



# **Airports (Environment Protection) Regulations 1997**

**Statutory Rules 1997 No. 13 as amended**

made under the

*Airports Act 1996*

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Attorney-General's Department, Canberra

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## Contents

### Part 1 Preliminary

1.01	Name of regulations [see Note 1]	7
1.02	Objects	7
1.03	Limited application to aircraft activities	7
1.03A	Airports to which Division 3 of Part 6 of the Act applies	7
1.04	Effect on other laws	8
1.05	Definitions	8
1.06	References to Australian Standards (AS)	10
1.07	Who is an operator of an undertaking at an airport	11
1.08	Testing	11

### Part 2 What is pollution or excessive noise

#### Division 1 Pollution

2.01	What is air pollution	13
2.02	What is water pollution	14
2.03	What is soil pollution	15

#### Division 2 Offensive noise

2.04	What is offensive noise	16
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### Part 3 Environmental strategies

#### Division 1 Preliminary

3.01	Airports to which Division 2 of Part 6 of the Act applies	18
3.01A	Application of this Part	18
3.02	Participation by operators of undertakings at an airport	18

#### Division 2 Additional matters to be specified in environment strategy

3.03	Sites of indigenous significance	19
3.04	Operations other than airport operations	19
3.05	Environment management training	19

---

	Page
<b>Division 3</b>	<b>Things to be addressed in strategy</b>
3.06	Management of airport site 20
3.07	Identification of environmentally significant areas of airport site 20
3.08	Identification of sources of environmental impact at airport 21
3.09	Proposed studies, reviews and monitoring 21
3.10	Proposed measures for preventing, controlling or reducing environmental impact 22
<b>Division 4</b>	<b>Publicising of strategy</b>
3.11	Sublessees and licensees to be aware of strategy 23
<b>Part 4</b>	<b>Duties of operators of undertakings at airports</b>
<b>Division 1</b>	<b>Pollution</b>
4.01	General duty to avoid polluting 24
4.02	Assumed compliance with general duty 24
4.03	Duty — pollution control equipment 26
<b>Division 2</b>	<b>Preservation of habitat, etc</b>
4.04	General duty to preserve 26
4.05	Duty to give notice of cultural, etc discovery 27
<b>Division 3</b>	<b>Offensive noise</b>
4.06	General duty to prevent offensive noise occurring 28
4.07	Assumed compliance with general duty 29
4.08	Duty — noisy, or potentially noisy, equipment 29
4.09	Duty — noise control equipment 29
<b>Part 5</b>	<b>Local standards and individual authorisations</b>
<b>Division 1</b>	<b>Local standards</b>
5.01	Purpose 31
5.02	Airport-lessee company may initiate consultations 31
5.03	Application to Minister 32
5.04	Determination of application 32
5.05	Notification of determination 33

---

	Page	
<b>Division 2</b>	<b>Authorisations</b>	
5.06	Effect of authorisation	33
5.07	Application for authorisation	34
5.08	Certain applications to be advertised	34
5.09	Determination of application	35
5.10	Notification of decision	37
5.11	Authorisation holder to comply with plan	37
5.12	Duration of authorisations	37
5.13	Urgently required authorisations	38
5.14	Notification to airport-lessee company	38
5.15	Public notification	38
5.16	Authorisations may be varied or revoked	39
5.17	Annual report by holder	40
5.18	Failure to comply with condition of authorisation	40
5.19	Authorisation may be transferred	41
<b>Part 6</b>	<b>Monitoring, reporting and remedial action</b>	
<b>Division 1</b>	<b>Monitoring and reporting</b>	
6.01	Existing pollution to be reported	43
6.02	Airport-lessee company to monitor pollution levels	44
6.03	Annual report	46
6.04	Additional reporting requirements	46
6.05	Duties of sublessees and licensees	47
6.06	Inaccurate or incomplete information to be corrected	48
<b>Division 2</b>	<b>Airport environment officer assessment of soil pollution</b>	
6.07	Duty to assess soil condition	48
6.08	Assessment of contamination of soil	50
6.09	Expert site examination	51
6.10	Eligible persons to be appointed assessor	52
6.11	Conduct of examination	53
6.12	Site investigator's report	53
6.13	Assessor's report	54
<b>Division 3</b>	<b>Remedial plan for soil pollution</b>	
6.14	Occupier may prepare remedial plan	54
6.15	Reporting of plan	55

---

	Page
6.16 Duty of airport environment officer to monitor plan	56
<b>Division 4 Remedial work: powers of airport environment officer</b>	
6.17 Interpretation	56
6.18 Power to order remedial work	57
6.19 Power to enter and perform remedial work	58
<b>Part 7 Enforcement</b>	
<b>Division 1 Environment protection orders</b>	
7.01 Pollution	60
7.02 Preservation of habitat, etc	61
7.03 Excessive noise	61
7.04 Order must not conflict with authorisation	62
7.05 Compliance with order	62
7.06 Compliance with condition of authorisation	62
<b>Part 8 General penalty provisions</b>	
<b>Division 1 Continuing offences</b>	
8.01 Continuing offences	64
<b>Division 2 Infringement notices</b>	
8.02 Purpose of this Division	64
8.03 Infringement notices	64
8.04 Extension of time to pay	66
8.05 Payment by instalments	67
8.06 If infringement notice disputed	67
8.07 Payment of penalty if infringement notice not withdrawn	68
8.08 Effect of payment of infringement notice penalty	68
8.09 Admissions under paragraph 8.03 (2) (h)	69
8.10 Matter not to be taken into account in determining sentence	69
8.11 Refund of infringement notice penalty if notice withdrawn	69
8.12 Evidence for hearing	69
8.13 Payment of penalty by cheque	70
8.14 Infringement notice not compulsory, etc	70

---

	Page	
<b>Part 9</b>	<b>Reconsideration and review of certain decisions</b>	
<b>Division 1</b>	<b>Decisions of airport environment officer</b>	
9.01	Decisions reviewable by Secretary	71
9.02	Review by Secretary	72
9.03	Secretary to obtain advice	72
<b>Division 2</b>	<b>AAT review</b>	
9.04	Interpretation	72
9.05	Statement to accompany notification of reviewable decisions	73
9.06	AAT review of decisions	73
<b>Part 10</b>	<b>Miscellaneous</b>	
10.01	Airport environment officers	74
10.02	Airport environment officer's records	74
10.03	Oversight of airport environment officer	75
10.04	Giving notices, directions, etc	76
10.05	Immunity from certain liability	77
10.06	Confidential information in hands of airport environment officer	77
10.07	Delegation	77
<b>Part 11</b>	<b>Transitional</b>	
11.01	Commenced actions that are otherwise lawful	78
<b>Schedule 1</b>	<b>Air pollution — accepted limits</b>	79
Part 1	Air pollutants emitted from a stationary source	79
Part 2	Ambient air quality objectives	90
<b>Schedule 2</b>	<b>Water pollution — accepted limits</b>	91
<b>Schedule 3</b>	<b>Soil pollution — accepted limits</b>	98
<b>Schedule 4</b>	<b>Excessive noise — guidelines</b>	102
Part 1	Introductory	102
Part 2	Sensitive receptors	102
Part 3	Commercial receptors	105
Part 4	Measuring noise	106
<b>Notes</b>		108

**Regulation 1.03A****Part 1 Preliminary****1.01 Name of regulations** [see Note 1]

These Regulations are the *Airports (Environment Protection) Regulations 1997*.

**1.02 Objects**

The objects of these Regulations are:

- (a) to establish, in conjunction with national environment protection measures made under section 14 of the *National Environment Protection Council Act 1994*, a Commonwealth system of regulation of, and accountability for, activities at airports that generate, or have potential to generate:
  - (i) pollution; or
  - (ii) excessive noise; and
- (b) to promote improving environmental management practices for activities carried out at airport sites.

**1.03 Limited application to aircraft activities**

These Regulations do not apply to:

- (a) pollution generated by an aircraft; or
- (b) noise generated by an aircraft in flight or when landing, taking off or taxiing at an airport.

