



Regional Express Response to:

**Consultation Regulatory Impact Statement (RIS)**

**Sunsetting Airports Regulations Stage 1a: Cutting Red Tape**

February 2022

**Documents for review during stage 1a:**

- Part 1-3 of Airports Regulations 1997
- Airports (Ownership-Interest in Shares) Regulations 1996 (AOISRs)

**Key areas for review during stage 1a:**

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

**Background of the key issues:**

**1. Subleases and licences**

- Under the current regulatory framework, subleases and licenses are generally prohibited unless the Secretary of the Department makes a declaration about the sublease or license (except for Commonwealth authorities, constitutional corporations and banks).
- However, the vast majority of exception applications are approved without amendment.

- This creates a significant administrative burden for ALCs and the Department. It may also impede investment and create market distortion between on and off airport sites

## **2. Reporting on ownership and control**

- Feedback indicated the current ownership and control definitions are unwieldy, overly complex and ambiguous, and could be drafted with improved clarity.
- Department's regulatory compliance area also reported a high administrative burden and a generally held view that there may be benefits in modernising foreign ownership and control regulations in line with the contemporary foreign investment framework.
- In general, there has been little change in the ownership composition of most airports in the past 20 years. In this way, annual reporting may not represent current best practice and may create an unnecessary administrative burden on AOCs.
- It may be useful to consider a "threshold" trigger for reporting or a longer timeframe for reporting, such as every three years instead of every year. Reducing reporting to every second or third year may be more appropriate when considering the low rate of ownership changes as well as the financial burden incurred by the Department and ALCs as a result of annual reporting requirements.
- Currently, the Department's assessment of ownership and control is based on comparisons with previous structures over the years. Analysis against the current set of regulations can be confusing when there are changes of ownership or control, and this analysis is quite time-consuming and resource intensive.

## **3. Simplifying regulation**

- The language of the AOISRs is complex and should be simplified.
- Both the Airports Regulations (Part 3) and the AOISRs contain material relating to ownership and control of airports, which in turn must refer to terms and definitions in the Schedule of the Act, creating duplicating instruments about a single regulatory area. Having information on the same topic in multiple locations makes reading regulations confusing, and compliance difficult, for stakeholders.
- The legal and financial oversight task could be significantly reduced if terminology and expression in the regulations were clarified and if the regulations were brought more into line with the contemporary modern investment framework.

## Summary of proposed options and Rex's response

### Option 1:

#### Question: Status quo: Allow the Airports Regulations and the AOISRs to sunset

##### (a) Subleases and licensing

- The Airports Regulations are essential to allow the Government to maintain a necessary level of regulatory oversight on the use of airport sites and the quality of service provided to airport users, as well as record-keeping and monitoring by the Australian Competition and Consumer Commission.
- If the Airports Regulations were allowed to sunset, then the grounds for refusing to approve the transfer of an airport lease or an airport-management agreement or variation of an agreement for the purposes of the Act will no longer be specified. The prohibited kinds of subleases and licences for subsection 35(1) of the Act will no longer be specified.

##### (b) Ownership

- If the AOISRs were allowed to sunset, certain investment funds or stakeholders (foreign funds, airlines or operators of certain airport pairs) could find themselves owning a stake in an airport that would exceed the limits in the Act and, as such, be instantly in breach. This is not an acceptable position for the Commonwealth to adopt. They would no longer be able to obtain (or maintain) exemptions from the foreign-ownership provisions as that system would no longer exist.
- While the Australian Competition and Consumer Commission (ACCC) have powers to ensure conflicts of interests and collusion do not occur, the AOISRs strengthens this power.
- This option would provide some benefits in reducing regulatory reporting requirements. It would also lead to the Airports Act no longer providing an appropriate regulatory environment due to substantial deregulation and limited scope for future investment in leased federal airports. Option 1 does not offer any regulatory savings.

