had inflated its estimates of future noise levels with the intention of inhibiting future planning approvals in areas near the airport, including the land owned by Village, in order to limit possible constraints upon the Airport's operations.

Village commenced proceedings alleging the Airport had engaged in misleading or deceptive conduct in trade or commerce, in contravention of s 52 of the *Trade Practices Act 1974* (Cth).

⁶⁵¹ *Airports Act 1996* (Cth) s 71(2)(e).

⁶⁵² The period over which the ANEF is measured is often annually (although not always).

⁶⁵³ *Airports Act 1996* (Cth) s 71(2)(e).

⁶⁵⁴ *Airports Act 1996* (Cth) s 6.

⁶⁵⁵ Australia's Noise Exposure Forecast system is detailed in Australian Standards AS2021 Acoustics – Aircraft Noise Intrusion – Building and Construction.

⁶⁵⁶ (2004) 139 FCR 330.

Decision:

The court found, both at first instance and on appeal, that the Airport's conduct was not 'in trade or commerce'. As a result, the court did not consider in detail the truth of Village's allegations.

On this point, His Honour said

'... it is difficult to see how the representations made by [the Airport] can be said to have been made in the course of a trading or commercial relationship or of activities that bear a trading or commercial character ...'

However, it is worth noting the court made a distinction between communications with the public of a political nature and commercial or promotional activities designed to persuade consumers or secure approval to a commercial transaction or dealing.

While in this case the Airport's conduct was considered not to be 'in trade or commerce', the court did not rule out a finding of misleading and deceptive conduct in similar circumstances:

'There may be activities which are 'political' in the sense they are designed to influence public opinion or achieve a particular outcome, but which might form part of transactions bearing a commercial character.'

**Facts:**

In *SEQ Properties Pty Ltd v Maroochy Shire Council*⁶⁵⁷, SEQ Properties (SEQ) made a proposal to develop forty-five residential allotments on land it owned that was located a little over one kilometre from the Sunshine Coast Airport. However, the Maroochy Shire Council's (the Council) Strategic Plan had designated the subject land as a 'Rural or Valued Habitat' zone which meant the preferred use of the land was to preserve habitats and vegetation.

SEQ made an application to the Council to re-zone the land as 'Residential' in order to facilitate the planning and development of its proposed residential allotments. The Council refused the application on the basis the proposal did not comply with their Strategic Plan and that developing a residential community on the land would compromise the future development of the Sunshine Coast Airport.

Decision:

The Council's initial decision refusing to rezone the land was quashed and the Queensland Planning and Environment court held the land be designated as 'residential'. In making its decision, the court made the following findings:

- based on expert evidence, it was found the ecological and agricultural values of the land were poor;
- as a result, the court found the land was 'entirely unsuitable' as a 'Rural or Valued Habitat' zone and this designation of the land 'had not been logically conceived and served no planning purpose';
- the court found there was a need for the subject land to be developed to satisfy the population growth in the area;

⁶⁵⁷ [1999] QPELR 36.

- while it was found the Sunshine Coast Airport would eventually require a runway, the development of a runway would not encroach on residential areas. Additionally, the court held the possible upgrading of the airport would not be adversely affected by the existence and placement of the residential area;
- the current and future impact of airport noise on the proposed residential area was considered to have 'no real significance' because even though some areas may be subject to future ANEF levels of between 20–25 (in the event of a future runway), buildings could be constructed to allow for such noise levels.

This case illustrates an airport's ANEF may be used to pre-empt future noise intrusion levels on proposed residential developments, which may include such measures as building insulation and therefore play a significant part in the airport's duty to avoid and minimise offensive noise.

Other noise regulations

Noise generated from aircraft

While airports are responsible for noise generated by its works or undertakings (as discussed above), noise generated from aircraft is shared with aircraft owners and operators.⁶⁵⁸

The Gold Coast, Sydney (Kingsford-Smith) and Adelaide Airports have in place curfews to control noise generated from aircraft.⁶⁵⁹ There is no curfew at the Brisbane, Cairns, Melbourne and Perth Airports but there are 'noise abatement procedures' which must be followed.⁶⁶⁰

Under the curfews, strict controls apply both to the type and number of aircraft that can be operated, and the runways used. For example, the Gold Coast Airport must comply with the following specific curfew:

- an annual quota of twenty-four passenger jet movements during curfew hours (to cater for peak demand periods);
- four freight jet aircraft movements per week during curfew hours;
- jet aircraft with a maximum take-off weight of 34,000 kilograms or less (to comply with the ICAO's noise standards); and
- the only aircraft generally permitted to operate during curfew hours are those involved in an 'emergency', or otherwise granted dispensation by The Department.

In order to manage night-time aircraft noise, curfews for the Gold Coast, Sydney and Adelaide Airports apply from 11:00pm to 6:00am.⁶⁶¹ Additional restrictions for the Sydney Airport limit specific runway use between 11:45am to 11:00pm daily, and 6:00am to 7:00am and 10:00pm to 11:00pm on weekends.^{661a}

⁶⁵⁸ 'Aircraft operator' is defined as 'a person who conducts, or offers to conduct, an air service by the use of the aircraft' *Air Navigation Act 1920* (Cth) s 3.

⁶⁵⁹ *Air Navigation (Coolangatta Airport Curfew) Regulations 1999* (Cth) reg 6; *Sydney Curfew Act 1995* (Cth) s 6; *Adelaide Airport Curfew Act and Regulations 2000* (Cth).

⁶⁶⁰ Relevant noise abatement procedures are available at: <<http://www.airservicesaustralia.com/aviationenvironment/noise/>>.

⁶⁶¹ Under the *Air Navigation (Coolangatta Airport Curfew) Regulations 1999* (Cth), the time refers to Queensland Local Time.

^{661a} *Sydney Curfew Act 1995* (Cth) ss 7–11.



Penalties apply for breach of curfew for all relevant airports. The maximum penalties for breach of curfew are 1000 penalty units at Sydney Airport,⁶⁶² 45 penalty units at Gold Coast Airport,^{662a} and 200 penalty units at Adelaide Airport.⁶⁶³

In a May 2009 local Sydney court decision, Jetstar became the first aircraft operator to be successfully prosecuted and fined (\$148 500) for breaching curfew at Sydney Airport. The Jetstar flight had departed Sydney Airport at approximately 11:30pm on 3 December, 2007, some half an hour after Sydney Airport's 11:00pm curfew.^{663a}

While curfew legislation tends to be aimed at airlines rather than airports, airports may also be subject to penalties if the airport becomes involved in the breach of curfew. For example, at Sydney Airport the airport will be regarded as having committed an offence if the airport "engages in conduct" and that conduct results in aircraft landing or taking off from the airport site outside of curfew.⁶⁶⁴ All airport operators subject to curfew should be cognisant that prohibited noise generated from aircraft may expose airport operators to serious penalties.^{664a}

Aircraft may take off during curfew only if the Minister has granted dispensation or in an emergency.⁶⁶⁵ In emergencies, operations may take place without the issuing of a dispensation.

