

3 June 2022

Director, Airport Reform, Sunsetting and IFAM Section – Airports Branch
Department of Infrastructure, Transport, Regional Development and Communications
GPO Box 594
Canberra ACT 2601

Email to: aviationreform@infrastructure.gov.au

Dear Sir/Madam,

Re: Sunsetting Airports Regulations Stage 1B: Cutting Red Tape – Submission from Sydney Airport

Thank you for the opportunity to comment on the Consultation Regulatory Impact Statement (RIS) for Stage 1B of the Sunsetting Airports Regulations (Cutting Red Tape) process.

Sydney Airport's response to that part of the RIS dealing with Penalty Infringement Notice (PIN) provisions in the *Airports (Building Control) Regulations 1996*, the *Airports (Control-of On-Airport Activities) Regulations 1997* and the *Airports (Environment Protection) Regulations 1997* is at **Attachment A**.

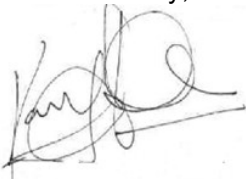
In SYD's experience, the current PIN scheme is under-utilised and its revision and modernisation will likely result in its more effective and frequent use. It should be noted that SYD's comments here are initial in nature. When more substantive proposals to amend the abovementioned Regulations to which the PIN scheme applies are released for comment in Stages 2 and 3 of the consultation process, we will make further comments at that time. It will be particularly important to ensure that any changes to these regulations does not add more complexity or impose additional costs or obligations on airport lessee companies.

Our response to the part of the RIS dealing with Airport Sites in the *Airports Regulations 1997* is at **Attachment B**.

Sydney Airport would be keen to see any final draft of proposed amendments to the relevant regulations and be given an opportunity to comment.

For further information, please feel free to contact Sydney Airport's Manager Public Affairs, Mr Mitch Dudley, at mitch.dudley@syd.com.au.

Yours sincerely,



Karen Halbert
Executive General manager Corporate Affairs

Option 1: Status quo: Allow the provisions to sunset	
1. Should the infringement notice provisions be allowed sunset?	No.
2. What are the benefits/consequences of not having an infringement notice scheme?	<p>The penalty infringement notice (PIN) scheme is one of the few avenues available to airport regulatory bodies – including the airport lessee company (ALC) – to enforce the relevant controls governing land use, planning, building, environmental protection, and other uses of the airport site. Without such a scheme, it would be very difficult, if not impossible, to enforce these controls, and while compliance costs may be initially reduced, costs would be incurred elsewhere in endeavouring to limit non-compliance and/or address the impacts of non-compliance, which would no doubt occur in the absence of an enforcement mechanism.</p> <p>With respect to complying with rules relating to the use of vehicles airside and airside smoking, the PIN scheme forms the basis of how SYD determines who is an Authorised Officer to issue Airside Traffic Infringement Notices (ATIN) under the Airside Vehicle Control Handbook (AVCH), which do not incur financial penalty under the regulations. These officers are also referenced as being able to issue breach notices under enforcement provisions within our Airport Operating Licence commercial agreement with airport stakeholders. Hence, removal of the PIN scheme would potentially have further negative ramifications to infringements issued where no financial penalty is incurred.</p>

Option 2: Remake the provisions in the same form

<p>3. Are the existing provisions fit for purpose in the current and a future operating environment?</p>	<p>While the existing PINs framework provides a good base, there are a number of ways it could be improved to achieve the intended purpose, particularly in the changing post-pandemic operating environment.</p> <p>For example, it would be beneficial to differentiate penalties to individuals and companies, with companies potentially receiving higher infringements.</p> <p>With respect to airside driving, some of the deficiencies with the regulations could be addressed by further expanding the types of issues penalties can apply to in order to better support airports in addressing compliance with their AVCH.</p>
<p>4. What are the benefits/consequences of having separate infringement notice frameworks for different subject matters?</p>	<p>As an ALC, SYD currently only has powers to issue PINs under the <i>Airports (Control of On-Airport Activities) Regulations 1997</i>, hence we only deal with the one framework in our role.</p> <p>In the event that ALC powers to issue PINs expands, SYD agrees with the views expressed on page 16 of the Consultation Regulatory Impact Statement (RIS) that maintaining “three slightly different frameworks could increase risks that infringement notices are not properly issued or managed in accordance with practice and procedure”.</p> <p>In principle, SYD can see there is benefit in consolidating three PINs frameworks into a single framework, although it would be important to ensure that the cost of implementing any such single framework was not higher than the status quo.</p>
<p>5. Should infringement notices continue to be issued in respect of non-strict liability offences?</p>	<p>Yes.</p>

