

Sydney Metro Airports Bankstown and Camden

Submissions – Proposed sunseting of Airports legislation – Stage 1b

Infringement Notices Scheme

Option 1 – Status Quo – let the provisions sunset

1. Should the Infringement Notices provisions be allowed to sunset? [SMA response: No, this would be to the detriment of airports operations as it would significantly reduce the ability to enforce statutory obligations].
2. What are the benefits/consequences of not having an infringement notice scheme? [SMA response: We see no benefits in not having an infringement notices scheme. As mentioned above, enforcement ability would be significantly reduced due to the resulting increase in the cost and complexity of having to prosecute alleged offenders through the courts.

Option 2 - remake the provisions in the same form:

1. Are the existing provisions fit for purpose in the current and a future operating environment? [SMA response: We consider the provisions to be generally fit for purpose at present, but nevertheless they should be reconsidered to incorporate changes in law and policy since their introduction in the 1990s. In particular, they should be fully consistent with the Attorney-General's Dept Guidelines].
2. What are the benefits/consequences of having different infringement notice frameworks for different subject matters? [SMA response: This could increase the effectiveness of the provisions by making specific provisions aimed at specific subject matters fit for that specific purpose rather than a more "one size fits all" approach. However, it can also be more difficult to administer and could lead to inconsistent outcomes].
3. Should infringement notices continue to be issued in respect of non-strict liability offences? [SMA response: Ideally no, as this involves a judgement by the issuing officer of the guilt of the alleged offender in situations where that offender should be regarded as innocent until proven guilty. In strict liability offences where the fact that the offence occurred is sufficient to establish guilt, an infringement notice is appropriate and fair].

Option 3 – remake the provisions in a modern and streamlined way

1. Should the infringement notice scheme cater for the future ability to issue infringement notices in respect of civil penalty provisions? [SMA response: Yes, the scheme should be flexible enough to adapt to the future need to issue infringement notices for civil penalties, particularly in view of the practices of other Commonwealth regulators].
2. Should all strict liability offences across airports law be subject to infringement notices? Are there any particular offences that should or should not be subject to an infringement notice? [SMA response: In our submission all strict liability offences should be subject to infringement notices].
3. Are the existing maximum infringement notice penalty amounts appropriate? [SMA response: Yes].

Option 3.1 – draw on the Regulatory Powers Act

1. Would the Regulatory Powers Act Framework provide an appropriate and fit for purpose infringement notice framework across airport regulation? [SMA response: We consider there needs to be greater flexibility to take into account unique and specific circumstances applicable to airport operations].

Option 3.2 – a bespoke framework

1. Would it be preferable to design a bespoke infringement notice framework to operate across airport regulations? [SMA response: this would be an ideal but probably unmanageable outcome. Option 3 above appears to be a more achievable outcome].
2. Are there any specific provisions that should be carried over from existing infringement notice frameworks into the single standard framework? [SMA response: this would be the fundamental consideration in designing the single standard framework].

Definition of Airport Sites

Option 1 – let the provisions sunset

1. Should Schedule 1 of the Regulations be allowed to sunset? [SMA response: No, the issue of clear definition of the land that forms part of airport land must be regulated with certainty, especially in relation to ensuring consistency between state and Commonwealth regulation].
2. What are the benefits/consequences of not having provisions defining what land is part of an Airport Site? [SMA response: This would create an unacceptable degree of uncertainty and would be a regressive step].

Option 2 -remake the Airports Regulation without changes

1. Are the existing provisions fit for purpose in the current and future operating environment? [SMA response: Not really in view of the need for legislative rather than administrative change when Airport land boundaries change].
2. What are the benefits/consequences of the remaking of the provisions in Schedule 1 without changes? [SMA response: no opportunity to rectify identified shortcomings with the provisions].

Option 3 – remake the Airports Regulation with changes

1. Is there benefit in ensuring consistency between the law and the land titles registry in respect of the land that makes up an airport site? [SMA response: Yes, in our view it is crucial that this level of consistency is established].
2. Is there benefit in introducing an obligation to report to the Department changes to land titles? [SMA response: Yes. This is part of the process to ensure consistency].
3. Does your particular State or Territory have any notification obligations upon the subdivision of land that could be drawn upon? [SMA response: At present in NSW where airport land registered on the land titles register is to be subdivided, the Commonwealth must formally consent to the subdivision before the registration can proceed. The main change needed to the Regulations is to permit changes to be administratively notified rather than the need for amendment of the Regulation to reflect changes].

Option 3.1 – change how the boundaries of airport sites are defined

1. Would an alternative mechanism for identifying parcels of land be suitable for identifying Airport sites? Why/why not? [SMA response: This is unnecessary as the current land registration system is efficient and any change would involve potential conflict with the NSW Real Property Act].
2. What alternative mechanisms for identifying parcels of land might be appropriate to be used? [SMA response: Not applicable].

Option 3.2 – allow the Minister to declare an airport site via legislative instrument

1. Would it be preferable for an instrument to allow the Minister or a Delegate to declare an airport site? [SMA response: Yes. The current process requiring the Executive Council to declare an airport site is much more complex and time consuming than the proposed change to allow the Minister alone to take this step.