An 'emergency' is when:

- the aircraft is being used in connection with:
 - i. a search and rescue operation; or
 - ii. a medical emergency; or
 - iii. a natural disaster; or
- the pilot of the aircraft has declared an in-flight emergency; or
- the aircraft has insufficient fuel to be diverted to another airport; or
- there is an urgent need for the aircraft to land or take off:
 - i. to ensure the safety or security of the aircraft or any person; or
 - ii. to avoid damage to property.^{665a}

Environmental protection policies

When developing an environmental regime, all airports should consider applicable State or Territory (subordinate) legislation and policies (such as Environmental Protection Policies (EPPs) in Queensland⁶⁶⁶) relating to noise insofar as they contain requirements for controlling particular activities (Refer to **Appendix 19** for State and Territory environmental policies and procedures). Airports should also consider whether any undertakings or works performed on the airport site require licences or approval from local authorities.⁶⁶⁷

⁶⁶² *Sydney Curfew Act 1995* (Cth) s 7.

^{662a} *Air Navigation (Coolangatta Airport Curfew) Regulations 1999* (Cth) r 8.

⁶⁶³ *Adelaide Airport Curfew Act 2000* (Cth) s 6.

^{663a} Media Release, The Hon. Anthony Albanese MP, Minister for Infrastructure, Transport, Regional Development and Local Government, AA154/2009, 5 May, 2009.

⁶⁶⁴ *Sydney Curfew Act 1995* (Cth) s 7(2).

^{664a} *Air Navigation Act 1920* (Cth).

⁶⁶⁵ *Sydney Curfew Act 1995* (Cth) pt 3 div 2, *Air Navigation (Coolangatta Airport Curfew) Regulations 1999* (Cth) pt 3 div 3, *Adelaide Airport Curfew Act 2000* (Cth) pt 3 div 5.

^{665a} *Air Navigation (Coolangatta Airport Curfew) Regulations 1999* (Cth) reg 20.

⁶⁶⁶ EPPs are subordinate legislation prepared by the Queensland Department of Environment and Heritage.

⁶⁶⁷ State or Territory laws which relate to the generation of and monitoring of the emission of noise at airport sites have no effect on the airports listed in Appendix 18: *Airports Act 1996* (Cth) ss 132(1)(a) and (e) and 133(1)(a) and (e); *Airports (Environment Protection) Regulations 1997* (Cth) reg 1.04(2).

Air

Master Plan/Major Development Plan

The airport has a duty to avoid 'air pollution'. Air pollution occurs when a pollutant is present in the air in a 'quantity, way, or condition, or under a circumstance' which is likely to either:

- harm the environment; or
- cause unreasonable inconvenience to a person, whether or not they are in the immediate vicinity of the source of the pollutant.⁶⁶⁸

The airport must take the following practical steps to comply with this duty:

- identify the areas within the airport site which are susceptible to air pollution;
- identify the sources of air pollution associated with airport operations;
- study, review and monitor the airport operations for environmental impact;
- plan the measures for preventing, controlling or reducing the environmental impact; and
- consult with State, Territory and Commonwealth conservation bodies where necessary.⁶⁶⁹

When identifying and monitoring air pollution, airports may have regard to:

- the average concentrations for particular substances in the air at an airport, measured over a particular period of time;⁶⁷⁰ and
- acceptable limits and rates for emissions of particular substances or gases in the air, the common sources which produce the particular substance, and the accepted method for measurement and monitoring particular substances.⁶⁷¹

Other Air quality regulations

When developing an environmental regime, all airports should consider State, Territory and Commonwealth based legislation and policies relating to air quality insofar as they contain requirements for controlling particular activities. Airports should also consider whether any undertakings or works performed on the airport site require licences or approval from local authorities. However, it should be noted that state laws which relate to the generation of and monitoring of air pollution at airport sites⁶⁷² have no effect on the airports listed in **Appendix 18**.⁶⁷³

⁶⁶⁸ *Airports (Environment Protection) Regulations 1997* (Cth) reg 2.01(1).

⁶⁶⁹ *Airports Act 1996* (Cth) ss 116(2)(b)-(h); *Airports (Environment Protection) Regulations 1997* (Cth) regs 3.07-3.10. See above discussion about the content of an Environment Strategy. Practicable measures may include developing strategies for managing dust, gases and solvents, other hazardous substances and the burning of substances. Strategies may include storage, handling, training and reporting obligations with respect to particular substances.

⁶⁷⁰ *Airports (Environment Protection) Regulations 1997* (Cth) sch 1 pt 2 sets out average concentrations for particular substances in the air at an airport, measured over a particular period of time. For example, over an average period of 3 months, the amount of lead in the air should not amount to an average concentration of more than 1.5 ppm.

⁶⁷¹ *Airports (Environment Protection) Regulations 1997* (Cth) sch 1 pt 1 identifies 17 substances, their sources, and sets out acceptable limits and rates for emissions of particular gases: *Airports (Environment Protection) Regulations 1997* (Cth) regs 1.01, 2.02.

⁶⁷² *Airports Act 1996* (Cth) ss 132(1)(a) and (e) and 133(1)(a) and (e).

⁶⁷³ *Airports (Environment Protection) Regulations 1997* (Cth) reg 1.04(2).

Ozone depleting substances

An airport should identify any operations using ozone depleting substances (if applicable) and attempt to remove them or replace these substances with non-ozone depleting substances.⁶⁷⁴ In the event an airport's works or undertakings require the use of ozone depleting substances, the airport must obtain a license.⁶⁷⁵

Soil

Master Plan/Major Development Plan

Airports must plan to avoid 'soil pollution'. Soil pollution is defined⁶⁷⁶ as pollution of land, including subterranean groundwater that is contaminated by a substance that causes, or is reasonably likely to cause, an 'adverse effect' on:

- the chemical or biological condition of the soil;
- the beneficial use of adjacent land or of any subterranean groundwater;
- the present or a proposed use of the land concerned; or
- the land concerned generally.

Soil pollution will be considered to have an 'adverse affect' where it is reasonably likely to be:

- unsafe or unfit for human habitation or occupation;
- in any other respect, harmful to the health or welfare of human beings; or
- significantly offensive to human senses.⁶⁷⁷

Examples of 'adverse affect' on the land concerned may be:

- where the land supports native flora or fauna and the substance degrades the capacity of the land to support the flora or fauna; or
- where the beneficial use of any subterranean groundwater is affected adversely.⁶⁷⁸

The airport must take the following practical steps to comply with this duty:

- identify the areas of soil pollution within the airport site;
- identify the sources of soil pollution associated with airport operations;
- study, review and monitor the airport operations for environmental impact;
- plan the measures for preventing, controlling or reducing the environmental impact; and
- consult with State, Territory and Commonwealth conservation bodies where necessary.⁶⁷⁹

Identification of soil pollution can be done by giving consideration to acceptable limits for substance contamination in land and soil.⁶⁸⁰ When identifying sources of soil pollution, it is also prudent to consult State, Territory and Commonwealth conservation organisations to identify local habitats of native species and endangered or vulnerable flora, fauna or ecological community.⁶⁸¹

⁶⁷⁴ The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) also interacts with the *Air Navigation (Aircraft Engine Emissions) Regulations 1995* (Cth) to limit gas emissions from airports and encourages Australian industry to replace ozone depleting substances and achieve a faster and greater reduction in the levels of production and use of ozone depleting substances.

⁶⁷⁵ *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) Part III.

⁶⁷⁶ *Airports (Environment Protection) Regulations 1997* (Cth) reg 2.03(1).

