

## **Airports Act 1996**

1. Amend subsections 32(1) and (2), and insert subsection 32(2A):

### **32 Airport operator company must not carry on non airport business**

#### *Airports other than joint user airports*

- (1) An airport operator company for an airport (other than a joint user airport) must not carry on substantial trading or financial activities other than:
- (a) activities relating to the operation or development, or both, of the airport as an airport; or
  - (b) activities incidental to the operation or development, or both, of the airport as an airport; or
  - (c) activities that, under the regulations, are incidental to the operation or development, or both, of the airport as an airport; or
  - (d) activities that are consistent with the airport lease for the airport and the final master plan for the airport, but only to the extent those activities fall within the scope of one or more or all of the activities specified in paragraphs (a), (b) and (c) of this subsection.

#### *Joint user airports*

- (2) An airport operator company for a joint user airport must not carry on substantial trading or financial activities other than:
- (a) activities connected with the airport; or
  - (b) activities incidental to activities connected with the airport; or
  - (c) activities that, under the regulations, are activities incidental to activities connected with the airport; or
  - (d) activities that are consistent with the airport lease for the airport and the final master plan for the airport, but only to the extent those activities fall within the scope of one or more or all of the activities specified in paragraphs (a), (b) and (c) of this subsection.
- (2A) In ascertaining whether an activity is within the scope of subsection (1) or (2), the most important consideration is whether the activity promotes the sound development of civil aviation in Australia.

*[These changes are intended to ‘close the loophole’ that currently allows airport lessees to do anything – including things that are deleterious to the development of civil aviation in Australia – by simply putting those things in the master plan for the airport.]*

2. Amend sections 70(2)(a) and (b):

- (a) to establish the strategic direction for efficient and economic development of the airport as an airport over the planning period of the plan; and
- (b) to provide for the development of additional uses of the airport site, but only to the extent that those additional uses do not detract from or interfere with the sound development of civil aviation in Australia or the present and future requirements of civil aviation users of the airport; and

*[These changes are intended to make clear that airports are supposed to be about aviation and developed for the benefit of aviation, and that is, therefore, what the master plan for an airport should be about.]*

3. Amend section 79(1A) by inserting a reference to subsections 81(8) and 81(9A):

- (1A) Before giving the Minister a draft master plan under section 75, 76 or 78 or subsection 81(8) or 81(9A), the airport-lessee company ...

*[This and change 4 are intended to make clear that the consultation process applies to a fresh master plan submitted after a refusal by the Minister to approve a previously-submitted draft master plan.]*

4. Amend section 80 by inserting a reference to subsections 81(8) and 81(9A):

- (1) This section applies if:
  - (a) an airport-lessee give the Minister a draft master plan under section 75, 76 or 78 or subsection 81(8) or 81(9A); and

*[This and change 3 are intended to make clear that the consultation process applies to a fresh master plan submitted after a refusal by the Minister to approve a previously-submitted draft master plan.]*

5. Amend section 81:

- (1) ...
- (2) ...
- (3) In deciding whether to approve the plan, the Minister must have regard to the following matters:

- (aa) the extent to which the plan achieves the purposes of a final master plan (see subsection 70(2));
  - (a) the extent to which carrying out the plan would meet present and future requirements of all civil aviation users of the airport, for services and facilities relating to the airport concerned;
  - (b) the effect that carrying out the plan would be likely to have on the use of land:
    - (i) within the airport site concerned; and
    - (ii) in areas surrounding the airport;
  - (c) the consultations undertaken in preparing the plan (including the outcome of the consultations);
  - (d) the views of the Civil Aviation Safety Authority and Airservices Australia, in so far as they relate to safety aspects and operational aspects of the plan.
- (3A) In having regard to the matter in paragraph (a) of subsection (3), the Minister must arrange for the development of a report, and take into consideration the content of the report, by a person or body independent in all respects from the airport-lessee company and with expertise in and knowledge of the requirements of all participants in civil aviation in Australia, setting out the present and future requirements of civil aviation users of the airport and analysing the extent to which carrying out the plan would meet those requirements.
- (4) Subsection (3) does not, by implication, limit the matters to which the Minister may have regard.
- (5) If the Minister neither approves, nor refuses to approve, the plan before the end of:
- (b) the period of 50 business days after the day on which the Minister received the draft plan; or
  - (b) a longer period (of no more than an extra 10 business days) that the Minister specifies in a written notice to the airport lessee company;
- the Minister is taken, at the end of that period, to have refused to approve the plan under subsection (2).
- (5A) A notice made under paragraph (5)(b) is not a legislative instrument.

- (6) As soon as practicable after deciding whether to approve the plan, the Minister must notify the company in writing of the decision. If the Minister is taken to have refused to approve the plan by operation of subsection (5), the company is taken to have been given notice of the refusal at the end of the period calculated in accordance with that subsection.
- (7) If the Minister decides to refuse to approve the plan, the Minister must notify the company in writing of the Minister's reasons for the refusal. If the Minister is taken to have refused to approve the plan by operation of subsection (5), the Minister must notify the company in writing of the Minister's reasons for not having made a decision within the period calculated in accordance with that subsection.
- (8) If the Minister decides to refuse or is taken to have refused to approve the plan, the Minister may, by written notice given to the company, direct the company to give the Minister, in writing, a fresh draft master plan. The fresh draft master plan must be given to the Minister:
  - (a) within 180 days after the day on which the direction was given; or
  - (b) if the Minister, by written notice given to the company, allows a longer period—within that longer period.
- (9) A company commits an offence etc..
- (9A) If the Minister decides to refuse or is taken to have refused to approve the plan but gives no direction to the company under subsection (8), the company may still choose to submit a fresh draft master plan.
- (10) The Minister's approval etc...

*[These changes are intended to, first, shift the focus of the criteria to which the Minister must have regard in assessing a draft master plan, to the current and future requirements of aviation users of the airport. And, secondly, to oblige the Minister to arrange for and take into consideration a report and analysis of those requirements by an expert person or body independent of the airport lessee. The current process entails the non-expert policy Dept simply 'rubber stamping' the airport lessee's assertions on those matters, which assertions usually coincide with a reduction in the infrastructure available to civil aviation users, to the financial benefit of the airport lessee. CASA merely expresses a view on whether whatever infrastructure will be left over for aviation can safely be used, the answer to which is invariably: yes. All aviation infrastructure, no matter how small, can be used safely by someone. But whether the remaining infrastructure will meet the present and future requirements of civil aviation users of the airport is an entirely separate question, the answer to which is almost invariably: no.]*