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Airports Regulation Regulatory Impact Statement Submission 1a

The Royal Federation of Aero Clubs Australia (RFACA) represents community owned flying clubs across the country whose pilot members number in the thousands flying hundreds of different aircraft. The Airports Act and Regulations that regulate the major general aviation airports have effects well outside the airport boundaries. The aviation businesses and organisations that must reside on these privatised government owned airports service our aeroclub members within a radius of often hundreds of kilometres.

The current regulatory framework has permitted the emergence of a widespread problem of no security of tenure of aviation sublessees in our aviation industry that is threatening jobs and public access to general aviation. It requires government action now.

The Department's current policy, as enunciated by the First Assistant Secretary[1], seems to be that the sub-leasing arrangements between an Aviation Lease Company (ALC) as lessor and an aviation business (as lessee) are commercial arrangements to be negotiated accordingly. This is reflected in the Department's proposed amendments to reduce regulatory oversight. But this fails to recognise the fundamental issue currently driving a knife through the industry, namely the extraordinarily unequal bargaining power between an ALC and an aviation small business in practice. An aviation business has no alternative option as to location, so must accept whatever terms the ALC offers (which may include six month unilateral termination provisions, no tenure security, requirements to remove buildings and increased rent for reduced facilities). The reason for this is that an aviation business cannot move up the road to another warehouse or industrial estate. Their very business must be located on an airport to function. Moreover, lack of security of tenure has substantial flow-on consequences, such as difficulty in securing business loans given the longer term viability of the business itself cannot be demonstrated to the banks (this is further explained at the end of the appendix).

The legislative requirement that an airport remain in use as an airport has in practice been minimised so as to provide no practical protection for aviation activities. For example, actively used hangars, taxiways and aircraft parking areas at Moorabbin have been recently demolished for non-aviation use. The Regulations and Act as they are at the moment are a failure and must be changed.

This difference in market-power is exacerbated when the ALC has a commercial interest in reducing aviation activity at an airport, which occurs as many airports are located in areas

where revenue earned per square meter can be substantially increased by replacing hangars with warehouses, factories, or other non-aviation businesses. So making business less viable for the lessee directly benefits the ALC, or its group companies as ALCs may be a subsidiary of a larger corporate group. This is regarded by some as exploiting a loophole in the Act and Regulations that attempted to guard against ALCs being primarily non-aviation businesses.

RFACA is delighted to be able to contribute to the improvement of the Airports Act and Regulations and request the following are achieved from this Regulatory Review process:

- Certainty of tenure for aviation sublease holders on Commonwealth land
- Creation of financial incentive mechanisms to produce or force investment into aviation infrastructure at airports by ALCs. For example, there could be a requirement imposed that a proportion (eg 30%) of the increase in land value of an airport from commercial activity, or a portion of non-aviation investment or a portion of total rental revenues to be reinvested solely into the aviation aspects of that airport within reasonable timeframes. The investment could only be augmentation, renewal or rent relief for aviation
- Legislate that existing state laws providing protection to small retail tenants and State laws regarding planning and property development are not bypassed by these federal airports.

Further to the above, RFACA has answered the Regulatory Impact Statement questions in the attached appendix.

The abuse of market power by monopolistic Airport Lease Companies (ALC) towards aviation sublease holders would be deemed unacceptable in any other regulated industry (such as energy, sea ports, telecommunications) and a primary underpinning of this power is the limp Airport Regulations and the lack of protections to aviation sublease holders.

There is an unavoidable monopolistic nature of the airport under regulation. This will result in market distortions as regards excessive and unsustainable attempts to recover rents from businesses by the ALC. Interventions into this monopolistic behaviour must be anticipated and addressed by the Regulatory Impact Statement and proposed changes to the regulations. Market correcting tools available in this regard are well known by economists and will no doubt involve a combination of incentive-based mechanisms.

The privatisation of airports occurred over 20 years ago to the benefit of ALCs, with no incentive to augment or improve airside infrastructure. Examples include: Archerfield (Brisbane's primary general aviation airport) still has grass runways, Bankstown has less runways, Moorabbin has less taxiways, hangars and reduced opportunity for new aviation businesses. Yet there are many examples non-aviation investment encroaching on airside space.