Option 3: Remake the provisions in a modern and streamlined way

<p>6. Should the infringement notice scheme cater for the future ability to issue infringement notices in respect of civil penalty provisions?</p>	<p>SYD would be open to considering this with respect to civil penalty provisions on a case-by-case basis.</p>
<p>7. Should all strict liability offences across airports law be subject to infringement notices? Are there any</p>	<p>Yes. These are required to deter non-compliance in the airport community.</p>

<p>particular offences that should or should not be subject to an infringement notice?</p>	<p>As the <i>Airports (Control of On-Airport Activities) Regulations 1997</i> currently only apply to the control of vehicles airside, SYD agrees that airports would be better supported by expanding the offences outlined within Part 4 of those regulations.</p> <p>For example, consideration could be given to including offences relating to speeding, failure to give way to aircraft, seatbelt compliance, FOD control, towing provisions, and disorderly conduct. This would also allow a greater level of standardisation across all Australian airports.</p> <p>An offence could also be created to make it an offence to intimidate an authorised person in the course of undertaking their duties to issue a PIN where the authorised person believes the individual has committed a PIN-related offence to reflect contemporary standards.</p>
<p>8. Are the existing maximum infringement notice penalty amounts appropriate?</p>	<p>Historically, SYD has not enforced monetary infringements airside in relation to vehicle control and smoking on advice that the value of the infringement issued is outweighed by the cost of recovery due to administration and recovery costs. As such, SYD agrees that consideration should be given to increasing the relevant penalty amounts.</p>
<p>Option 3.1 – Draw on the <i>Regulatory Powers (Standard Provisions) Act 2014</i> (Regulatory Powers Act)</p>	
<p>9. Would the Regulatory Powers Act framework provide an appropriate and fit for purpose infringement notice framework across airport regulation?</p>	<p>While the Regulatory Powers Act framework appears to provide a good PINs framework across airport regulation, that would ultimately depend in part on how practical it would be to incorporate special airport-specific provisions into the Regulatory Powers Act. For example, these could include:</p> <ul style="list-style-type: none"> • Who can issue infringement notices? <p>If the Regulatory Powers Act was to be used, SYD would need to clarify how our personnel would be appointed as ‘Infringement Officers.’</p> <ul style="list-style-type: none"> • What is the maximum infringement notice amount? <p>It appears that the Regulatory Powers Act would create an ability to apply different levels of infringements between individuals and companies. SYD believes this would be beneficial.</p>

- **When can an infringement notice be issued?**

Currently, SYD can issue a PIN where an authorised person has reason to believe a person has committed a PIN-related offence. Under the Regulatory Powers Act, we would need to know on reasonable grounds that a person had contravened a provision subject to an infringement notice. This is the standard that applies under the *Airports (Control of On-Airport Activities) Regulations 1997*.

- **Specific matters to be included in an infringement notice**

- The Regulatory Powers Act requires the name and contact details of the infringement officer to be included. Under the *Airports (Control of On-Airport Activities) Regulations 1997*, however, SYD can issue a PIN with either the name of the officer or a unique identifying number. In the past, SYD personnel have been opposed to putting their name on PINs for personal reasons. As such, we have allowed them to reference their employee or ASIC number. If the Regulatory Powers Act were to replace Part 7 of the regulations, it should allow the provision of name or a unique identifying number to protect the privacy of our personnel.
- Under the details of the alleged infringement, the notice should allow the ability to issue under a single notice multiple PINs for the same offences. For instance, if a company parks multiple vehicles in a “no standing” area, each vehicle should be able to be infringed.
- Under the Regulatory Powers Act with regard to the format of a PIN, it would be beneficial to *not* need approval from the Secretary.

- **Extension or withdrawal of the infringement notice**

In relation to applications for extension or withdrawal of a PIN, the Regulatory Powers Act would require the Chief Executive Officer to approve such an application. Under the *Airports (Control of On-Airport Activities) Regulations 1997*, however, authorised persons can do so. SYD suggests that if the Regulatory Powers Act provisions were applied provision be made for an authorised person/s to be appointed on behalf of the ALC to review considerations for extension or withdrawal.