⁶⁷⁷ *Airports (Environment Protection) Regulations 1997* (Cth) reg 2.03(1)(b).

⁶⁷⁸ *Airports (Environment Protection) Regulations 1997* (Cth) reg 2.03(1).

⁶⁷⁹ *Airports Act 1996* (Cth) ss 116(2)(b)-(h); *Airports (Environment Protection) Regulations 1997* (Cth) regs 3.07–3.10. See also the above discussion regarding the content of an Environment Strategy.

⁶⁸⁰ Schedule 3 of the *Airports (Environment Protection) Regulations 1997* (Cth) sets out acceptable limits for substance and metal contamination in land and soil.

⁶⁸¹ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.04(1).

With respect to any works or undertakings performed on an airport site, airports must take ‘all reasonable and practicable measures’ to ensure any such work does not adversely affect the areas identified in the Environment Strategy, which should include:

- local biota and the ecosystems and habitats of native species; and
- flora or fauna that is known to be endangered or vulnerable as a species, or an ecological community that is known to be an endangered ecological community.⁶⁸²

The considerations that determine whether a measure is ‘reasonable and practicable’ include:

- the sensitivity of the receiving environment to pollution that the undertaking is capable of generating;
- the nature of the harm the pollution from the undertaking is capable of causing, or has potential to cause;
- the current state of technical knowledge about preventing or minimising pollution being generated from an undertaking of the kind being operated; and
- all measures that might practicably be used to prevent or minimise the pollution, and the probable benefits and detriments (if any) that should be expected from the implementation of each measure.⁶⁸³

Plans for sources of soil pollution

Where there is a source, or likely source of soil pollution, the airport must submit a plan to the applicable AEO for the cleaning up, remedying or rectifying the pollution.⁶⁸⁴ This plan must:

- be developed in consultation with and agreement with the assessor who has reported the pollution;⁶⁸⁵
- set out:
 - the soil quality standards that can reasonably be achieved; and
 - a timetable for a clean up within the shortest time reasonably practicable; and
- aim to restore all potential and actual beneficial uses.⁶⁸⁶

At minimum, the plan must set out an appropriate risk management program to minimise any ongoing effects of the pollution and stop the pollution from migrating to another area.⁶⁸⁷

Until a plan has achieved its objectives, the occupier must give the airport’s AEO a report of progress under the plan at six monthly intervals and before ceasing occupation (if applicable).⁶⁸⁸

⁶⁸² *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.04(1).

⁶⁸³ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.01(2).

⁶⁸⁴ *Airports (Environment Protection) Regulations 1997* (Cth) reg 6.14(1).

⁶⁸⁵ An assessor is a person, or class of persons, nominated by the Secretary of The Department as eligible for appointment in Queensland. A person suitable for appointment is someone recognised in Queensland (or if not available, another State) as having expertise in environmental protection issues because of their qualifications or employment. The Secretary must ensure the relevant AEO is aware of the persons the Secretary has nominated as eligible for appointment: *Airports (Environment Protection) Regulations 1997* (Cth) reg 6.10.

⁶⁸⁶ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.03(2).

⁶⁸⁷ *Airports (Environment Protection) Regulations 1997* (Cth) reg 6.14(2).

⁶⁸⁸ *Airports (Environment Protection) Regulations 1997* (Cth) reg 6.15(1).

The AEO must, before the end of 30 days after receipt of the plan:

- approve or refuse to approve the plan;
- give the airport written notice of the decision; and
- if the decision is a refusal, mention in the notice the reasons for refusal.⁶⁸⁹

An AEO who approves a remedial plan must also monitor the implementation of the plan.⁶⁹⁰

When the airport decides that a plan has achieved its objectives, it must give the AEO a report giving details of the achievement of the objectives, accompanied by a copy of the results of any test or other monitoring exercise carried out with the intention of ascertaining progress under the plan.⁶⁹¹

Water

Master Plan/Major Development Plan

Airports must avoid 'water pollution' which is when water contains a substance or organism that causes, or is reasonably likely to cause an 'adverse effect on beneficial use'⁶⁹² of the water, or the physical, chemical or biological condition of the water.⁶⁹³

Water will be considered to contain a polluting substance if the substance is suspended or otherwise dispersed in the waters, floating on the surface of the waters or deposited on the bed of the waters (whether or not the substance is capable of uniformly mixing with water), or if the substance is dissolved in the waters.⁶⁹⁴

The key indicator of 'adverse effects' and 'adverse effect on beneficial use' of water are the pre-identified 'acceptable limits' of particular substances (identified in terms of both measurements and percentage).⁶⁹⁵

The airport must take the following practical steps to comply with this duty:

- identify the areas on site where 'water' exists;
- identify the sources of water pollution associated with airport operations;
- study, review and monitor the airport operations for environmental impact;
- plan the measures for preventing, controlling or reducing the environmental impact; and
- consult with State, Territory and Commonwealth conservation bodies where necessary.⁶⁹⁶

⁶⁸⁹ *Airports (Environment Protection) Regulations 1997* (Cth) reg 6.14(3).

⁶⁹⁰ *Airports (Environment Protection) Regulations 1997* (Cth) reg 6.16.

⁶⁹¹ *Airports (Environment Protection) Regulations 1997* (Cth) reg 6.15(2). Practical ways which an airport might plan to reduce soil pollution may be to carefully consider all pest and plants introduced, contain potential contamination of hazardous chemicals or waste, manage the handling, storing and use of hazardous chemicals and maintain a system of reporting for spills.

⁶⁹² 'Beneficial use' means a use conducive to public health, safety, aesthetic enjoyment or other benefit: *Airports (Environment Protection) Regulations 1997* (Cth) reg 2.02(3).

⁶⁹³ *Airports (Environment Protection) Regulations 1997* (Cth) reg 2.02(1).

⁶⁹⁴ *Airports (Environment Protection) Regulations 1997* (Cth) reg 2.02(2).

⁶⁹⁵ *Airports (Environment Protection) Regulations 1997* (Cth) sch 2 identifies these substances and acceptable limits.

⁶⁹⁶ *Airports Act 1996* (Cth) ss 116(2)(b)-(h); *Airports (Environment Protection) Regulations 1997* (Cth) regs 3.07-3.10. See above discussion about the content of an Environment Strategy.

For the purposes of identifying areas on site where ‘water’ exists, ‘water’ is ‘*marine, estuarine or fresh waters*’, and includes:

- a body of water;
- a natural watercourse;
- a swamp or wetland;
- groundwater; and
- water in a channel, drain, pipe or other artificial holding facility (unless it is water in a system for the passage of sewage, or for the passage or trapping of pollution).⁶⁹⁷

Airports must ‘take all reasonable and practicable measures’ to ensure any work or undertaking does not adversely affect:

- local habitats of native species; or
- flora or fauna or an ecological community that is known to be endangered or vulnerable.⁶⁹⁸

The considerations that determine whether a measure is ‘reasonable and practicable’ include:

- the sensitivity of the receiving environment to pollution that the undertaking is capable of generating;
- the nature of the harm the pollution from the undertaking is capable of causing, or has potential to cause;
- the current state of technical knowledge about preventing or minimising pollution being generated from an undertaking of the kind being operated; and
- all measures that might practicably be used to prevent or minimise the pollution, and the probable benefits and detriments (if any) that should be expected from the implementation of each measure.⁶⁹⁹

Other Water Quality Regulations

When considering the effect of works or undertakings on a body of water, airports need to determine the appropriate water quality standard before conducting the works or undertakings in a way that water quality does not fall below the standard. Airports should also consider State or Territory based policies and strategies relating to water prepared by the relevant department.⁷⁰⁰ It should be noted that State or Territory laws which relate to the generation of, and monitoring of water pollution at airport sites⁷⁰¹ have no effect on the airports listed in **Appendix 18**.⁷⁰²

⁶⁹⁷ *Airports (Environment Protection) Regulations 1997* (Cth) reg 2.02(3).