The depressed airside investment, if allowed to continue, will drag down the exciting and expanding future of general aviation driven by technology developments in engine energy

sources, automatic flight systems and aircraft design features that will expand general aviation and in some cases replace airlines. A significant privately funded, location-diverse and regionally technically-enabling airport network is denied to Australia by its monopoly airport policy. Airport management have all the power but the aviation industry that created and use the airport have none. The aviation industry strives and commits to deliver reward to Australia, but at the moment struggle just to pay the rent.

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1. Senate Rural and Regional Affairs and Transport Committee on Australia's General Aviation Industry 07/12/21

Appendix

RFACA supports Option 3: Remake the Airport Regulations and the AOSIRs with changes

Subleases and Licensing:

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

The RFACA disagrees with the Regulatory Impact Statement (RIS) proposal as stated in section 3.3.1: *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*

The removal of the approval process and to implement a softer form of regulation is completely unacceptable. The Regulations and the performance of the Regulator have been so poor that subleases to aviation orientated business are difficult to obtain with no to little capital investment from the ALC. The little to no capital investment has also come with large increases in rents and lease terms that almost prohibit any private investment and security of tenure.

The RIS section 3.3.1 *"The Department would have visibility of the register and the ability to intervene if required."* RFACA demands the Department of Infrastructure (DOI) to present what Regulatory power they would be able to exercise during said intervention and the outcomes available. The DOI have proven that their regulatory obligations are inadequate to protect the industry from practices that threaten industry viability.

Since these Regulations have been put into force, many ALCs have made significant non-aviation related investments with corresponding leases that have been approved by the DOI, such as Moorabbin.

The current regime results in the DOI appearing apathetic to industry towards its own regulatory outcomes that are contributing to the destruction of general aviation in RIS section 1.1.2: *Based on departmental data, the vast majority of exception applications are approved without amendment. This creates a significant administrative burden for ALCs and the Department.*

Furthermore in section 4.2.1: *Departmental records from over the last 10 years show that the Department has processed on average 120 requests annually to have subleases and licences declared not prohibited. Each of these requests requires a Departmental staff member to review each submission to ensure it is complete to our requirements, reviewed by an executive level staff and provided to a senior executive service (SES) level staff for review and signing. This takes the Department approximately five work hours per submission, with an annual regulatory cost of $44,000*

RFACA agrees the cost of $44,000 per year by the tax payer is wasted, in part because of the weak regulations that have resulted in the practice of rubberstamping by the Regulator as admitted by the DOI in section 1.1.2.

The revision of the Regulations should provide adequate powers to the DOI to improve the regulatory outcomes for the aviation community, not to the ALCs.

The General Aviation industry is suffering greatly due to the Department inaction to prevent the abuse of aviation business by these monopolies, RFACA objects to the RIS suggestions of reducing red tape where that red tape is intended to protect aviation sublease holders.

As for the cost of this red tape on the ALC, this is inconsequential to the extraordinary amounts of money they obtain after the approval.

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

RFACA recommends stronger regulations that are directed at protecting aviation organisations that require access to airport land. Secondly RFACA recommends stronger regulation that protects the performance of the airport for the aviation tenants.

To quote First Assistant Secretary[1] at a recent Senate Rural and Regional Affairs and Transport Committee on Australia's General Aviation Industry. When directly asked if the ALC "can't pull the wool over your eyes" in relation to sublease price gouging the First Assistant Secretary responded with: "How they set up their tenants is a commercial decision for them." RFACA view the assessment of regulatory outcomes that turn a blind eye to ALCs abusing their substantial market power as unacceptable.