*Note* In relation to engine emissions and noise emissions by aircraft, see the Air Navigation (Aircraft Engine Emissions) Regulations and the Air Navigation (Aircraft Noise) Regulations.

**1.03A Airports to which Division 3 of Part 6 of the Act applies**

For paragraph 131A (b) of the Act, the following airports are specified:

- (a) Archerfield Airport;

**Regulation 1.04**

- (aa) Bankstown Airport;
- (ab) Camden Airport;
- (b) Essendon Airport;
- (c) Jandakot Airport;
- (d) Moorabbin Airport;
- (e) Parafield Airport.

**1.04 Effect on other laws**

- (1) To the extent that these Regulations make provision about a matter mentioned in paragraph 132 (1) (a) or (e), or 133 (1) (a) or (e), of the Act, a State law making provision about the matter has no effect at an airport on an airport site declared under regulation 1.03 of the Airports Regulations.
- (2) Subregulation (1) does not apply to a State law to the extent that it makes provision about:
  - (a) pollution from a motor vehicle; or
  - (b) occupational health and safety matters; or
  - (c) emissions of substances that deplete stratospheric ozone; or
  - (d) the use of a pesticide.

*Note* Certain other Commonwealth laws may apply to persons affected by these regulations. For example:

*Aboriginal and Torres Strait Islander Heritage Protection Act 1984*

*Australian Heritage Commission Act 1975*

*Endangered Species Protection Act 1992.*

**1.05 Definitions**

- (1) In these Regulations, unless the contrary intention appears:

*Act* means the *Airports Act 1996*.

*air pollution* has the meaning given in regulation 2.01.

*airport environment officer* means a person appointed under regulation 10.01.

*airport-sourced pollution* or *noise* means pollution or noise generated by an activity carried out at an airport.

**Regulation 1.05**

*AS* has the meaning given in regulation 1.06.

*at an airport* includes under and over an airport.

*Australian Standard* means a standard approved for publication by, or for, the Council of the Standards Association of Australia as an Australian Standard.

*deal with* includes convey, create, dispose of, distribute, generate, handle, keep, manufacture, produce, sell, store and use.

*document* includes a part of a document and a reproduction of a document, or part.

*Note* For meaning of *document*, see *Acts Interpretation Act 1901*, s. 25.

**generation:**

- (a) of pollution, means emission and transmission of pollution in any way; and
- (b) of noise, means emission and transmission of noise in any way.

**level**, of a pollutant, means:

- (a) quantity of the pollutant; or
- (b) concentration of the pollutant.

*NATA* means the National Association of Testing Authorities.

*noise control equipment* means equipment to prevent, minimise, measure, record or monitor the generation of excessive noise.

*offensive noise* has the meaning given in regulation 2.04.

*operator* has the meaning given in regulation 1.07.

*pollution* includes air pollution, water pollution and soil pollution.

*pollution control equipment* means equipment to prevent, minimise, measure, record or monitor the generation of pollution.

*rescue and fire fighting service* means a rescue and fire fighting service in accordance with Annex 14 to the Convention on International Civil Aviation done at Chicago on 7 December 1944.

**Regulation 1.06**

*site of indigenous significance* means a site that has value:

- (a) of customary significance to Aboriginal or Torres Strait Islander people; or
- (b) of significance to anthropological or archaeological understanding of Australian aboriginal history and society.

*soil pollution* has the meaning given in regulation 2.03.

*State* includes the Australian Capital Territory and the Northern Territory.

*undertaking* at an airport has the meaning given in regulation 1.07.

*USEPA* means the Environment Protection Agency of the United States of America.

*waste* includes, whether or not it has a value or use:

- (a) refuse in any form; and
- (b) discarded or disused plant or equipment; and
- (c) an industrial byproduct.

*Note* Examples of waste included are:

- (a) waste oil and oil containers; and
- (b) surplus or spent chemicals, paints and solvents and their containers; and
- (c) sewage; and
- (d) waste paper, litter and food scraps.

*water pollution* has the meaning given in regulation 2.02.

- (2) An expression used in both these regulations and the Airports Regulations has, unless the contrary intention appears, the same meaning in these Regulations as in those Regulations.

**1.06 References to Australian Standards (AS)**

In these Regulations, *AS* followed by a number or other identification is a reference to the Australian Standard so numbered or identified, as in force or existing from time to time.

**Regulation 1.08****1.07 Who is an operator of an undertaking at an airport**

- (1) For these Regulations, an *undertaking* at an airport includes, whether or not the undertaking is carried on for profit, authorised by an airport-lessee company or otherwise lawfully authorised:
  - (a) the operation of a business; and
  - (b) the carrying out of any activity, dealing, operation, process, or work; and
  - (c) the operation of any facility, plant, machine or equipment.
- (2) For these regulations, *undertaking* does not include:
  - (a) the function, of the airport-lessee company for an airport, of sublessor or licensor; or
  - (b) the function, of the airport-management company (if any) for an airport, of managing the airport; or
  - (c) any vicarious liability that an airport-lessee company or airport-management company may be found to have in relation to the carrying on of an undertaking by a person who is a sublessee or licensee of part of the airport.
- (3) For these regulations, an *operator* of an undertaking at an airport is a person, or one of the persons:
  - (a) carrying out the undertaking; or
  - (b) on whose behalf, and under whose direction and control, the undertaking is being carried out by another person as agent or employee of, or by other arrangement with, the first-mentioned person; or
  - (c) on whose behalf, and under whose direction and control, part of the undertaking is being carried out by another person as agent or employee of, or by other arrangement with, the first-mentioned person.

**1.08 Testing**

A test required by these Regulations must be carried out:

- (a) by a laboratory accredited by NATA to carry out that type of test; and

**Regulation 1.08**

- (b) using a method approved by NATA for that type of test, or (if there is no such method) a method approved, for that type of test, by:
  - (i) USEPA; or
  - (ii) the American Public Health Association; or
  - (iii) the American Society for Testing and Materials.

## **Part 2                      What is pollution or excessive noise**

### **Division 1                Pollution**

#### **2.01      What is air pollution**

- (1) For these Regulations, **air pollution** has occurred when a pollutant is present in air in a quantity, way, or condition, or under a circumstance, in which:
- (a) harm is likely to be caused to the environment; or
  - (b) unreasonable inconvenience is likely to be caused to a person:
    - (i) at a place other than the immediate vicinity of the source of the pollutant; or
    - (ii) if the source is in a place to which members of the public have access — in that place.
- (2) For this regulation:
- pollutant*** means:
- (a) a substance, generated from a stationary source, being:
    - (i) a substance mentioned in column 2 of Table 1 in Part 1 of Schedule 1; or
    - (ii) solid particles (for example, smoke, dust, fly ash and cinders), or liquid droplets (for example, mist and fumes), of any kind when dispersed in the air; or
  - (b) an objectionable odour;  
but does not include a substance that is a pollutant only because it causes depletion of ozone in the stratosphere.
- stationary source*** means plant or equipment that:
- (a) is not a vehicle; or
  - (b) is fixed to a particular place for the purpose of carrying out its function.

**Regulation 2.02**

- (3) For this regulation, unreasonable inconvenience from an odour is likely to be caused to a person if the odour:
- (a) is generated from something other than the ordinary operations of aircraft; and
  - (b) is detectable, by an airport environment officer's unassisted sense of smell, at a place mentioned in subparagraph (1) (b) (i) or (ii).

**2.02      What is water pollution**

- (1) For these Regulations, **water pollution** has occurred when waters contain a substance or organism:
- (a) that causes, or is reasonably likely to cause, the physical, chemical or biological condition of the waters to be adversely affected; or
  - (b) that causes, or is reasonably likely to cause, an adverse effect on beneficial use of the waters.
- (2) For subregulation (1), waters contain a polluting substance if:
- (a) the substance is dissolved in the waters; or
  - (b) whether or not the substance is capable of uniformly mixing with water — it is:
    - (i) suspended or otherwise dispersed in the waters; or
    - (ii) floating on the surface of the waters; or
    - (iii) deposited on the bed of the waters.
- (3) In this regulation:

**adverse effect** includes the effects so described in Schedule 2.

**beneficial use** means a use conducive to public health, safety, aesthetic enjoyment or other benefit.

**waters** means marine, estuarine or fresh waters, and includes:

- (a) a body of water; and
- (b) a natural watercourse; and
- (c) a swamp or wetland; and
- (d) groundwater; and
- (e) water in a channel, drain, pipe or other artificial holding facility (unless it is water in a system for the passage of sewage, or for the passage or trapping of pollution).