Option 3.2 – A bespoke framework

10. Would it be preferable to design a bespoke infringement notice framework to operate across airport regulations?

SYD believes the existing provisions should not be remade in their current form. Rather, they should be remade with a modern bespoke framework which reflects the unique nature of the airport environment, and the particular idiosyncrasies of its use and occupation.

With respect to the *Airports (Environment Protection) Regulations 1997*, SYD notes that, whilst the Department of Infrastructure, Transport, Regional Development and Communications (the Department) and Airport Environment Officer (AEO) appropriately have a role as the regulatory authority over the airport, SYD, as the ALC, also has a role in managing airport use and activity with its tenants and other occupiers. This unique hierarchy is something SYD considers should be reflected in the penalty notice provisions, if remade.

As a first step, there should be opportunities for SYD as the ALC to make representations directly to the AEO where it considers a PIN should be issued. Whether or not ALCs should be empowered to issue PINs under these regulations would require further consideration.

SYD is also concerned to ensure that any bespoke PINs framework addresses the potential for recidivism. In this regard, SYD would welcome the inclusion of more robust penalties for infringements, reflective of current standards, noting that the provisions originally came into force 25 years ago.

SYD would also welcome the inclusion of a regime that includes penalties for repeat offenders, and where historical non-compliance is considered as relevant when assessing applications to undertake certain activities at the airport. This could involve an information-sharing regime where relevant bodies who have the power to issue PINs share those details with one another. Such an approach, in SYD's view, would limit recidivism and ensure that compliance with controls is given utmost importance by airport users.

11. Are there any special provisions that should be carried over from existing infringement notice frameworks into the single standard framework?

- **Authorised Person**

It would be important to maintain a provision that allows the ALC to designate an authorised person who can issue PINs.

- **Regulation 155A (Liability of owner of vehicle etc for offences)**

This provision should be maintained. It should be noted that on-airport Ground Service Providers (GSP), however, are increasingly leasing equipment back from an equipment provider. Depending on the commercial arrangements, the equipment may either be registered to the GSP or to the lessor. In both scenarios, ALCs will need flexibility to determine that, if the vehicle subject to the offence is being operated by the GSP, then the GSP would be held liable.

Option 1: Let the provisions sunset	
1. Should Schedule 1 of the Regulations be allowed sunset?	No.
2. What are the benefits/consequences of not having a provisions defining what land is part of an Airport Site?	Not knowing exactly what land forms part of the airport site would create considerable uncertainty regarding the applicability of Commonwealth or state-based laws.
Option 2: Remake the existing provisions without changes	
3. Are the existing provisions fit the purpose in the current and a future operating environment?	Not applicable.
4. What are the benefits/consequences of the remaking the provisions in Schedule 1 without changes?	Not applicable.
Option 3: Remake the provisions to allow the Minister to declare an Airport Site via a legislative instrument	
5. Is there benefit in ensuring consistency between the law and the land titles register in respect of the land that makes up an Airport Site?	Sydney Airport does not comment on this question.
6. Is there benefit in introducing an obligation to report to the Department changes to land titles?	Sydney Airport does not comment on this question.
7. Does your particular State or Territory have any notification obligations upon the subdivision of land that could be drawn upon?	Sydney Airport does not comment on this question.
Option 4.3.1 Change how the boundaries of Airport sites are defined	
8. Would an alternative mechanism for identifying parcels of land be suitable for identifying Airport Sites? Why / Why not?	Sydney Airport is not aware of any alternative mechanism.

<p>9. What alternative mechanisms for identifying parcels of land might be appropriate to be used?</p>	<p>Not applicable.</p>
<p>Option 4.3.2 Allow the Minister to declare an Airport Site via legislative instrument</p>	
<p>10. Would it be preferable for an instrument to allow the Minister or a Delegate to define an Airport Site?</p>	<p>Yes. SYD agrees that would be a more efficient way to define and declare an airport site, much in the same way as prescribed airspace is declared by the Department.</p> <p>It would be helpful for the Department, however, to clarify the following aspects of the proposed reforms:</p> <ul style="list-style-type: none"> a) the powers given to the Minister (or delegate); b) the process involved in updating definitions of an airport site; c) how the obligation for ALCs to report land title changes to Department on an annual basis would work, and; d) how the reporting requirements would interact with other Commonwealth legislation, particularly transport security and critical infrastructure legislation administered by the Department of Home Affairs.