### Option 1

#### Response:

##### 1. Do you think the Airports Regulations and the AOISRs should be allowed to sunset?

- *Rex is opposed to option 1. The Airports Regulations and the AOISRs should not be allowed to sunset. The Airport Regulations and AOISR's were initially introduced as a system of safeguards to protect airport users and the general community. The justification for providing such safeguards in the first instances has not relinquished, if anything the increasing commercial nature of Airport Lessee Companies and soaring capital value has further necessitated the need for safeguards to be imposed.*

**2. What are the benefits of no regulations on airport subleases, licensing and ownership?**

- *No benefits.*

**3. What are the consequences of no regulations on subleases, licensing and ownership?**

- *If the Airport Regulations under review were allowed to sunset, a declaration/approval to transfer an airport lease would no longer be required and such deregulation would have a devastating effect on airport users and lead to the Airport Lessee Companies (ALCs) being granted greater power to control the lease sites in its own best interest. It will affect the commercial viability of airlines to offer affordable fares particularly to the marginal regional communities and maintain sustainable operations.*
- *Without government oversight, ALC's would purely take a commercial position on subleasing, making it financially unviable for airlines to have access to the lease sites/resources that are essential to maintain operations, this is particularly relevant for regional airlines operating marginal routes that don't generate the scale of revenue that can support excessive lease rates. It is critical to have regulations that ensure a regional airline operating essential services to connect the regional communities, otherwise the consumers will ultimately be the loser of the monopoly.*
- *If the AOISRs were allowed to sunset, certain stakeholders including airlines could be owning a stake in an airport that exceed the limits in the Act. This will adversely impact airlines from commercial/ethical perspectives and also affect fair competition between airlines.*
- *In the absence of any limit on airline ownership, there would be no protection provided to airport users as the ALC/Airline would have a conflict of interest and be able to control the lease rates in their best interest.*

## Option 2:

### Question: Remake the Airports Regulations and the AOISRs without changes

#### (a) Subleases and licensing

- The current level of regulation, was implemented in 1996-97 following the privatisation of the leased federal airports to give the Australian Government substantial oversight of activities taking place on Commonwealth land. A number of provisions have since become outdated.
- All ALCs would need to continue submitting declaration requests for approval of other types of leases and sublicenses. However, almost all declaration applications are approved without amendment, demonstrating this level of regulatory oversight is unnecessary.

#### (b) Ownership

- Failing to combine Part 3 of the Airports Regulations and the AOISRs, and maintaining the same subject matter in two different sets of regulations, would continue to make it difficult for stakeholders to understand and comply with ownership provisions.
- Requirements in both Part 3 of the Airports Regulations and Part 2 of the AOISRs require reporting on airport ownership annually. If unaddressed, the Airports Regulations and the AOISRs will continue to impose an unnecessarily high level of regulatory burden on ALCs and will mean these regulatory activities may no longer represent modern best practice.

## Option 2

### Response:

#### 1. Do you agree or disagree with keeping the Part 1, 2 and 3 of the Airports Regulations and the AOISRs as is and without changes?

- *Rex agrees with option 2. These relevant sections of the Act have adequately provided protection to all stakeholders for many years under a level playing field and as initially intended to safeguard airport users. Greater commercialization of ALCs have only reiterated the need to retain initial safeguards.*

#### 2. What are the benefits or efficiencies in keeping these two Regulations as is?

- *The current regulations have been proven to provide effective protection for airline and airport stakeholders for many years. Any changes that reduced regulatory oversight would have disastrous repercussions.*

#### 3. What are the inefficiencies in keeping these two Regulations as is?

- *There are no significant inefficiencies in retaining these two regulations that would justify any change to what was initially intended.*

- *Further, the current regulations must be increasingly strengthened to protect those regional airlines having access to lease sites at fair rates that are essential to offer affordable fares and to maintain sustainable operations for the regional communities.*

### Option 3:

#### Question: Remake the Airport Regulations and the AOISRs with changes

##### (a) Subleases and licensing

- Under this option, both instruments (Airports Regulations and the AOISRs) would be remade with minimal redrafting, to maintain an appropriate level of Commonwealth oversight, while amending aspects that are outdated and no longer fit-for-purpose. This will remove unwarranted regulatory burden for ALCs and other stakeholders, particularly with respect to the clarity and legibility of the administrative processes and reporting that ALCs are obliged to follow.
- There is an opportunity to cut red tape by amending Part 2 of the Airports Regulations to permit declaration by exception rather than as the rule, while maintaining a requirement for airports to maintain a register of subleases/licenses. The Department would have visibility of the register and the ability to intervene if required. This will ensure an appropriate level of regulatory oversight for the Australian Government.