**Regulation 2.03**

**2.03 What is soil pollution**

- (1) For these Regulations, **soil pollution** has occurred when land, including subterranean groundwater, is contaminated by a substance:
  - (a) that causes, or is reasonably likely to cause, the chemical or biological condition of the soil to be adversely affected; or
  - (b) that causes, or is reasonably likely to cause, an adverse effect on present use of the land concerned, or a proposed use under a final master plan in force for the airport, because it is, or is reasonably likely to be:
    - (i) unsafe or unfit for human habitation or occupation; or
    - (ii) in any other respect, harmful to the health or welfare of human beings; or
    - (iii) significantly offensive to human senses; or
  - (c) that causes, or is reasonably likely to cause, an adverse effect on the land concerned, because:
    - (i) the land supports native flora or fauna; and
    - (ii) the substance degrades the capacity of the land to support the flora or fauna; or
  - (d) that causes, or is reasonably likely to cause, an adverse effect on beneficial use of any subterranean groundwater; or
  - (e) that causes, or is reasonably likely to cause, an adverse effect on beneficial use, of adjacent land in accordance with a final master plan in force for the airport.
- (2) Whether the condition described in subregulation (1) exists is an assessment to be made in accordance with Division 2 of Part 6.
- (3) In this regulation, **beneficial use** means a use conducive to public health, safety, aesthetic enjoyment or other benefit.

**Regulation 2.04**

**Division 2                      Offensive noise**

**2.04      What is offensive noise**

- (1) For these Regulations, noise that is offensive occurs when noise is generated at a volume, or in a way, or under a circumstance, that, in the opinion of an airport environment officer, offensively intrudes on individual, community or commercial amenity.
- (2) In forming an opinion, an airport environment officer must have regard to:
  - (a) the volume, tonality and impulsive character (if any) of the noise; and
  - (b) the time of day, and duration, of the noise; and
  - (c) background noise levels at the time the noise is generated; and
  - (d) the location, in relation to the source of the noise, of:
    - (i) sensitive receptors; or
    - (ii) if there is no affected sensitive receptor — commercial receptors; and
  - (e) the excessive noise guidelines in Schedule 4.
- (3) For subregulation (2):

*commercial receptor* means a business operation, whether for profit, or not.

*sensitive receptor* means:

  - (a) a dwelling; or
  - (b) an impermanent dwelling in a place designed, or reserved, for impermanent dwellings (for example, a caravan park or residential marina); or
  - (c) a hotel, motel or hostel; or
  - (d) a child care institution, kindergarten, school, college, university or other educational institution; or

**Regulation 2.04**

- (e) a hospital, medical centre or nursing home; or
- (f) a building that is a church or similar place of worship.

*Note* Duty to prevent offensive noise occurring is set out in regulation 4.06.

**Regulation 3.01**

## **Part 3 Environmental strategies**

### **Division 1 Preliminary**

#### **3.01 Airports to which Division 2 of Part 6 of the Act applies**

For paragraph 114 (b) of the Act, the following airports are specified:

- (a) Archerfield Airport;
- (aa) Bankstown Airport;
- (ab) Camden Airport;
- (b) Essendon Airport;
- (c) Jandakot Airport;
- (d) Moorabbin Airport;
- (e) Parafield Airport.

#### **3.01A Application of this Part**

This Part applies to each draft, and final, environment strategy for an airport, prepared under Division 2 of Part 6 of the Act.

#### **3.02 Participation by operators of undertakings at an airport**

An operator of an undertaking at an airport must give all practicable assistance to the airport-lessee company for the airport in developing, reviewing and revising (if appropriate) the environment strategy for the airport.

**Regulation 3.05**

**Division 2 Additional matters to be specified  
in environment strategy**

**3.03 Sites of indigenous significance**

For paragraphs 116 (2) (j) and (3) (j) of the Act, a matter that must be specified in an environment strategy is any area, within the airport site to which the strategy applies, that the airport-lessee company for the airport has identified as being a site of indigenous significance, following consultation with:

- (a) any relevant indigenous communities and organisations; and
- (b) any relevant Commonwealth or State body.

**3.04 Operations other than airport operations**

- (1) For paragraphs 116 (2) (j) and (3) (j) of the Act, a matter that must be specified in an environment strategy is the airport-lessee company's strategy for environmental management of areas of the airport site that are, or could be, used for a purpose that is not connected, or directly connected, with airport operations.
- (2) In specifying the matter mentioned in subregulation (1), the environment strategy must address the things mentioned in Division 3 of this Part.

**3.05 Environment management training**

For paragraphs 116 (2) (j) and (3) (j) of the Act, matters that must be specified in an environment strategy are:

- (a) the training necessary for appropriate environment management by persons employed on the airport site by the airport-lessee company or by other major employers, or classes of persons so employed; and
- (b) any formal training programs, of which the airport-lessee company is aware, that it considers would meet the training needs of a person mentioned in paragraph (a).

**Regulation 3.06**

**Division 3 Things to be addressed in strategy**

**3.06 Management of airport site**

An airport-lessee company, in specifying in an environment strategy its objectives for the airport under paragraph 116 (2) (a) or (3) (a) of the Act, must address its policies and targets for:

- (a) continuous improvement in the environmental consequences of activities at the airport; and
- (b) progressive reduction in extant pollution at the airport; and
- (c) development and adoption of a comprehensive environmental management system for the airport that maintains consistency with relevant Australian and international standards; and
- (d) identification, and conservation, by the airport-lessee company and other operators of undertakings at the airport, of objects and matters at the airport that have natural, indigenous or heritage value; and
- (e) involvement of the local community and airport users in development of any future strategy; and
- (f) dissemination of the strategy to sub-lessees, licensees, other airport users and the local community.

**3.07 Identification of environmentally significant areas of airport site**

An airport-lessee company, in specifying in an environment strategy the areas within the airport site that, under paragraph 116 (2) (b) or (3) (b) of the Act, it identifies as environmentally significant, must address:

- (a) any relevant recommendation of the Australian Heritage Commission; and
- (b) any relevant recommendation of the Department of the Environment, Sport and Territories regarding biota, habitat, heritage or kindred matters; and

**Regulation 3.09**

- (c) any relevant recommendation of a body established in the State in which the airport is located, having responsibilities in relation to conservation of biota, habitat, heritage or kindred matters.

**3.08 Identification of sources of environmental impact at airport**

An airport-lessee company, in specifying in an environment strategy the sources of environmental impact that, under paragraph 116 (2) (c) or (3) (c) of the Act, it associates with airport operations, or civil aviation operations at the airport, as the case requires, must address:

- (a) the quality of air at the airport site, and in so much of the regional airshed as is reasonably likely to be affected by airport activities; and
- (b) water quality, including potentially affected groundwater, estuarine waters and marine waters; and
- (c) soil quality, including that of land known to be already contaminated; and
- (d) release, into the air, of substances that deplete stratospheric ozone; and
- (e) generation, and handling, of hazardous waste and any other kind of waste; and
- (f) usage of natural resources (whether renewable or non-renewable); and
- (g) usage of energy the production of which generates emissions of gases known as ‘greenhouse gases’; and
- (h) generation of noise.

