

Sunsetting Airports Regulations Stage 2: Control of On-Airport Activities

Consultation paper response

September 2022

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Confidential submission:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Industry type:	<input checked="" type="checkbox"/> Government Body <input type="checkbox"/> Airline <input type="checkbox"/> Airport Lessee Company <input type="checkbox"/> General Aviation <input type="checkbox"/> Community Group <input type="checkbox"/> Retail <input type="checkbox"/> Industry Body <input type="checkbox"/> Other (please specify)
If you ticked other above, please specify:	

Responding to this paper

In acknowledgement of the size and scope of this submission paper, respondents are welcome to provide responses to aviationreform@infrastructure.gov.au via other formats. However, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) recommends the use of this submission paper to assist with analysing and reviewing of submissions.

Please provide submissions or direct your questions to aviationreform@infrastructure.gov.au.

Privacy and confidentiality

Written submissions **will be made publicly available** in full on the Department's website unless you clearly indicate that you would like all or part of your submission to remain in confidence.

Any personal information respondents provide to the Department will be used for purposes related to considering issues raised in the consultation paper, in accordance with the *Privacy Act 1988* (see **Appendix B** of the consultation paper). You are also welcome to provide submissions confidentially.

Introduction

Please provide relevant background information to help the Department to understand your perspective. Relevant factors may be who you are or what organisation you are from, and what your interests are in responding to the sunseting review of the Airports (Control of On-Airport Activities) Regulations 1997 (the Regulations).

Queensland Health is the legal custodian of the *Tobacco and Other Smoking Products Act 1998 (Qld)*. This Act bans the use of smoking products (including tobacco products and e-cigarettes/vapes) in enclosed public places, and many outdoor public places. The Act does not have specific airport controls.

The Act also regulates the sale of smoking products, with the supply of smoking products to minors prohibited, and the display, advertising and promotion of smoking products by retailers restricted.

Smoke-free environments reduce unintended health harms from exposure to second-hand smoke, while also creating environments that make quit smoking attempts easier. In 2020, the Queensland Government made a commitment to increase smoke-free places, and to strengthen the provisions relating to the supply, advertising and promotion of smoking products.

Under the *Tobacco and Other Smoking Products Act 1998 (Qld)*, Environmental Health Officers across 11 Public Health Units are authorised to respond to complaints about smoking at other Queensland airports (i.e. those that are not leased federal airports), on the basis that they are enclosed public places. These Officers do not have jurisdiction to enforce the *Airports (Control of On-Airport Activities) Regulations 1997 (Cwth)*. Sunsetting the Regulations may have implications for Authorised Officers in Queensland.

This submission only responds to Part 6: Smoking.

1: Liquor control in airports outside NSW

1. How appropriate do you think the current regulatory settings are for liquor in leased federal airports outside NSW? What works well? What needs to be fixed?
2. What is your preferred sunseting option (sunseting without remaking, remaking without substantive changes, or remaking with changes)? Why?
3. Are there any modifications of state or territory liquor laws, or other provisions of the Regulations relating to the control of liquor outside NSW (Part 2 or Schedule 1 of the Regulations), that are no longer required? If so, what are they and why?

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4. Are there any modifications of state or territory liquor laws, or other provisions, that are out of date or ineffective and so require updating? If so, what are they and why? What is the nature of the update required?

 5. What disparate requirements (for example, different requirements that apply to different airports within a state or territory, or to different parts of an airport such as the terminal area only) need harmonisation, if any? What would be the impacts of this harmonisation?

2: Consumer trading hours

6. How appropriate do you think the current regulatory settings are for consumer trading hours in leased federal airports? What works well? What needs to be fixed?

7. What is your preferred sunset option (sunset without remaking, remaking without substantive changes, or remaking with changes)? Why?

8. Should the Regulations include any new provisions (e.g. exemptions to consumer trading hours for Western Sydney International (Nancy-Bird Walton) Airport)? What would be the impact on your operations if the provisions were or were not included?