The DOI 'head in the sand' (or 'tied hands') approach to monopolistic behaviour can be resolved by lawmakers through the following changes to the Regulations, perhaps these changes may only apply to airports that are detailed in 2.01A:

A. Create further regulation of non-aviation development to ensure it is adequately peer reviewed, open to public scrutiny and to comply with local planning policies as the current Master Plan approval model is failing aviation
B. Protect Aviation organisations from sublease contracts that are an abuse of market power
C. Introduce basic protections to subleases holders that mirror State Acts and Regulations
D. Strengthen the Regulations to ensure airport performance standards do not decrease over time
E. Create a requirement for capital investment, and for ongoing annual investment as a proportion of rents received from non-aviation investment, in aviation development based on a portion of the capital and recurrent investments and gross rentals received made for non-aviation development and
F. Create a regulated pricing mechanism for aviation tenants using either market-distortion intervention techniques as described above

It is the intention of these financial-contribution recommendations to recognise that non-aviation improvements and enterprises undertaken within the land parcel should benefit the long-term aviation use of the FAC airports. The current arrangements allow 100% of all non-aviation profits to be drained from the FAC airport and delivered solely to the benefit of the ALC. This has been occurring for over 20 years and represents an unanticipated consequence of the original drafting of the legislation. In effect, the legislation did not properly cater for the monopoly situation it created.

A.
There is no reason why the Act or Regulation cannot openly discriminate between businesses that are primarily for aviation purposes and those that are not. This has been

done in the past across many different industries and to great success, such as manufacturing and agriculture.

The Regulations should define a reasonable test that determines if a proposed or existing business or organisation is for the primary purpose of aviation. This test could include the requirement of the business or organisation to disclose their sources of revenue, CASA approvals, or other documents with exemptions for not-for-profit entities.

RFACA recommends that any application for a sublease, where the proposal is for a non-aviation related entity to be open for public scrutiny and to include the following:

- Size of land to be leased
- Tenure conditions of the lease
- Annual cost of the lease
- A statement of why this non-aviation lease should be approved
- The ability for stakeholders to publically object
- The impact on aviation sublessees at that airport
- The amount of non-current and current financial contribution to aviation-related infrastructure and cost reductions that would be made available by the proposed non-aviation development

Ultimately the decision to approve the sublease would rest with the department.

B.
Protect Aviation organisations from sublease contracts that are an abuse of market power.

The Acts and Regulations at the moment have sections that can prohibit certain terms in subleases. Currently, only prostitution and certain organisation structures such as 'airport managers' are prohibited.

RFACA is of the opinion that the revised Regulations that prohibit certain terms or activities be extended to prohibit the 'Development Clauses' that are in many subleases. These 'Development Clauses' permit the ALC to demolish the buildings under that lease within six months of notice (or, extraordinarily, in some cases for the sublessee to remove the buildings at its cost). These clauses have the practical effect of preventing any form of private investment in these aviation buildings. The results can be seen at many of the airports listed in 2.01A of the Regulations. Whilst this request may appear to be onerous on ALCs or a duplication of protection that the Master Plan approval process is meant to provide, it is not. There are currently no protection measures in the Regulations to prevent an abuse of market power by the ALCs in sublease terms and conditions, this must be rectified.

These airports have had very little investment in the aviation buildings and infrastructure by private enterprise due to the 'Development Clause' and similar clauses in airport subleases. The DOI need to ensure that the revision of these Regulations prohibit clauses in subleases that detract private investment in the airport due to there being no security of tenure, regardless of any approved Master Plan.

C.

The Act and Regulations should be amended to provide protections that are the same protections that general retail lease holders have across every state and territory to ALC sublease holders. The Regulations or Act provide that protection in accordance with the applicable State Act where the airport resides.

D.

Amend Regulations to ensure airport performance does not degrade over time.
Currently, the Regulations do not guarantee service levels of airport performance from ALCs. The Act requires the Airport to remain as an Airport, however an Airport only needs one runway to satisfy this test, and no minimum level of access to general aviation. It seems that one private operator operating one aircraft would meet the current requirement, while denying access to the airport to all other users.
ALC have no obligation to maintain performance standards of an airport such as:

- Runways lengths
- Runway width,
- Runway surface condition,
- Runway displaced thresholds,
- Runway lighting,
- Taxiway length, width, surface condition, lighting and availability
- ICAO adherence
- Maintain suitability for various category aircraft or type of operation,
- Restriction of use, such as downtime during maintenance activities
- Aircraft parking areas
- Hours of operation
- Reasonable pricing
- Safety of air operations, such as turbulence generated by new buildings near runways and reduction of safety areas for emergencies.

Previous and recent approved Master Plans at Moorabbin airport have consistently and additively reduced airport performance and safety standards. RFACA propose the amended Regulations should require ALC to maintain or improve these performance standards.