**3.09 Proposed studies, reviews and monitoring**

An airport-lessee company, in specifying in an environment strategy the studies, reviews and monitoring that, under paragraph 116 (2) (d) or (3) (d) of the Act, it plans to carry out in connection with airport operations, or civil aviation operations at the airport, as the case requires, must address:

- (a) the matters mentioned in regulations 3.03, 3.07 and 3.08; and

**Regulation 3.10**

- (b) the scope, identified by the airport-lessee company, for conservation of objects and matters at the airport that have natural, indigenous or heritage value; and
- (c) the approaches, and measures, identified by the airport-lessee company as its preferred conservation approaches and measures; and
- (d) the professional qualifications that must be held by a person engaged in carrying out the monitoring; and
- (e) the proposed systems of testing, measuring and sampling to be carried out for possible, or suspected, pollution or excessive noise; and
- (f) the proposed frequency of routine reporting of monitoring results to the airport environment officer (if any) for the airport, or to the Secretary.

**3.10 Proposed measures for preventing, controlling or reducing environmental impact**

An airport-lessee company, in specifying in an environment strategy the measures that, under paragraph 116 (2) (f) or (3) (f) of the Act, it plans to carry out for the purposes of preventing, controlling or reducing the environmental impact associated with airport operations, or civil aviation operations at the airport, as the case requires, must address:

- (a) the matters mentioned in regulations 3.06, 3.07 and 3.08; and
- (b) the means by which it proposes to achieve the cooperation of other operators of undertakings at the airport in carrying out those plans.

**Regulation 3.11**

**Division 4                      Publicising of strategy**

**3.11                      Sublessees and licensees to be aware of strategy**

Consistently with paragraph 131 (2) (c) or (d) (as appropriate) of the Act, the airport-lessee company for an airport must ensure that every person who is a sublessee or licensee of the airport-lessee company at the airport is aware of the company's final environment strategy and of any approved variation of the strategy.

**Regulation 4.01**

## **Part 4                      Duties of operators of    undertakings at airports**

### **Division 1                Pollution**

#### **4.01            General duty to avoid polluting**

- (1) The operator of an undertaking at an airport must take all reasonable and practicable measures:
  - (a) to prevent the generation of pollution from the undertaking; or
  - (b) if prevention is not reasonable or practicable — to minimise the generation of pollution from the undertaking.
- (2) The considerations that determine whether a measure is reasonable and practicable include:
  - (a) the sensitivity of the receiving environment to pollution that the undertaking is capable of generating; and
  - (b) the nature of the harm that pollution that the undertaking is capable of generating will cause, or has potential to cause; and
  - (c) the current state of technical knowledge about preventing, or minimising, pollution being generated from an undertaking of the kind being operated; and
  - (d) all measures that might practicably be used to prevent or minimise the pollution, and the probable benefits and detriments (if any) that should be expected from the implementation of each measure.
- (3) Failure to comply with subregulation (1) does not, of itself, constitute a contravention of these Regulations, but compliance may be enforced under regulation 7.01.

#### **4.02            Assumed compliance with general duty**

- (1) An operator of an undertaking at an airport is complying with subregulation 4.01 (1), despite the generation of pollution from

**Regulation 4.02**

the undertaking, when the quantity, or rate, being generated is not:

- (a) if the pollutant is a substance mentioned in column 2 of a table in Part 1 of Schedule 1, in Schedule 2 or Schedule 3 — more than the limit mentioned in the table as the accepted limit for contamination of air, fresh water, marine water or soil, as the case may be, by that pollutant; or
  - (b) if, under regulation 5.04 the Minister has approved a local standard for the airport — more than the acceptable limit set by that standard; or
  - (c) if, under regulation 5.09, the operator is the holder of an authorisation:
    - (i) more than the acceptable limit (if any) set by the authorisation; or
    - (ii) inconsistent with the authorisation.
- (2) However, the provider of a rescue and fire fighting service for an airport need not comply with the limit mentioned in item 1 of table 1 in clause 1.02 of Schedule 1 for the emission of dark smoke if the provider is complying with an agreement with the Secretary of the Department that:
- (a) provides for education of the public, the airport-lessee company and airport tenants about fire training activities; and
  - (b) provides for telling the airport-lessee company and the airport environment officer before a fire training event; and
  - (c) provides for limiting fire training activity in unsuitable weather conditions; and
  - (d) provides for telling the airport environment officer of any environmental incident caused by fire training activities; and
  - (e) promotes the extent of night fire training events; and
  - (f) is in force for a period, stated in the agreement, of not more than 3 years.

**Regulation 4.03**

**4.03      Duty — pollution control equipment**

- (1) This regulation applies to equipment (*‘operating equipment’*) used by the operator of an undertaking at an airport, in carrying on the undertaking, if pollution control equipment is:
  - (a) fitted to, or supplied with, the operating equipment when it is supplied to the operator; or
  - (b) specified or recommended for the operating equipment by the manufacturer or supplier.
- (2) The operator is not complying with regulation 4.01 when using the operating equipment unless:
  - (a) it is fitted with the pollution control equipment, or pollution control equipment having comparable effect; and
  - (b) the pollution control equipment is:
    - (i) maintained in proper and efficient condition; and
    - (ii) used effectively whenever the operating equipment is used.

**Division 2                      Preservation of habitat, etc**

**4.04      General duty to preserve**

- (1) The operator of an undertaking at an airport must take all reasonable and practicable measures to ensure that, in the operation of the undertaking, and in the carrying out of any work in connection with the undertaking:
  - (a) there are no adverse consequences for:
    - (i) the local biota and the ecosystems and habitats of native species; or
    - (ii) existing aesthetic, cultural, historical, social and scientific (including archaeological and anthropological) values of the local area; and
  - (b) there are no adverse consequences for:
    - (i) flora or fauna that is known to be endangered, or vulnerable, as a species; or
    - (ii) an ecological community that is known to be an endangered ecological community; or

**Regulation 4.05**

- (iii) sites of indigenous significance on the airport site;  
and
- (c) if it is reasonably discoverable that, at the airport site, there is a native species that is endangered or vulnerable, or an ecological community that is endangered — the operation, or other work, is not inconsistent with action intended to lessen the danger or vulnerability; and
- (d) the operation, or other work, is not inconsistent with an international convention, treaty or other agreement to which Australia is a party, and that relates to a matter to which these Regulations apply.

*Note* In a particular instance, the duty may be affected by Division 2 of Part 5, which provides for the granting of authorisations.

- (2) An expression used in subregulation (1) and in the *Endangered Species Act 1992* has the same meaning as it has in that Act.
- (3) Failure to comply with subregulation (1) does not, of itself, constitute a contravention of these regulations, but compliance may be enforced under regulation 7.02.

**4.05 Duty to give notice of cultural, etc discovery**

- (1) The operator of an undertaking at an airport who, in the course of operating the undertaking, or carrying out work in connection with the undertaking, discovers an object, species or ecological community that indicates that the site of the undertaking, or other work, is a site of previously unrecognised significance:
  - (a) for local biota or the ecosystems and habitats of native species; or
  - (b) of the kind mentioned in paragraph 132 (1) (c) or (d) of the Act;

must give written notice of the discovery to the airport-lessee company for the airport and the airport environment officer.

Penalty: 50 penalty units.

- (1A) An offence against subregulation (1) is an offence of strict liability.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

**Regulation 4.06**

- (2) An airport-lessee company, or airport environment officer, receiving notice under subregulation (1) must:
  - (a) seek expert advice from an appropriate person on appropriate conservation measures (if any); and
  - (b) consult with the operator of the undertaking about reasonable means of giving effect to the recommended measures; and
  - (c) record the discovery in the environmental site register for the airport kept under subregulation 6.02 (3).
- (3) For subregulation (2), *appropriate person* means:
  - (a) the Department of the Environment, Sport and Territories; or
  - (b) a body established in the State in which the airport is located, having responsibilities in relation to conservation of local biota, habitat, heritage or kindred matters.

**Division 3                    Offensive noise**

**4.06            General duty to prevent offensive noise occurring**

- (1) The operator of an undertaking at an airport must take all reasonable and practicable measures:
  - (a) to prevent the generation of offensive noise from the undertaking; or
  - (b) if prevention is not reasonable or practicable — to minimise the generation of offensive noise from the undertaking.
- (2) Whether a measure is reasonable and practicable is a judgment to be made by an airport environment officer having regard to:
  - (a) the circumstances in which a particular noise is generated, and current standards in best-practice management of generation of noise in those circumstances; and
  - (b) the current state of technical knowledge about preventing, or minimising, excessive noise being generated from an undertaking of the kind being operated; and
  - (c) all measures that might practicably be used to prevent or minimise the excessive noise, and the probable benefits

**Regulation 4.09**

and detriments (if any) that should be expected from the implementation of each measure.