9. If you think it is appropriate for exemptions to continue to apply (or new exemptions to apply) under the Regulations to state or territory consumer trading restrictions, should these apply to the whole of the airport site, or only the terminal area? Why? Would your views be different if any change only impacted new businesses trading on the airport site?

10. Are there any provisions in the Regulations relating to consumer trading hours (e.g. exemptions to state laws) that are no longer required? If so, what are they and why?

11. Are there any provisions in the Regulations relating to consumer trading that are out of date or ineffective and so require updating? If so, what are they and why? What is the nature of the update required?

3: Landside vehicle parking

12. Should the Parking Infringement Notice Scheme (PINS) framework continue in its current form? Why?

13. What are the benefits (or issues) to your business of the current arrangements at the airport you are located at or manage? (PINS or non-PINS)

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14. What additional changes would make the PINS work better if it was retained?
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15. What benefits (or issues) would there be from the use of state and territory regulations?
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4: Airside vehicles

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16. Should airside vehicle controls be nationally consistent? Why?
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17. Would there be an impact on your operations if the airside vehicle control provisions within the Regulations were allowed to sunset?
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18. What additional changes would make this part of the Regulations work better if it was retained?
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5: Gambling

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19. How appropriate do you think the current regulatory settings are for gambling in leased federal airports? What works well? What needs to be fixed?
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20. What is your preferred sunset option (sunset without remaking, remaking without substantive changes, or remaking with changes)? Why?
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21. Would you support the lifting of the gambling prohibition? What impacts would an increase in gambling activities on leased federal airports have?
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22. Would you support the transfer of regulatory responsibilities for gambling activities under existing authorities to the relevant South Australian and Victorian government authorities?
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23. Are there any provisions relating to the control of gambling (Part 5 of the Regulations), that are no longer required? If so, what are they and why?
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24. Are there any provisions relating to the control of gambling (Part 5 of the Regulations), that are out of date or ineffective and so require updating? If so, what are they and why? What is the nature of the update required?
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6: Smoking

25. Do the current smoking regulations adequately control smoking at leased federal airports?	<p>It is difficult to assess whether the current smoking regulations are adequate to control smoking at leased federal airports. Information about which areas of each airport are designated as no-smoking areas, as well as compliance and enforcement data are not available from the Australian Government at this time.</p> <p>The current regulations permit airport-operators to designate no-smoking areas at airports, rather than take a mandatory approach to ban smoking entirely or in specified areas at airports. This may result in inconsistency across Australian airports, with inequitable protection from exposure to second-hand smoke for staff and visitors to domestic and international airports.</p> <p>There may also be inconsistency of no-smoking areas between leased federal airports and other smoke-free places in Queensland (and in other States and Territories). This could create confusion for the public and may impact the level of compliance with no-smoking requirements.</p>
26. Are the penalties appropriate for the contravention of smoking?	<p>It is noted that the five penalty units for smoking in a signed no-smoking area differs from the penalties for smoking in mandated smoke-free places in Queensland. Although this is higher than Queensland's on-the-spot fine for smoking in smoke-free areas (2 penalty units), the higher penalty is appropriate. Queensland legislation also includes a maximum court penalty of 20 penalty units.</p>