⁶⁹⁸ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.04(1).

⁶⁹⁹ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.01(2). Practical ways which an airport might plan to reduce adverse effects on the beneficial use of water may be to implement an effective waste management system for discharge and excess water, and ensure operations and the use of equipment do not result in the release of substances, fuel or chemicals into areas identified.

⁷⁰⁰ Refer to Appendix 19 for State and Territory environmental policies and procedures.

⁷⁰¹ *Airports Act 1996* (Cth) ss 132(1)(a) and (e) and 133(1)(a) and (e).

⁷⁰² *Airports (Environment Protection) Regulations 1997* (Cth) reg 1.04(2).

Culture and heritage

Master Plan/Major Development Plan

With respect to culture and heritage, airports must take 'all reasonable and practicable measures' to ensure that any undertakings or works carried out on site does not adversely affect the following:

- local habitats of native species;
- existing cultural⁷⁰³ or historical values of the local area;
- sites of indigenous significance;^{703a} or
- flora or fauna or an ecological community that is known to be endangered or vulnerable.⁷⁰⁴

If it is 'reasonably discoverable' that there is a native species or an ecological community that is endangered or vulnerable at the airport site, the work should not be 'inconsistent with any action to lessen the danger or vulnerability.'⁷⁰⁵

Airports are expected to consult with indigenous communities and organisations, and the relevant Commonwealth and State bodies in order to identify sites of indigenous significance within the airport site. They must then specify this area in their Environment Strategy.⁷⁰⁶



Airports also have a duty to give written notice to the applicable AEO of a cultural discovery if the discovery is made during the course of, or in connection with the work or undertaking. Failure to give notice is an offence – 50 penalty units – \$5500.⁷⁰⁷

Upon receiving notice of a cultural discovery, the airport or AEO must then:

- seek expert advice from an 'appropriate person'⁷⁰⁸ on appropriate conservation measures (if any);
- consult with the airport about reasonable means of giving effect to the recommended measures; and
- record the discovery in the environmental site register for the airport.⁷⁰⁹

⁷⁰³ 'Cultural' includes historical, social and scientific (including archaeological and anthropological): *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.04(1)(a)(ii).

^{703a} Note that this duty may also apply under State legislation, to the extent of any inconsistency with the Commonwealth legislation. State legislation may also assist in identifying sites of indigenous significance.

⁷⁰⁴ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.04(1).

⁷⁰⁵ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.04(1)(c).

⁷⁰⁶ *Airports (Environment Protection) Regulations 1997* (Cth) reg 3.03.

⁷⁰⁷ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.05(1).

⁷⁰⁸ 'Appropriate person' means either the Department of the Environment, Sport and Territories or a body established in the State in which the airport is located, having responsibilities in relation to conservation of local biota, habitat, heritage or kindred matters.

⁷⁰⁹ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.05(2).

Other cultural and heritage regulations

Heritage registers

The Australian Heritage Council keeps a register of the National Estate.⁷¹⁰ Before an airport takes any action that might affect a place which is part of the national estate, the Australian Heritage Council should be advised. The Australian Heritage Register should also be consulted to consider any places affecting Australian airports.⁷¹¹

Airports are prohibited from undertaking any action which adversely affects a place that is in the Register of the National Estate unless the authority is satisfied, that there is no feasible and prudent alternative, and that all reasonable measures be taken to minimise the adverse effects.⁷¹²

Australian airports must ensure any works or undertakings do not impinge upon archaeological objects on land and under water or areas of archaeological interest listed on the State's Heritage Register.⁷¹³

Aboriginal Cultural Heritage

Where an airport or someone in connection with the airport discovers Aboriginal remains, they are required to report their discovery to the Minister.⁷¹⁴ State or Territory legislation relating to heritage and cultural obligations should also be considered as it will apply to airports,⁷¹⁵ but only to the extent of any inconsistency with the Commonwealth legislation.^{715a}

Aboriginal 'cultural property' can include places, objects and folklore that are 'of particular significance to Aboriginals in accordance with Aboriginal tradition'.

Control equipment

Pollution control equipment

When a core regulated airport is using equipment for carrying on works or undertakings, the equipment may have 'pollution control equipment'⁷¹⁶ that is either:

- fitted to or supplied with the operating equipment when it is supplied to the airport; or
- specified or recommended for the operating equipment by the manufacturer or supplier.⁷¹⁷

⁷¹⁰ *Australian Heritage Council Act 2003* (Cth) s 21(1), pt 16.

⁷¹¹ *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

⁷¹² *Airports (Environment Protection) Regulations 1997* (Cth) reg 1.04; *Australian Heritage Council Act 2003* (Cth) pt 16. Note this duty applies concurrently with the provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) which relate to activities which may affect a place that is part of the National Estate.

⁷¹³ A record of registered places which list places and items of heritage significance can be found on the relevant state heritage register: *Queensland Heritage Act 1992* (Qld); *Heritage Act 1977* (NSW); *Heritage Act 2004* (ACT); *Heritage Act 1995* (Vic); *Historic Cultural Heritage Act 1995* (Tas) and *Cultural Heritage Amendment Act 1997* (Tas); *Heritage Places Act 1993* (SA); *Heritage of Western Australia Act 1990* (WA); and *Heritage Conservation Act 1991* (NT).

⁷¹⁴ 'Aboriginal remains' is defined as 'the whole or part of bodily remains of an Aboriginal (but not) remains buried in accordance with State or Territory law or on Aboriginal burial ground, or remains not readily recognisable or to be dealt with by medical or post-mortem examination' *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) ss 3, 20.

⁷¹⁵ For example, in Queensland, an airport's obligation to take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage is both a Commonwealth and a State obligation: *Aboriginal Cultural Heritage Act 2003* (Qld) s 23(1).

^{715a} *Airports (Environment Protection) Regulations 1997* (Cth) reg 1.04.

⁷¹⁶ Equipment to prevent, minimise, measure, record or monitor the generation of pollution: *Airports (Environment Protection) Regulations 1997* (Cth) reg 1.05.

⁷¹⁷ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.03(1).