- (3) Failure to comply with subregulation (1) does not, of itself, constitute a contravention of these Regulations, but compliance may be enforced under regulation 7.03.

**4.07 Assumed compliance with general duty**

An operator of an undertaking at an airport is complying with subregulation 4.06 (1) if:

- (a) noise is generated from the undertaking that, under the guidelines in Schedule 4, is not regarded as offensive; or
- (b) noise is generated from the undertaking that, under the guidelines in Schedule 4, could be regarded as offensive, but that is not:
  - (i) if, under regulation 5.04 the Minister has approved a local standard for the airport — more than the acceptable limit set by that standard; or
  - (ii) if, under regulation 5.09, the operator is the holder of an authorisation:
    - (A) more than the acceptable limit (if any) set by the authorisation; or
    - (B) inconsistent with the authorisation.

**4.08 Duty — noisy, or potentially noisy, equipment**

The operator of an undertaking at an airport is not complying with subregulation 4.06 (1) if equipment, the use of which could result in offensive noise being generated from the undertaking:

- (a) is operated in a manner that is not proper and efficient; or
- (b) is not maintained in a proper and efficient condition.

**4.09 Duty — noise control equipment**

- (1) This regulation applies to equipment (**‘operating equipment’**) used by the operator of an airport undertaking, in carrying on the undertaking, if noise control equipment is:

**Regulation 4.09**

- (a) fitted to, or supplied with, the operating equipment when it is supplied to the operator; or
  - (b) specified or recommended for the operating equipment by the manufacturer or supplier.
- (2) The operator is not complying with subregulation 4.06 (1) when using the operating equipment unless:
- (a) it is fitted with the noise control equipment, or noise control equipment having comparable effect; and
  - (b) the noise control equipment is:
    - (i) maintained in proper and efficient condition; and
    - (ii) used effectively whenever the operating equipment is used.

## **Part 5                      Local standards and    individual authorisations**

### **Division 1                Local standards**

#### **5.01      Purpose**

The purpose of this Division is to enable flexibility in the administration of standards under these Regulations where, because of climatic, topographic and similar considerations peculiar to an airport, or to the region in which an airport is located, inflexibility would be unreasonable.

#### **5.02      Airport-lessee company may initiate consultations**

- (1) The airport-lessee company for an airport, if it considers, for the reason given in regulation 5.01, that a standard mentioned in a Schedule to these Regulations as an accepted limit of contamination or noise is inappropriate for application to the airport, may propose a substitute standard ('**local standard**').
- (2) Before determining an appropriate local standard, the airport-lessee company must:
  - (a) advertise, in a newspaper that has general circulation in the State in which the airport is located, the intention to make a determination; and
  - (b) allow interested persons a period of 90 days after publication of the advertisement to make written comment.
- (3) To determine an appropriate local standard, the airport-lessee company must:
  - (a) consider any comments made under paragraph (2) (b); and
  - (b) consult with:
    - (i) the body having, in the State in which the airport is located, responsibility for regulation of activities of the kind to which the standard applies; and

**Regulation 5.03**

- (ii) the Department of the Environment, Sport and Territories; and
- (iii) all persons who could be significantly affected by the substitution, if given effect.

**5.03      Application to Minister**

- (1) If, following consultation under regulation 5.02, an airport-lessee company determines an appropriate local standard, the airport-lessee company may apply to the Minister for approval of the local standard in substitution for the standard mentioned in a Schedule to these Regulations that is considered to be inappropriate.
- (2) An application must be in writing and must set out:
  - (a) the reasons for the proposed substitution; and
  - (b) the names of all persons consulted; and
  - (c) a detailed summary of the views of each person consulted.

**5.04      Determination of application**

- (1) An application for approval of a local standard must be decided by the Minister by:
  - (a) granting it; or
  - (b) granting it subject to any condition that the Minister considers appropriate; or
  - (c) refusing it.
- (2) When considering an application, the Minister must take into account:
  - (a) the views of the airport-lessee company and each person consulted by the company; and
  - (b) any relevant requirement, or standard, established under a law of the State in which the airport is located; and
  - (c) whether the local standard would be consistent, or inconsistent, with the objectives and proposed measures set out in the draft, or final, environment strategy, as the case may be; and

**Regulation 5.06**

- (d) the need to avoid inconsistency with national environment protection measures made under section 14 of the *National Environment Protection Council Act 1994*.
- (3) The Minister's decision must be based on expert environmental advice, and, for that purpose, the Minister may consult:
  - (a) Commonwealth and State bodies, or officers, having relevant expertise; and
  - (b) relevant independent experts.

**5.05 Notification of determination**

- (1) The Minister must:
  - (a) give an airport-lessee company applicant written notice of the decision under regulation 5.04 before the end of 30 days after receipt of the application; and
  - (b) if the decision is to grant approval — notify the decision in the *Gazette* before the end of 15 days after the decision.
- (2) If approval is refused, or is granted subject to a condition, the notice to the airport-lessee company must set out the reasons for the decision.
- (3) An approval begins to take effect on the day notification appears in the *Gazette*.

*Note* Under section 242 of the Act, application may be made to the Administrative Appeals Tribunal for review of the Minister's decision.

**Division 2 Authorisations**

**5.06 Effect of authorisation**

- (1) An authorisation authorises the person to whom it applies to observe the general objects of these Regulations by carrying out an act, or an act in the class of acts, or acts in a sequence of acts, mentioned in the authorisation, during the period for which the authorisation has effect.
- (2) For subregulation (1), *act* includes an omission and a failure to act.

**Regulation 5.07**

**5.07      Application for authorisation**

- (1) Application for an authorisation may be made, in writing, to an airport environment officer.
- (2) An application must set out:
  - (a) the name of the applicant; and
  - (b) the name of the airport concerned; and
  - (c) the act, class of acts or sequence of acts, for which the authorisation is sought; and
  - (d) any accepted limit under a Schedule that is intended to be exceeded, and the likely extent of the excess; and
  - (e) the reason why the authorisation is needed; and
  - (f) the period for which the authorisation is needed.
- (3) An application must be supported by an environment management plan detailing the actions that the applicant proposes to take, during the period for which the authorisation has effect:
  - (a) that the applicant expects will ensure that pollution emissions overall are not more environmentally damaging than would be the case if exact compliance with the accepted limits mentioned in the Schedules were achieved; or
  - (b) if the applicant believes the outcome described in paragraph (a) can be achieved only by incremental improvements over a greater period of time — to make satisfactory progress toward achievement of that outcome.
- (4) An airport environment officer may request the applicant, in writing, to provide further information, mentioned in the notice, that is reasonably necessary to enable the airport environment officer to determine the application.

**5.08      Certain applications to be advertised**

- (1) An application for an authorisation of any of the following kinds must be advertised in a newspaper that has general circulation in the State in which the airport concerned is located:
  - (a) an authorisation sought for a period longer than 90 days;

**Regulation 5.09**

- (b) an authorisation that, if granted, will allow an activity that is likely, in the opinion of the airport environment officer for the airport concerned, to have a significantly adverse material impact on another person;
  - (c) an authorisation that, if granted, will allow an activity that is likely, in the opinion of the airport environment officer, to generate pollution or noise in excess of an accepted limit under these regulations:
    - (i) frequently; or
    - (ii) repeatedly and protractedly.
- (2) The advertisement must include:
- (a) the information mentioned in subregulations 5.07 (2) in relation to the application; and
  - (b) the name and address of the airport environment officer; and
  - (c) details of the address of a place where, during normal business hours, a copy of the environment management plan mentioned in subregulation 5.07 (3) can be examined; and
  - (d) an invitation to make written submissions to the airport environment officer about the application; and
  - (e) mention of a period, being not less than 14 days after the date of publication of the advertisement, within which persons may make submissions.
- (3) The applicant for the authorisation must pay the reasonable costs of the advertisement, including the cost of preparing the advertisement.