##### (b) Ownership

- Key to the reform of reporting on ownership and control is the potential for annual reporting (as required in both the Airports Regulations and the AOISRs) to be made less frequent – potentially to a maximum of every three years or when a significant change in ownership occurs.
- Also, both the Department and AOCs encounter difficulties in interpreting the very detailed and complicated language in ensuring airports remain compliant with the ownership and control provisions. All provisions relating to ownership in Part 3 of the Airport Regulations and in the AOISRs should be consolidated and simplified to ensure clarity and reduce duplication.

### Option 3

#### Response:

##### Subleases and Licensing

#### 1. Do you agree or disagree with the proposed amendments? Please specify.

- *Rex disagrees with the proposed amendment to dilute the regulatory requirements currently imposed on ALCs. Any changes or simplification of the subleasing declaration process will reduce the level of protection to the airport users. In the overall context of leasing commonwealth land for the generation of commercial benefits, the reporting functions do not appear onerous.*

#### 2. Can you suggest any improvements to the proposed amendments (e.g. is there anything else that should be included)?

- *There must be provisions under the regulation to protect and ensure regional airlines have access to facility/resources that are necessary to maintain sustainable regional operations. Similar to the protection of 'ring fenced' slots, protection should also be given to regional airlines to ensure access to*

*essential lease facilities (such as mandatory crew rest and flight planning facilities, maintenance facilities and staff rooms) is maintained and at affordable rates.*

- *Any lease pricing model must take into consideration the service provided by the lessee, and not purely based on commercial ROI. In Rex's capacity as a regional airline, that provides essential services to the regional communities, Rex requires access to fair lease rates in order to offer affordable fares for consumers and to contribute by maintaining sustainable operations.*
- *There must be mechanism imposed that strengthens fair review of lease rates. The onus is on the government to regulate the Airports by ensuring that the Airports take a consistent approach to apply lease rates fairly and equally across all airport users.*

**3. What level of benefit would you expect these changes to bring to your business?**

- *The proposed amendment as outlined in this RIS on declaration process of subleasing is purely benefiting the Department and the airports (cost savings and less administrative work to them), Rex does not foresee any significant benefit to its business.*
- *However, the further improvement proposed under question 2 (above) will control the monopolistic behaviour of many ALCs and allow Airlines to have access to fair lease rates.*

**4. Are there other opportunities to streamline and reduce red tape in regard to subleases and licensing?**

- *Nil*

**5. Do you agree with the Department's estimate of the regulatory impact of proposed changes?**

- *No, the anticipated regulatory saving is limited and will sacrifice the protection for the airport users.*

**Ownership**

**1. Do you agree or disagree with the proposed amendments? Please specify.**

- *Rex disagrees with the proposed amendments. The government must enforce the regulations of ownership. Any simplification of the reporting requirement or structures of the regulation will reduce the level of protection of the airport users.*

**2. Can you suggest any improvements to the proposed amendments (e.g. is there anything else that should be included)?**

- *Cross ownership of multiple airports does give the airports more leverage when it comes to commercial negotiations with airlines and provide even less competition amongst the airports. One airport will put up the charges and other airports will refer to the higher charges of the first airport.*



*This will have the effect of normalising high charges as there are no objective standards as to what is a fair charge. In the finance sector, you are not allowed to impose a charge (eg insurance premium) if you make too much margin on it. The airports are making an incredible margin and yet nobody bats an eyelid.*

- *Greater limitation on cross ownership should be imposed and caps placed on margins an airport can generate. Limits of cross ownership of certain airport pairs should be reduced from 15% to 5% in order to control monopoly behaviour when the airline negotiates commercial agreements with Airports.*

**3. What level of benefit would you expect these changes to bring to your business?**

- *The proposed amendment on report is purely benefiting the Department and the airports (cost savings and less administrative work to them), Rex does not foresee any significant benefit to its business.*
- *However, the further improvement proposed under question 2 (above) will control the monopolistic behaviour of many ALCs and allow Airlines to have access to fair lease rates and charges.*

**4. How could airport ownership remain as competitive as possible, while protecting Australia's national infrastructure?**

- *Greater measures placed on restricting cross airport ownership.*

**5. Do you agree with the Department's estimate of the regulatory impact of proposed changes?**

- *No, the anticipated regulatory saving is limited and will sacrifice the protection of the airport users.*