In these circumstances, the airport is *not* complying with the duty to avoid air, soil or water pollution (discussed above) *unless*:

- the operating equipment is fitted with the pollution control equipment (or pollution control equipment having comparable effect);
- the pollution control equipment is maintained in proper and efficient condition; and
- the pollution control equipment is used effectively.⁷¹⁸

Noise control equipment

When a core regulated airport is using equipment for carrying on works or undertakings, the equipment may have 'noise control equipment' (i.e. equipment to prevent minimise, measure, record or monitor the generation of excessive noise⁷¹⁹) that is either:

- fitted to or supplied with the operating equipment when it is supplied to the airport; or
- specified or recommended for the operating equipment by the manufacturer or supplier.⁷²⁰

In these circumstances, the airport is *not* complying with the duty to avoid offensive noise (discussed above) *unless*:

- the operating equipment is fitted with the noise control equipment (or noise control equipment having comparable effect);
- the noise control equipment is maintained in proper and efficient condition; and
- the noise control equipment is used effectively.⁷²¹

Authorisation

When a core regulated airport wishes to undertake works or undertakings on an airport site that will result in environmental pollution or noise that exceeds 'acceptable limits' (i.e. acceptable quantity or rate of contamination⁷²²), they must apply for authorisation. Authorisations apply to a particular undertaking during a particular period and are intended to allow for technical compliance with the airport's environmental obligations, whilst the airport investigates and pursues methods of achieving actual compliance.⁷²³

The airport must follow the application process for such authorisation in accordance with the following steps:

1. Make the application in writing to the applicable AEO

Application for an authorisation is to be made, in writing to the applicable AEO, and must set out:

- the name of the airport (in their capacity as lessees and generally);
- the 'works or undertakings'⁷²⁴ for which the authorisation is sought;
- any 'acceptable limit' that is intended to be exceeded, and the likely extent of the excess;
- the reason why the authorisation is needed; and
- the period for which the authorisation is needed.⁷²⁵

⁷¹⁸ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.03(2).

⁷¹⁹ *Airports (Environment Protection) Regulations 1997* (Cth) reg 105.

⁷²⁰ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.09(1).

⁷²¹ *Airports (Environment Protection) Regulations 1997* (Cth) reg 4.09(2). The duty to prevent offensive noise is discussed above: reg 4.06(2).

⁷²² This is set out in the Schedules under the *Airports (Environment Protection) Regulations 1997* (Cth).

⁷²³ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.06. References to 'act' include an 'omission'.

⁷²⁴ With respect to obtaining authorisations, references to 'work or undertaking' for the purposes of the Guide also mean an 'act, class of acts or sequence of acts' or 'activity or activities'.

⁷²⁵ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.07.

If it is not practicable for an application for an authorisation to be made in writing because of the urgency of the need for an authorisation, the application may be made orally. An authorisation granted orally has effect for a period of 48 hours or any lesser period specified in the authorisation.⁷²⁶ An airport must give the AEO written confirmation of the application.⁷²⁷

All applications must be supported by an 'environment management plan' detailing the actions the airport proposes to take during the period for which the airport proposes the authorisation to have effect. The 'environmental management plan' will include:

- actions the airport expects will ensure pollution emissions overall are not more environmentally damaging than would be the case if exact compliance with the acceptable limits were achieved; or
- if the airport believes the relevant outcome can be achieved only by incremental improvements over a greater period of time, to make satisfactory progress toward achievement of that outcome.⁷²⁸

An AEO may request, in writing, that the airport provide any such further information that is reasonably necessary to enable the AEO to determine the application.⁷²⁹

2. *Advertise the application*

The following kinds of applications must be advertised in a newspaper that has general circulation in the relevant State or Territory:

- an authorisation sought for a period longer than 90 days;
- an authorisation that, if granted, will allow a work or undertaking that is likely (in the opinion of the AEO) to have a significantly adverse material impact on another person; and
- an authorisation that, if granted, will allow an undertaking that is likely (in the opinion of the AEO) to generate pollution or noise in excess of an acceptable limit frequently or repeatedly and protractedly.⁷³⁰

The advertisement must include:

- the name of the airport (in their capacity as lessees and generally);
- the work or undertaking for which the authorisation is sought;
- any acceptable limit that is intended to be exceeded, and the likely extent of the excess;
- the reason why the authorisation is needed;
- the period for which the authorisation is needed;
- the name and address of the AEO;
- details of the address of a place where, during normal business hours, a copy of the environment management plan can be examined;
- an invitation to make written submissions to the AEO about the application; and
- mention of a period, being not less than 14 days after the date of publication of the advertisement, within which persons may make submissions.⁷³¹

⁷²⁶ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.13(3).

⁷²⁷ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.13(4).

⁷²⁸ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.07(3).

⁷²⁹ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.07.

⁷³⁰ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.08(1).

⁷³¹ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.08(2). The applicant for the authorisation must pay the reasonable costs of the advertisement, including the cost of preparing the advertisement: reg 5.08(3).

3. *Determining the application*

When considering an application, an AEO must take into account:

- any reasonable alternative actions available to the airport to achieve the object of the proposed action, including the possibility that the undertaking concerned could be carried out in a different place;
- whether the airport has taken all reasonably available measures to avoid or minimise the need for an authorisation;
- all reasonably likely consequences of the proposed action:
 - for the health, safety and, if a likely consequence is excessive noise, comfort of any person;
 - for any aspect of the environment;
 - if air quality is likely to be adversely affected, for compliance with acceptable limits;
- the period of time for which authorisation would practically be required;
- the adequacy of the environment management plan and the likelihood of the plan being realised;
- whether the need for an authorisation is to enable remedial work to be carried out on existing airport-sourced pollution;
- whether grant of the authorisation would be consistent, or inconsistent, with the objectives and proposed measures set out in the draft or final Environment Strategy;
- whether grant of the authorisation would have a significant impact on the interests of another person;
- any submissions made about the application; and
- any other matter that the AEO considers to be relevant.⁷³²

Once an AEO has considered an authorisation, the AEO may:

- grant authorisation;
- grant authorisation subject to any condition the AEO considers appropriate; or
- refuse authorisation.⁷³³

When considering the appropriateness of a conditional grant, the AEO must:

- take into account any commitment the airport has given to prevent or minimise pollution or noise of the kind to which the authorisation will apply; and
- if practicable, prefer a decision that will promote improved actual compliance by the airport after the authorisation would cease to have effect.⁷³⁴

An AEO must give an airport written notice of the decision:

- before the end of 30 days after receipt of the application; or
- if further information has been sought from the airport, before the end of 30 days after the further information is given.⁷³⁵

If the application is refused, or is granted subject to a condition, the notice must set out the reasons for the decision.⁷³⁶

⁷³² *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.09(2).

⁷³³ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.09(1).

⁷³⁴ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.09(3).

⁷³⁵ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.10(1).

⁷³⁶ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.10(2).

Before the end of 2 days after granting an authorisation, an AEO must:

- make a written record of the authorisation; and
- give a copy of the authorisation to both the airport concerned and the airport in their capacity as lessees.⁷³⁷

4. *Variations or Assignments*

An airport with a previously granted authorisation may request an AEO, in writing, to vary the authorisation. Such a request must set out:

- the work or undertaking for which the variation is sought;
- the reason why the variation is needed; and
- the period for which the variation is needed.⁷³⁸

If ownership of the relevant undertaking is being assigned to another person, the airport may also assign any authorisation which applies to that undertaking in the following circumstances:

- notice of the proposed assignment is given in writing to the applicable AEO;
- the AEO is given a written acknowledgment by the transferee about the terms and any conditions of the authorisation; and
- at the end of seven days after the AEO has received the written notice and the acknowledgment, if the AEO has indicated no objection to the assignment.⁷³⁹

5. *Comply with the authorisation and conditions of the authorisation*

It is a condition of an authorisation that the holder of the authorisation complies with the 'environmental management plan'.⁷⁴⁰

The period for which an authorisation has effect must be no longer than three years, and may be specified in any, or by reference to:

- the dates on which it begins and ends;
- a duration;
- the happening of an event; or
- the acts authorised.⁷⁴¹

The period for which an authorisation has effect cannot be extended beyond three years by a variation.⁷⁴²

Consequences for failure to comply with authorisation or conditions

An airport who has been granted an authorisation, and who contravenes a condition of the authorisation or knows of a contravention of a condition of the authorisation, must report the contravention to an AEO:

- before the end of 24 hours after the event; or
- if the operator learns of the contravention after the event, before the end of 24 hours after the operator learns of the event.⁷⁴³

⁷³⁷ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.14.