**5.09 Determination of application**

- (1) An application for authorisation must be determined by an airport environment officer by:
- (a) granting it; or
  - (b) granting it subject to any condition that the airport environment officer considers appropriate; or
  - (c) refusing it.

**Regulation 5.09**

- (2) When considering an application, an airport environment officer must take into account:
- (a) any reasonable alternative actions available to the applicant to achieve the object of the proposed action, including the possibility that the undertaking concerned could be carried out in a different place; and
  - (b) whether the applicant has taken all reasonably available measures to avoid, or minimise, the need for an authorisation; and
  - (c) all reasonably likely consequences of the proposed action:
    - (i) for the health, safety, and, if a likely consequence is excessive noise, comfort, of any person; and
    - (ii) for any aspect of the environment; and
    - (iii) if air quality is likely to be adversely affected — for compliance with the ambient objectives mentioned in Part 2 of Schedule 1; and
  - (d) the period of time for which authorisation would, practically, be required; and
  - (e) the adequacy of the environment management plan under subregulation 5.07 (3) and the likelihood of the plan being realised; and
  - (f) whether the need for an authorisation is to enable remedial work to be carried out on existing airport-sourced pollution; and
  - (g) whether grant of the authorisation would be consistent, or inconsistent, with the objectives and proposed measures set out in the draft, or final, environment strategy, as the case may be; and
  - (h) whether grant of the authorisation would have a significant impact on the interests of another person; and
  - (i) if, under regulation 5.08, a submission is made about the application — the submission; and
  - (j) any other matter that the airport environment officer considers to be relevant.

*Note* A decision under this provision may have to take account of an environmental impact statement or public environment report, if any, under the *Environment Protection (Impact of Proposals) Act 1974*: see s. 8 of that Act.

**Regulation 5.12**

- (3) When considering the appropriateness of a conditional grant, the airport environment officer must:
  - (a) take into account any commitment that the applicant has given to prevent or minimise pollution or noise of the kind to which the authorisation will apply; and
  - (b) prefer, if practicable, a decision that will promote improved compliance by the applicant with these Regulations after the authorisation, if granted, ceases to have effect.

**5.10 Notification of decision**

- (1) An airport environment officer must give an applicant for an authorisation written notice of the decision under regulation 5.09:
  - (a) before the end of 30 days after receipt of the application; or
  - (b) if further information has been sought from the applicant — before the end of 30 days after the further information is given.
- (2) If the application is refused, or is granted subject to a condition, the notice must set out the reasons for the decision.

**5.11 Authorisation holder to comply with plan**

It is a condition of an authorisation that the holder of the authorisation complies with the plan referred to in subregulation 5.07 (3) submitted with the application for the authorisation.

**5.12 Duration of authorisations**

- (1) The period for which an authorisation has effect must be no longer than 3 years, and may be specified in any, or by more than one, of the following ways:
  - (a) by reference to the dates on which it begins and ends;
  - (b) by reference to a duration;
  - (c) by reference to the happening of an event;
  - (d) by specifying the acts authorised.

**Regulation 5.13**

- (2) The period for which an authorisation has effect cannot be extended beyond 3 years by a variation under regulation 5.16.

**5.13 Urgently required authorisations**

- (1) If, because of the urgency of the need for an authorisation, it is not practicable for an application for an authorisation to be made in writing, application may be made orally.
- (2) Subregulation 5.07 (2) and regulation 5.09 apply to an application under this regulation as if it were a written application.
- (3) An authorisation granted under this regulation has effect for a period of 48 hours, or any lesser period specified in the authorisation.
- (4) An applicant under this regulation must give the airport environment officer written confirmation of the application at the earliest reasonable opportunity.

**5.14 Notification to airport-lessee company**

Before the end of 2 days after granting a person an authorisation under this Part, an airport environment officer must:

- (a) make a written record of the authorisation; and
- (b) give a copy of the authorisation to the airport-lessee company for the airport concerned.

**5.15 Public notification**

- (1) If, in any period of 3 months ending on 31 March, 30 June, 30 September or 31 December, an authorisation is granted by an airport environment officer under this Part, he or she must publish notice of it in the *Gazette* before the end of 28 days after that date, together with notice to the effect that a copy of the authorisation can be inspected at the offices of the airport-lessee company for the airport concerned.

**Regulation 5.16**

- (2) If, in a year for which the Department publishes an annual report, an authorisation is granted under this Part, the Department must include notification of the authorisation in the report.
- (3) The validity of an authorisation is not affected by a failure to comply with this regulation.

**5.16 Authorisations may be varied or revoked**

- (1) Whether or not a request is received under subregulation (2), an airport environment officer, if satisfied that in all the circumstances it is proper to do so, may vary or revoke an authorisation.
- (2) An authorisation holder may request an airport environment officer, in writing, to vary the authorisation.
- (3) The request must set out:
  - (a) the act, or the class of acts, for which the variation is sought; and
  - (b) the reason why the variation is needed; and
  - (c) the period for which the variation is needed.
- (4) A variation or revocation that:
  - (a) is notified to the authorisation holder orally; and
  - (b) is declared by an airport environment officer to take effect immediately, in order to deal appropriately with an emergency;  
has effect only until the end of 48 hours after notification, unless notification is also given in writing before the end of that period.
- (5) Except as provided by subregulation (4), a variation or revocation is not effective until it is notified in writing to the authorisation holder.
- (6) In proceedings against a person under these Regulations, the fact that an authorisation has been varied or revoked must be disregarded if:
  - (a) the person is not the authorisation holder; and

**Regulation 5.17**

- (b) it is established that the person did not know, and could not reasonably be expected to have known, that the authorisation has been varied or revoked.
- (7) Regulations 5.08, 5.09 and 5.14 apply to a variation of an authorisation as if it were a grant of an authorisation.

**5.17 Annual report by holder**

The holder of an authorisation granted for a period longer than 1 year must give the airport environment officer who granted the authorisation (or that person's successor) a report for each year that the authorisation is in force, setting out:

- (a) details of the holder's performance in giving effect to the holder's plan under subregulation 5.07 (3); and
- (b) details of progress (if any) made in reducing the generation of pollution or noise that is generated in excess of the approved limit, under the Schedules, for pollution or noise of that kind; and
- (c) any failure by the holder to comply with the terms and conditions (if any) of the authorisation.

**5.18 Failure to comply with condition of authorisation**

- (1) This regulation applies to an operator of an airport undertaking who has been granted an authorisation, and who:
  - (a) contravenes a condition of the authorisation; or
  - (b) knows of a contravention of a condition of the authorisation.
- (2) The operator must report the contravention to an airport environment officer:
  - (a) before the end of 24 hours after the event; or
  - (b) if the operator learns of the contravention after the event — before the end of 24 hours after the operator learns of the event.
- (3) For subsection 132 (2) of the Act, the maximum number of penalty units for a contravention of subregulation (2) is 50 penalty units.

**Regulation 5.19**

*Note* See also Part 15 of the Act, which provides for the grant of injunctions for certain contraventions of the Act.

- (4) It is a defence to a prosecution that the defendant knew that the contravention had already been reported, in writing, to an airport environment officer.

*Note* A defendant bears an evidential burden in relation to whether he or she was knew that the contravention had already been reported, in writing, to an airport environment officer (see subsection 13.3 (3) of the *Criminal Code*).

**5.19 Authorisation may be transferred**

- (1) The holder of an authorisation under this Part may, when ownership of the undertaking to which the authorisation applies is being transferred to another person, assign the holder's interest in the authorisation to the other person if:
- (a) notice of the proposed assignment is given, in writing, to the airport environment officer for the airport concerned; and
  - (b) the airport environment officer is given a written acknowledgment by the transferee about the terms and any conditions of the authorisation; and
  - (c) at the end of 7 days after the airport environment officer has received the notice under paragraph (a) and the acknowledgment under paragraph (b)— the airport environment officer has indicated no objection to the assignment.
- (2) An authorisation cannot be assigned if an airport environment officer, being satisfied that in all the circumstances it is proper to do so, gives the holder written notice that assignment of the authorisation is not permitted.
- (3) For these Regulations, a person to whom an interest in an authorisation is validly assigned under this regulation becomes the holder of the authorisation.