27. What additional changes would make smoking provisions under the Regulations work better if it was retained?	<p>If the Regulations was retained, the following could be considered to strengthen the control of smoking at leased federal airports:</p> <ul style="list-style-type: none"> • The inclusion of a definition of smoking that encompasses all forms of smoking products (e.g. tobacco, herbal cigarettes, e-cigarettes/vapes, regardless of nicotine content, shisha, hookahs) would bring more alignment with State and Territory laws, and community expectations that all forms of smoking are regulated. <p>As there are different definitions of smoking / smoking products between States and Territories, inclusion of a comprehensive definition in the Commonwealth Regulations that applies to all Australian airports would be preferable to adopting the State or Territory definition for airports in each jurisdiction.</p> <p>It would be important that any definition of smoking / smoking products is sufficiently broad to capture all existing smoking products, as well as the emergence of novel products in the future.</p> <p>Further consultation with all States and Territories to determine an agreed definition for smoking / smoking products is recommended.</p> <ul style="list-style-type: none"> • While it is unknown the extent that smoking occurs at Australian airports, explicitly restricting smoking within all enclosed areas, at and near entrances, passenger drop-off/pick-up points, and outdoor drinking and eating places would be a stronger approach to controlling smoking at airports, compared to allowing airport operators to designate no smoking areas. Restrictions in both public and private areas of airports, would protect the public as well as employees. <p>A stronger approach may reduce exposure to second-hand smoke for employees and visitors and may encourage smoking cessation among smokers. Airport restrictions for smoking would also align with the restriction of smoking, including the use of e-cigarettes/vapes, on aircraft.</p> <ul style="list-style-type: none"> • It is noted that the Regulations implicitly apply the State and Territory laws for smoking, as there is no explicit provision that they don't apply at leased federal airports. However, this is potentially a grey area and explicitly stating that State and Territory smoking laws apply at relevant airports if stronger than a Commonwealth restriction on smoking in a particular jurisdiction could be considered.
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If this was pursued, consideration would need to be given to how a shared Commonwealth/State enforcement role could operate; and how differences in State and Territory laws could be managed to reduce inconsistencies across Australian airports.

Consideration of how the State and Territory requirements for the sale, display, advertising and promotion of smoking products by retailers apply for retailers operating at airports could also be undertaken.

- Requiring airport operators to provide information about compliance and enforcement activity to the Australian Government may help identify priority areas for further regulatory action and inform communication with airport users.
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28. Would state and territory governments need to make changes to their frameworks if smoking provisions under the Regulations were to sunset?

If, as noted in the Consultation paper, there is an expectation that airport operators would continue to enforce no-smoking requirements at airports, the Queensland Government may need to amend the *Tobacco and Other Smoking Products Regulation 2021 (Qld)* to prescribe airport operators as authorised persons under the Act or amend the *State Penalties Enforcement Act 1999* or the sub-legislation. Consideration would first need to be given to the appropriateness of airport operators monitoring compliance and enforcing the Queensland smoking laws at airports. If airport operators were subsequently prescribed as authorised persons, there would be a need for training, and a period of support from Queensland Health.

The *Tobacco and Other Smoking Products Act 1998 (Qld)* already restricts smoking in enclosed places, within five metres of an entrance to an enclosed place, and at and within five metres of public transport waiting points. It is anticipated that these restrictions would apply to leased federal airports in the event the Commonwealth Regulations were to sunset. Further consideration of the need to explicitly prescribe an airport (entirely or partially) as a smoke-free places in the Act may be necessary. The impact of these provisions on staff and visitors to each airport would need to be considered.

In addition to considering changes to the legislative framework, Queensland Health would also need to consider the impact of the Regulations sunsetting on compliance and enforcement activity for the *Tobacco and Other Smoking Products Act 1998 (Qld)*. A risk-based approach to enforcement is taken to maximise existing resources. If there were significant complaints of smoking at leased federal airports, this could adversely affect the capacity to monitor compliance and enforce the other public health legislation in Queensland. Further advice from the Australian Government on current compliance and enforcement activity and the number of existing authorised officers associated with the control of smoking would be needed if this responsibility was to be transitioned to Queensland.

Training and resources for authorised officers, the compliance and enforcement database and public information about smoking laws in Queensland would need to be amended.

7: Other comments

29. Do you have any other comments you would like to share with the Department in relation to the sunseting review of the Airports (Control of On Airport Activities) Regulations 1997?

It was appreciated that the Aviation Reform team met with the Tobacco Policy Officers Group on 18 October 2022. It is recommended that there is ongoing consultation with this group which includes all States and Territories, as well as the Australian Department of Health. Engagement with the group is important to ensure a holistic approach to smoking policy and regulation at leased federal airports is taken. Given that airports support cross-border travel a consistent approach across Australian airports may prevent community confusion and inequitable protections from smoking.