⁷³⁸ *Airports (Environment Protection) Regulations 1997* (Cth) regs 5.16(3)-(4).

⁷³⁹ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.19. An authorisation cannot be assigned if an AEO, being satisfied that in all the circumstances it is proper to do so, gives the airport written notice that assignment of the authorisation is not permitted: reg 5.19(2).

⁷⁴⁰ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.11.

⁷⁴¹ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.12(1).

⁷⁴² *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.12(2).

⁷⁴³ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.18(1).



Failure to report the failure to comply with an authorisation or condition to the applicable AEO in writing is an offence – 50 penalty units – \$5500. In addition, an injunction may also apply with respect to the undertaking.⁷⁴⁴

In addition, an AEO may vary or revoke an authorisation without the airport's request, if satisfied that in all the circumstances it is proper to do so.⁷⁴⁵ A variation or revocation is not effective until it is notified in writing to the airport unless:

- the variation or revocation is notified to the airport orally; and
- is declared by an AEO to take effect immediately in order to deal appropriately with an emergency (which has effect only until the end of 48 hours after notification); or
- unless notification is also given in writing before the end of that period.⁷⁴⁶

Monitoring and reporting

Duty to monitor pollution levels

Core regulated airports (**Appendix 18**) have a duty to monitor levels of pollution in air, water or soil, and levels of noise generated at the airport, in accordance with the airport's Environment Strategy.⁷⁴⁷

The monitoring must be carried out in a way which is consistent with studies, reviews and monitoring undertaken in accordance with the airport's Environment Strategy. If the monitoring involves testing, it must not be inconsistent with any national environment protection measures.⁷⁴⁸

Environmental site register

Core regulated airports must keep a written record of the environmental condition of the airport and its environmental management generally (the 'environmental site register').⁷⁴⁹ The environmental site register should include:

- the results of monitoring;
- any information or report received;
- details of any remedial plan for an area of the airport, and of any reports in relation to a plan; and
- details of the nature, date and place of any occurrence of environmental significance (detrimental or beneficial) at the airport.

In this respect, it is prudent for an airport to include in their environmental register procedures for reporting and recording all environmentally related incidents on site.

⁷⁴⁴ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.18(3).

⁷⁴⁵ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.16(3).

⁷⁴⁶ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.16(5).

⁷⁴⁷ *Airports (Environment Protection) Regulations 1997* (Cth) reg 6.02(1).

⁷⁴⁸ In accordance with *Airports (Environment Protection) Regulations 1997* (Cth) regs 1.08 and 6.02(2) and the measures made under *National Environment Protection Council Act 1994* (Cth).

⁷⁴⁹ *Airports (Environment Protection) Regulations 1997* (Cth) reg 6.02(3).

Duty to report pollution

If a regulated airport's environment monitoring discloses pollution or excessive noise occurring, the airport must give the applicable AEO, within 14 days, a written report setting out:

- the nature of the pollution, or excessive noise;
- the location of the affected environment;
- the date, time and when the pollution or excessive noise occurred, or is likely to have occurred; and
- details of remedial action the airport or any other person has taken, or is taking, to prevent or minimise the pollution or noise, and its recurrence.⁷⁵⁰

Duty to report non-compliance

If a regulated airport's environmental monitoring discloses a pollutant present in air, water or land at the airport, in a quantity or concentration that indicates non-compliance with acceptable limits, the airport must give the applicable AEO a written report, within 14 days, setting out:

- the nature of the pollution or noise;
- the location of the pollution or noise; and
- details of remedial action the airport or any other person has taken, or is taking, to minimise the pollution.⁷⁵¹



If an airport fails to comply with these regulations, it commits an offence – 50 penalty units – \$5500.⁷⁵²

Annual report

A regulated airport must provide a report for each financial year containing the following details:

- information added to the environmental site register for the preceding year;
- details of the airport's performance in achieving the policies and targets of the Environment Strategy and, in particular, the airport's progressive management of enduring environmental pollution problems at the airport; and
- a report of incidents of pollution and other contraventions of the regulations that have occurred during the year to which the report applies.⁷⁵³

The airport must give its report to The Department not later than 120 days after the end of the reporting period (i.e. the financial year).⁷⁵⁴

If the airport holds an Authorisation (discussed above) which has been granted for a period longer than one year, the airport must give the AEO who granted the authorisation (or the AEO's successor) a report for each year the authorisation is in force. This report must set out:

- details of the holder's performance in giving effect to the airport's 'environmental management plan' (discussed above);
- details of progress (if any) made in reducing the generation of pollution or noise that is generated in excess of the acceptable limits; and
- any failure by the airport to comply with the terms and conditions (if any) of the authorisation.⁷⁵⁵

⁷⁵⁰ *Airports (Environment Protection) Regulations 1997* (Cth) reg 6.04(1).

⁷⁵¹ *Airports (Environment Protection) Regulations 1997* (Cth) reg 6.04(2).

⁷⁵² *Airports (Environment Protection) Regulations 1997* (Cth) reg 6.04(3).

⁷⁵³ *Airports (Environment Protection) Regulations 1997* (Cth) reg 6.03(1).

⁷⁵⁴ *Airports (Environment Protection) Regulations 1997* (Cth) reg 6.03(2).

⁷⁵⁵ *Airports (Environment Protection) Regulations 1997* (Cth) reg 5.17. The reporting period is either the financial year or another period the Secretary of The Department determines: reg 6.03(1).

General monitoring powers

Regulated airports can be monitored for the purposes of ascertaining whether the airport has complied with its environmental management responsibilities.⁷⁵⁶

An 'authorised officer'⁷⁵⁷ may enter any 'airport premises'⁷⁵⁸ at any time during the day or night to ascertain whether the airport has complied with their environmental obligations.⁷⁵⁹

However, they must only enter the premises with the airport's consent⁷⁶⁰ and the authorised officer must inform the airport that they may refuse to give consent;⁷⁶¹ otherwise, entry is not lawful.⁷⁶²

If the airport has required the authorised officer to produce his or her identity card and the authorised officer does not do so, the authorised officer is not entitled to exercise their powers.⁷⁶³

When on the premises, the authorised officer may:

- search the airport premises;
- take photographs (including a video recording) or make sketches of the airport premises or any substance or thing at the airport premises;
- inspect, examine and take samples of any substance or thing on or in the airport premises;
- take extracts from or make copies of any document on the airport premises;
- take measurements, make surveys or take levels at airport premises and, for those purposes, dig trenches, break up the soil or set up any post, stake or mark at the airport premises; or
- take onto the airport premises any equipment or material reasonably necessary for the purpose of exercising such powers.⁷⁶⁴

In relation to certain documents on airport premises, the authorised officer has powers to operate equipment at the airport premises to determine whether the equipment (which includes a 'disk, tape or other storage device') that is at the airport premises contains information relevant to environmental compliance.⁷⁶⁵ If the authorised officer finds information relevant to determining whether the airport is complying with their environmental obligations, the authorised officer may:

- put the information in documentary form;
- copy the documents; and/or
- transfer the information onto a storage device and remove the storage device from the airport premises.⁷⁶⁶

The authorised officer also has the power to issue 'monitoring warrants'⁷⁶⁷ and require persons to answer certain questions to ascertain an airport's environmental compliance.