**Regulation 5.19**

- (4) Before the end of 2 days after the end of the period within which the airport environment officer may indicate an objection, the airport environment officer must give a copy of the notice under paragraph (1) (a) and the acknowledgment under paragraph (1) (b) to the airport-lessee company for the airport.

## **Part 6                      Monitoring, reporting and    remedial action**

### **Division 1                Monitoring and reporting**

#### **6.01      Existing pollution to be reported**

- (1) An airport environment officer for an airport may direct the occupier of an area at the airport, in writing, to give to the airport environment officer a copy of any information held by, or available to, the occupier relating to that part of the airport site, that discloses:
  - (a) former uses of the land, and other activities of the occupier or a previous occupier; and
  - (b) when a matter disclosed under paragraph (a) occurred; and
  - (c) the manner in which a former land use, or other activity, was undertaken; and
  - (d) how waste, or any other material requiring to be disposed of, was disposed of; and
  - (e) if any part of the land is contaminated by pollution, the character and extent of the contamination; and
  - (f) any known impact of pollution generated on the site of the undertaking:
    - (i) on the site; and
    - (ii) outside the site.
- (3) A direction must be complied with before the end of 3 months after its receipt.

Penalty: 50 penalty units.
- (4) The airport environment officer must give a copy of the information to the airport-lessee company for the airport.

Penalty: 10 penalty units.
- (4A) It is a defence to a prosecution under subregulation (4) that the information was provided by the airport-lessee company.

**Regulation 6.02**

*Note* A defendant bears an evidential burden in relation to whether the information was provided by the airport-lessee company (see subsection 13.3 (3) of the *Criminal Code*).

- (5) Information given under this regulation cannot be used as evidence in proceedings, against the person giving the information, for an apparent offence under these Regulations (except an offence under this regulation).
- (6) In this regulation:
  - occupier** of an area at an airport means:
    - (a) if the area is not subject to a sublease or licence subordinate to the relevant airport lease — the airport-lessee company; or
    - (b) if the area is subject to such a sublease or licence — the person having the right to occupy the area under:
      - (i) the sublease or licence; or
      - (ii) any lease or licence subordinate to the sublease or licence.

**6.02 Airport-lessee company to monitor pollution levels**

- (1) An airport-lessee company must monitor, in accordance with its environment strategy:
  - (a) the levels of pollution, if any, present in air, water or soil at the airport; and
  - (b) the level of noise generated at the airport.
- (2) Monitoring must be carried out:
  - (a) in a way that is consistent with the specification, in the environment strategy, of studies, reviews and monitoring, as affected by regulation 3.09; and
  - (b) under the direction of a person having the qualifications addressed under paragraph 3.09 (d); and
  - (c) if it involves testing — in accordance with regulation 1.08; and
  - (d) in a way that is not inconsistent with:
    - (i) any international convention, treaty or agreement, relating to environment protection, to which Australia is a party; or

**Regulation 6.02**

- (ii) a provision of national environment protection measures made under section 14 of the *National Environment Protection Council Act 1994*.
- (3) The airport-lessee company must keep a written record of the environmental condition of the airport and its environmental management generally (the ‘**environmental site register**’), including:
- (a) the results of monitoring, under this Division; and
  - (b) any information or report received under subregulation 6.01 (4), paragraph 6.05 (1) (b) or subregulation 6.08 (4); and
  - (c) details of any remedial plan under regulation 6.14 for an area of the airport, and of any reports under regulation 6.15 in relation to a plan; and
  - (d) details of the nature, date and place of any occurrence of environmental significance (detrimental or beneficial) at the airport.

*Note 1* For meaning of **writing**, see *Acts Interpretation Act 1901*, s. 25.

*Note 2* Paragraph 4.05 (2) (c) requires a report of a cultural discovery to be entered in the environment site register.

- (4) In this regulation, **environment strategy** means the airport-lessee company’s final environment strategy or, if there is not yet a final environment strategy in force for the airport, the draft environment strategy submitted to the Minister under section 120 of the Act.
- (5) An airport-lessee company that fails to comply with this regulation commits an offence.

Penalty: 50 penalty units.

- (6) An offence against subregulation (5) is an offence of strict liability.

*Note* For **strict liability**, see section 6.1 of the *Criminal Code*.

**Regulation 6.03**

**6.03 Annual report**

- (1) The airport-lessee company for an airport must give the Secretary a report for each financial year, or another reporting period that the Secretary determines, containing:
  - (a) information, mentioned in paragraph 6.02 (3), added to the environmental site register for the preceding year; and
  - (b) details of the company's performance in achieving the policies and targets of the environment strategy and, in particular, of the company's progressive management of enduring environmental pollution problems at the airport; and
  - (c) a report of incidents of pollution and other contraventions of the regulations that have occurred during the year to which the report applies.
- (2) The airport-lessee company must give its report for a reporting period to the Secretary not later than 120 days after the end of the reporting period.

**6.04 Additional reporting requirements**

- (1) If monitoring discloses pollution, or excessive noise, occurring, the airport-lessee company must give an airport environment officer for the airport, within 14 days, a written report setting out:
  - (a) the nature of the pollution, or excessive noise; and
  - (b) the location of the affected environment; and
  - (c) the date, and time, when the pollution, or excessive noise, occurred, or is likely to have occurred; and
  - (d) details of remedial action the airport-lessee or any other person has taken, or is taking, to prevent or minimise the pollution, or noise, and its recurrence.
- (2) If monitoring discloses that there is present in air, water or land at the airport, a pollutant in a quantity or concentration that indicates non-compliance by the operator of an undertaking with the operator's general duty under Part 4, the airport-lessee company must give an airport environment officer for the airport, within 14 days, a written report setting out:
  - (a) the nature of the pollution; and

**Regulation 6.05**

- (b) the location of the pollution; and
  - (c) details of remedial action the airport-lessee company or any other person has taken, or is taking, to minimise the pollution.
- (3) An airport-lessee company that fails to comply with this regulation commits an offence.

Penalty: 50 penalty units.

- (4) An offence against subregulation (3) is an offence of strict liability.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

**6.05 Duties of sublessees and licensees**

- (1) To ensure effective monitoring under subregulation 6.02 (1), an occupier of part of an airport site must give all reasonable assistance to the airport-lessee company for the airport, including:
- (a) establishing and maintaining its own appropriate system, or systems, of monitoring the environmental consequences of:
    - (i) its activities; and
    - (ii) the activities of other persons in the area occupied; and
  - (b) reporting to the airport-lessee company the results of the monitoring.
- (2) An occupier must give the airport-lessee company, at any reasonable time, and after a request in writing, any access the airport-lessee company reasonably requires:
- (a) to the area, or part of the area, occupied; or
  - (b) to a document, or part of a document, under the control of the occupier.
- (3) At the request of an airport-lessee company, if the Secretary is satisfied that an occupier is not complying with subregulation (1) or (2), the Secretary may direct the occupier, in writing, to so comply.

**Regulation 6.06**

- (4) An occupier receiving a direction under subregulation (3) must:
- (a) comply with the direction; and
  - (b) if a period is specified in the direction — comply before the end of the period.

Penalty: 50 penalty units.

- (5) In this regulation, *occupier* means a person having a right of occupation of part of the airport site under:
- (a) a sublease, or licence, granted by the airport-lessee company for premises, or an undertaking, at the airport; or
  - (b) any lease, or licence, subordinate to a sublease or licence described in paragraph (a).

**6.06 Inaccurate or incomplete information to be corrected**

- (1) This regulation applies to a person:
- (a) that gives information, in a report or otherwise, under a provision of this Division and becomes aware that the information is inaccurate or incomplete; or
  - (b) that is the operator of an airport undertaking, is aware that information has been given on its behalf under regulation 6.01 or 6.05, and becomes aware that the information is inaccurate or incomplete.
- (2) The person must give the Secretary, the airport environment officer or the airport-lessee company, as appropriate, a completed or corrected report, as the case requires, without delay.