E.

The Regulations should be amended to provide a guarantee for a portion of aviation capital investment for every dollar invested by the ALC in non-aviation development.
This mechanism will provide benefits to the aviation industry that is currently lacking at many ALC owned airports. The evidence is clear, that after more than 20 years and multiple approved Master Plans, Archerfield airport runways remain grass and not asphalt. The Moorabbin airport has observed runway distances reduce, taxiways demolished, hangars demolished, open air aircraft parking substantially diminished and barely any aviation capital investment since privatisation.

There are many examples of redistribution of capital expenditure requirements from the project proponents in various State planning laws and regulations in the form of contributions. The Regulations could nominate ratios of what must be spent on aviation development for every dollar spent on non-aviation development at the time of building approval. The ALC would be in a position where they must deliver aviation capital improvements for every non-aviation development.
Then maybe Archerfield would have an asphalt runway upgrade, rather than new grass seed, which under the current Acts and Regulations will never ever happen.

F.
Create a regulated pricing or revenue mechanism for aviation sublease holders and aviation activities.
RFACA expect this request to be considered and justified as to why it cannot be implemented. A deterministic revenue or tariff model currently used by the Australian Energy Regulator that imposes limitations on monopolistic service fees to consumers is an excellent model for airport sublease and activity pricing. There are other models available that are used for Private Health Insurance, Toll Roads and Council Rates.
Currently there is no protection from monopolistic behaviour for the following fees or any fee they create, normally levied by ALC:

- Building and hangar rent
- Landing
- Aircraft Parking

An aviation organisation or individual attempting to negotiate a better outcome with an ALC is pointless. The ALC at many airports does not need the aviation tenant or activity as the ALC garners most of its revenue from non-aviation lease holders and there are no viable options for the aviation organisation to move off the airport. This forces the aviation organisation to accept any terms and fees that the ALC chooses to levy.

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

The benefits of the changes proposed by the RIS would bring to aeroclubs would be minimal.

The benefits of the changes proposed by RFACA would be to rejuvenate general aviation by providing incentive mechanisms for the development of aviation infrastructure for the benefit of all Australians.

The benefits of the changes proposed by the RIS would bring delight to monopoly ALCs and deliver windfall gains to them, while creating less incentive for aviation development at airports.

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

To reduce the administrative burden on the department and ALCs, sublease applications for businesses that are primarily for aviation purposes could be made exempt from the Prohibitions in the Regulations 2.04 and 2.12.

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

RFACA has no comment on the Departments estimate of its own costs.
RFACA is of the opinion that the proposed changes in the RIS would reduce layers of protection for aviation organisations that are trying to maintain an existence on Commonwealth owned airports.

The impact of the proposed changes are more than cost cutting, they will reduce the transparency of ALC sublease activity which in turn reduces the DOI's ability to intervene. The effect will be greater costs will be passed onto the aviation community, which would be orders of magnitude greater than any taxpayer saving.

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

The RFACA disagrees with the proposed amendments and suggests the following improvements:
GA needs airport tenure. Currently aviation tenants are unable to borrow money against a property asset – an opportunity that is available to every other business in Australia (agriculture, manufacturing, most retailers, service providers). One system may be via a Canberra-like, Commonwealth conceived, ACT implemented, 99 year lease. In addition, the ALC could provide financial support as part of the leasing arrangements.

In the ACT you can borrow against leasehold property for 95% of the purchase price, 105% if you have a guarantor, normal bank borrowing policy applies; in short a Canberra property is treated like any freehold property for lending purposes. Given that the air above, the aeroplanes in it and the supporting maintenance are under a Commonwealth umbrella, surely it is reasonable to excise an airside area at each airport for exclusive aviation use, under a 99 year lease system. The asset that is borrowed against is the right (lease) to occupy that airside location. The lease could also be transferred by the lease holder without any capacity for the ALC to intervene in line with normal property rights conventions and legislative protections.

The benefit of these changes to GA businesses is the ability to raise capital against an asset that appreciates. The ability to raise capital is essential for any business to make equipment and technology investments that decrease its cost base and to expand its operation. Currently, there are no financing or similar finance options for GA businesses that occupy Commonwealth-owned airports due to the Airport Regulations.