⁷⁵⁶ *Airports Act 1996* (Cth) s 232, pt 18. These environmental management responsibilities include all the airport's obligations relating to its Master Plan, Major Development Plan and Environment Strategy: *Airports Act 1996* (Cth) pts 5, 6. These are discussed in Chapter 1 of this Guide.

⁷⁵⁷ An 'authorised officer' is a government officer authorised by the Minister of The Department under the *Airports Act 1996* (Cth) s 233.

⁷⁵⁸ 'Airport premises' means an airport site, if there is an airport lease for the airport, or a building or other structure on such a site, and includes a part of any such premises: *Airports Act 1996* (Cth) s 239.

⁷⁵⁹ *Airports Act 1996* (Cth) s 235(1).

⁷⁶⁰ *Airports Act 1996* (Cth) s 235(2).

⁷⁶¹ *Airports Act 1996* (Cth) s 235(4).

⁷⁶² *Airports Act 1996* (Cth) s 235(5).

⁷⁶³ *Airports Act 1996* (Cth) s 235(3).

⁷⁶⁴ *Airports Act 1996* (Cth) s 238(1).

⁷⁶⁵ *Airports Act 1996* (Cth) s 238(2).

⁷⁶⁶ *Airports Act 1996* (Cth) s 238(3).

⁷⁶⁷ A 'monitoring warrant' is a warrant issued by the Magistrates Court which allows the authorised officer to access the airport premises for the purpose of discovering whether the airport's environmental obligations (including their Master Plan and Environment Strategy) have been complied with: *Airports Act 1996* (Cth) s 236.

Other duties

National environmental significance

In undertaking any activity on an airport site, all airports must consider whether any part of the works or undertakings relate to a matter of 'National Environmental Significance', of which there are six:

- World Heritage properties;
- Ramsar Wetlands of international significance;
- nationally threatened species and ecological communities;
- migratory species;
- Commonwealth marine areas; and
- nuclear actions.⁷⁶⁸

If an airport identifies anything of significance which is located within or is related to an area on the airport site, the airport must obtain approval from the Australian Government Department of Environment, Water, Heritage and the Arts.⁷⁶⁹

Environmental impact statement

Airports must consider requirements under State and Territory legislation with respect to the need for an Environmental Impact Statement (EIS).^{769a}

In Queensland, an EIS will be required for 'developmental activities' on airports, which may include building, operational, plumbing or drainage work.⁷⁷⁰

The EIS must attempt to achieve 'ecological sustainability'⁷⁷¹ which is:

'a balance that integrates protection of ecological processes and natural systems at local, regional, state and wider levels, economic development, and maintenance of the cultural, economic, physical and social wellbeing of people and communities'.⁷⁷²

The process in Queensland is that the EIS must be accompanied by an EIS Assessment Report, which must:

- address the adequacy of the EIS in addressing the terms of reference;
- address the adequacy of any environmental management plan for the development;

⁷⁶⁸ *Environment Protection and Biodiversity Conservation Act 1999* (Cth). This is to be distinguished from an 'environmentally relevant activity' under the *Environmental Protection Act 1994* (Qld) which often relates to mining activities.

⁷⁶⁹ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), Ch 2, pt 3.

^{769a} The relevant document is called an 'Environmental Impact Statement' in Queensland: *Integrated Planning Act 1997* (Qld), New South Wales: *Environmental Planning and Assessment Act 1979* (NSW) pt 3 div 1 ss 24–26 and South Australia: *Development Act 1993* (SA) and *Development Regulations 2008* (SA) ss 46–47. However, other states and territories have different names: ACT (Environmental Impact Assessment Statement): *Planning and Development Act 2007* (ACT) (see also the Agreement between the Commonwealth of Australia and the ACT relating to shared Environmental Impact Assessment procedures; Vic (Environmental Effects Statement): *Environmental Effects Act 1978* (Vic); TAS (Environmental Assessments): *Environmental Management and Pollution Control Amendment (Environment Protection Authority) Act 2007* (TAS); WA (Environment Impact Assessment or EPA reports): *Environment Protection Act 1986* (WA), Part IV div 1; and NT (environmental impact assessment): *Environmental Assessment Act 1994* (NT) ss 7–10.

⁷⁷⁰ *Integrated Planning Act 1997* (Qld) ss 5.8.1, 1.3.2.(a)–(c).

⁷⁷¹ *Integrated Planning Act 1997* (Qld) s 1.2.1.

⁷⁷² *Integrated Planning Act 1997* (Qld) s 1.3.3.

- make recommendations about the suitability of the development;
- recommend any conditions on which any approval required for the development may be given; and
- contain any other matter prescribed under a regulation.⁷⁷³

ENVIRONMENT AND CULTURE CHAPTER SUMMARY TABLE

TABLE 1: Penalty provisions

	Legislation	Section	Description	Penalty for non-compliance
Approval Process for an Environmental Strategy	<i>Airports Act 1996</i> (Cth)	s 121(1)	Where an Environment Strategy is in force for an airport, the airport must give the Minister the new Draft Environment Strategy before the expiry of the original with enough time for the new Environment Strategy to be approved and commence	250 penalty units (\$27 500)
	<i>Airports Act 1996</i> (Cth)	s 124(2)	An airport commits an offence if the airport does not provide the Minister with a draft Environmental Strategy or engages in conduct other than to prepare a draft Environment Strategy to submit to the Minister	250 penalty units (\$27 500)
	<i>Airports Act 1996</i> (Cth)	s126 (9) (a)	Upon the Minister's refusal of a draft strategy, a company commits an offence if it fails to produce a new fresh draft environmental strategy considering the Minister's directions within 180 days after the day which the direction was given or within a longer period as permitted by the Minister	250 penalty units (\$27 750)
	<i>Airports Act 1996</i> (Cth)	s 131(3)	The airport commits an offence if it does not publish a Notice within 50 days of the Minister approving the strategy in a newspaper circulated around the relevant State and Territory and on the airport's website or engages in conduct other than to prepare a draft Environment Strategy to submit to the Minister	250 penalty units (\$27 500)

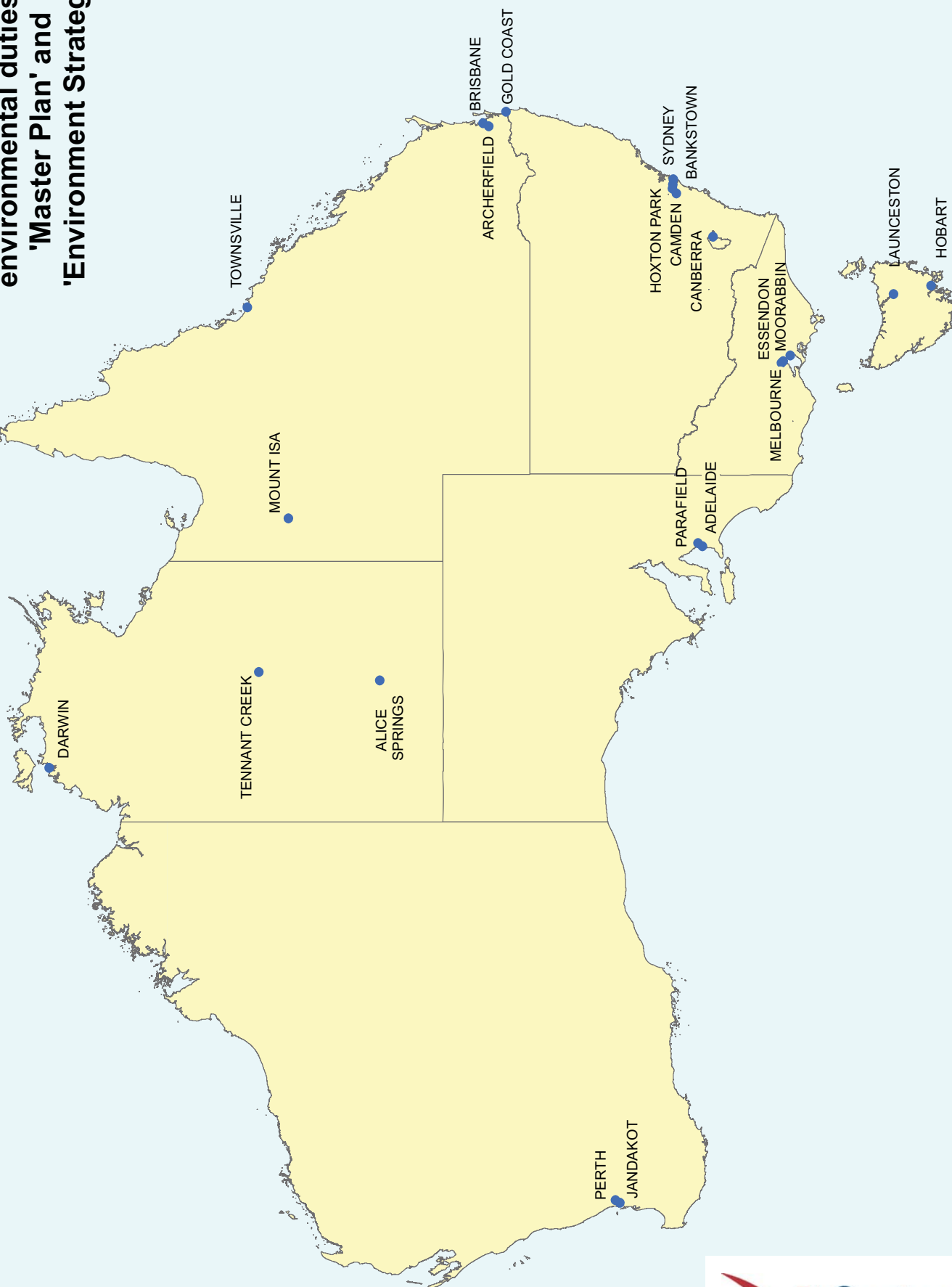
⁷⁷³ *Integrated Planning Act 1997* (Qld) s 5.8.12.

	Legislation	Section	Description	Penalty for non-compliance
General Environmental Duty	<i>Airports Act 1996 (Cth)</i>	s 131B	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	500 penalty units (\$55 000)
	<i>Airports Act 1996 (Cth)</i>	s 131C	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	200 penalty units (\$22 000)
	<i>Airports Act 1996 (Cth)</i>	s 131D	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	50 penalty units (\$5500)
Master Plan/Major Development Plan	<i>Airports (Environmental Protection) Regulations 1997 (Cth)</i>	reg 4.05(1)	Airports have a written duty to give notice to the applicable AEO of a cultural discovery if the discovery is made during the course of, or in connection with the work or undertaking. Failure to give notice is an offence	50 penalty units (\$5500)
	<i>Airports (Environmental Protection) Regulations 1997 (Cth)</i>	reg 5.18(3)	Failure to report the failure to comply with an authorisation or condition to the applicable AEO in writing is an offence	50 penalty units (\$5500) and/or injunction
	<i>Airports (Environmental Protection) Regulations 1997 (Cth)</i>	reg 6.04	If a regulated airport's environmental monitoring discloses a pollutant present in air, water or land at the airport, in a quantity or concentration that indicates non-compliance with acceptable limits, the airport must give the applicable AEO a written report within 14 days	50 penalty units (\$5500)



Appendix 18:

Australian airports with environmental duties / 'Master Plan' and 'Environment Strategy'



Appendix 19:

State and Territory environmental policies and procedures

Queensland	Codes of Practice (voluntary) ¹ Environmental Protection Policies (air, noise, waste, water) ²
New South Wales	Environmental legislation ³
Australian Capital Territory	Environmental Protection Policies ⁴
Victoria	Environmental legislation ⁵ Codes of Practice ⁶
Tasmania	Environmental Policies and Procedures ⁷
South Australia	Codes of Practice (voluntary) ⁸
Western Australia	Environmental legislation ⁹
Northern Territory	Codes of Practice ¹⁰

¹ Queensland Environmental Protection Agency, *Environmental Management Codes of Practice* (2003) <http://www.epa.qld.gov.au/environmental_management/planning_and_guidelines/codes_of_practice/> at 19 February 2009.

² Queensland Environmental Protection Agency, *Environmental Management Policies and Strategies* (2006) <http://www.epa.qld.gov.au/environmental_management/planning_and_guidelines/policies_and_strategies/> at 19 February 2009.

³ New South Wales Department of Environment and Climate Change, *NSW Environmental Legislation* (2009) <<http://www.environment.nsw.gov.au/legislation/otherlegislation.htm>> at 19 February 2009.

⁴ Australian Capital Territory Department of Territory and Municipal Services, *Environment Protection Policies and Guidelines* (2006) <http://www.tams.act.gov.au/work/environment_for_business_and_industry/environmentprotectionpoliciesandguidelines> at 19 February 2009.

⁵ Victorian Environmental Protection Agency, *Environmental Legislation* (2007) <http://www.epa.vic.gov.au/about_us/legislation/default.asp> at 19 February 2009.

⁶ Victorian Environmental Protection Agency, *Best Practice Environmental Management Series* (2006) <http://epanote2.epa.vic.gov.au/_4a256593001f8336.nsf/bycat?OpenView&Start=1&Count=40&Expand=4#4> at 19 February 2009.

⁷ Tasmanian Department of Environment, Parks, Heritage and the Arts, *Environmental Policies, Publications, Procedures and Strategies* (2009) <<http://www.environment.tas.gov.au/index.aspx?base=361>> at 19 February 2009.

⁸ South Australian Environmental Protection Agency, *Codes of Practice* (2009) <<http://www.epa.sa.gov.au/codes.html>> at 19 February 2009.

⁹ Western Australian Environmental Protection Agency, *Environmental Legislation* (2009) <<http://www.epa.wa.gov.au/template.asp?ID=10&area=Profile&Cat=Legislation>> at 19 February 2009.

¹⁰ Northern Territory Department for Natural Resources, Environment, the Arts and Sport, *Codes of Practice* (2007) <<http://www.nt.gov.au/nreta/environment/waste/codes.html>> 19 February 2009.



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