Penalty: 50 penalty units.

**Division 2 Airport environment officer  
assessment of soil pollution**

**6.07 Duty to assess soil condition**

- (1) The condition of soil in an area of an airport must be assessed by an airport environment officer for the airport if:
- (a) the airport environment officer has reason to suspect that:

**Regulation 6.07**

- (i) the soil in the area is contaminated by a pollutant mentioned in column 2 of table 1 in Schedule 3 in a way that causes an effect described in subregulation 2.03 (1); or
    - (ii) contamination in the soil by a pollutant mentioned in column 2 of table 1 in Schedule 3 is possibly migrating to another place where it is causing an effect described in subregulation 2.03 (1); or
  - (b) the soil, being in an area specified under paragraph 116 (2) (b) or (3) (b) of the Act as an area of environmental significance, is possibly contaminated by a pollutant mentioned in column 2 of table 2 in Schedule 3 in a way that causes an effect described in subregulation 2.03 (1); or
  - (c) the soil is in an area of land that:
    - (i) is likely to have previously experienced some pollution; and
    - (ii) is subject to a sublease or licence that is about to expire or is proposed to be terminated or transferred; or
  - (d) the soil is in area of land that is affected by a proposed change of use, under a final master plan for the airport, of a kind described in subregulation (2).
- (2) A change of use to which paragraph (1) (d) applies is a change that necessitates greater environmental protection measures because the use will result in the land being used in a way, or for a purpose, that will, or is reasonably likely to, cause greater harm:
- (a) to an aspect of the environment; or
  - (b) to the health, safety or, in any respect, the welfare of, human beings.
- (3) For paragraph (1) (c), the sublessee or licensee must give an airport environment officer for the airport, at least 2 months before the expected occurrence of the event mentioned in subparagraph (1) (c) (ii), a written report of an expert investigation of the condition of soil in the area of the sublease or licence.

**Regulation 6.08**

Penalty: 20 penalty units.

- (4) In this regulation, *sublease or licence* means:
- (a) a sublease, or licence, granted by the airport-lessee company for premises, or an undertaking, at the airport; or
  - (b) any lease, or licence, subordinate to a sublease or licence described in paragraph (a).

**6.08 Assessment of contamination of soil**

- (1) An airport environment officer making an assessment under paragraph 6.07 (1) (a) or (b) must:
- (a) test, in accordance with regulation 1.08, samples of soil or groundwater that will indicate whether or not soil contamination has occurred; and
  - (b) make a written record of the result of the test.
- (1A) However, for subregulation (1), an airport environment officer need not carry out a test if:
- (a) a test of the same kind has been carried out by another person; and
  - (b) that test was in accordance with regulation 1.08; and
  - (c) there is a written record of the result of that test; and
  - (d) the airport environment officer believes it is reasonable to rely on the result of that test.
- (2) A test result that shows:
- (a) the presence of a polluting substance mentioned in column 2 of the applicable table in Schedule 3 at, or greater than, the trigger level mentioned for the substance in column 3 of the table; or
  - (b) that the pH of the soil is outside the range 6 to 8;  
indicates contamination of the soil requiring the airport environment officer to make a decision under subregulation (3).
- (3) If testing indicates contamination of the soil, the airport environment officer must decide whether:

**Regulation 6.09**

- (a) measures being taken by the occupier of the affected site are likely to manage, or mitigate the effect of, the indicated contamination; or
- (b) because of the possibility that the contamination is causing, or could cause, an effect described in subregulation 2.03 (1) — a conclusive expert examination of the site is necessary.

*Note* Subject to Part 18 of the Act, an authorised officer for that Part (who could be an airport environment officer, or a person employed or engaged by an airport environment officer) may take samples of soil and groundwater.

- (4) A copy of the record of the result of the test, and of the airport environment officer's decision, must be given to the airport-lessee company.

**6.09 Expert site examination**

- (1) An airport environment officer who is making an assessment, under subregulation 6.07 (1), of the condition of soil in an area of an airport, or who has decided, under subregulation 6.08 (3), that an area of an airport site requires expert examination, may direct the occupier of the area, in writing, to arrange an examination of the area.
- (2) An occupier receiving a direction must appoint:
  - (a) a site investigator who has qualifications and experience appropriate to the nature of the examination; and
  - (b) an assessor.

Penalty: 50 penalty units.

- (3) At the request of an occupier, an airport environment officer must give the occupier a list of persons who, under regulation 6.10, are eligible to be appointed as an assessor.
- (4) Before the end of 2 months after the airport environment officer's direction is received, or any longer period allowed, in writing, by the airport environment officer, an examination by the site investigator must be completed and a written report of the examination given to the assessor.

**Regulation 6.10**

- (5) Before the end of 2 months after the assessor receives a report under subregulation (4), the assessor must give to the airport environment officer a written report on the site investigator's report.
- (6) In this regulation:  
*occupier* of an area at an airport means:
  - (a) if the area is not subject to a sublease or licence subordinate to the relevant airport lease — the airport-lessee company; or
  - (b) if the area is subject to such a sublease or licence — the person having the right to occupy the area under:
    - (i) the sublease or licence; or
    - (ii) any lease or licence subordinate to the sublease or licence.

**6.10 Eligible persons to be appointed assessor**

- (1) For regulation 6.09, an assessor may only be a person nominated by the Secretary, or a person in a class of persons nominated by the Secretary, as eligible for appointment in the State in which the airport is located.
- (2) A person suitable for nomination by the Secretary is:
  - (a) a person who, because of his or her qualifications or employment, is recognised in the State in which the airport is located as having expertise in environmental protection issues; or
  - (b) if a person of the kind described in paragraph (a) is not available — a person who, because of his or her qualifications or employment, is recognised in another State as having expertise in environmental protection issues.
- (3) The Secretary must ensure that an airport environment officer for an airport is aware of the persons, and classes of persons, that the Secretary has nominated as eligible for appointment in the State in which the airport is located.

**Regulation 6.12**

**6.11 Conduct of examination**

- (1) A site investigator must not carry out an examination under regulation 6.09, until:
  - (a) he or she has given to the appointed assessor a detailed outline of the proposed manner and scope of the examination; and
  - (b) the assessor has approved the outline.
- (2) An assessor must give the site investigator written notice approving, or refusing to approve, an outline before the end of 7 days after receiving the outline.
- (3) An examination must:
  - (a) have regard to the history of the examination site as an area of the airport concerned, and take full account of changes to the state of contamination of soil in the area; and
  - (b) have regard to items 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6 of 'Australian Guidelines for the Assessment and Management of Contaminated Sites (1992)' published jointly by the Australian and New Zealand Environment and Conservation Council and the National Health and Medical Research Council.

**6.12 Site investigator's report**

A report of a site investigator under subregulation 6.09 (4) must address at least:

- (a) the potential beneficial uses of the area under examination, having regard to the final master plan (if any) for the airport concerned; and
- (b) in relation to a pollutant of particular concern — the background level of other pollutants in the area; and
- (c) in relation to a pollutant of particular concern — the level of pollution mentioned in Schedule 3 as the accepted level; and
- (d) in relation to a pollutant of particular concern — the potential impact of the pollutant on soil and groundwater in the area of examination, and elsewhere.

**Regulation 6.13**

**6.13 Assessor's report**

- (1) A report of an assessor under subregulation 6.09 (5) must address at least whether, in the opinion of the assessor, having regard to the site investigator's report:
  - (a) soil pollution has occurred; and
  - (b) the pollution is sufficient, in the area examined, to inhibit viable development of a beneficial use, within the meaning of subregulation 2.03 (1); and
  - (c) the pollution is localised in a way that could enable development of a beneficial use, within the meaning of subregulation 2.03 (1), to occur in the area examined.

*Note* Soil pollution is defined in subregulation 2.03 (1).
- (2) If the assessor believes there is soil pollution, the report must identify:
  - (a) the polluting substance or substances; and
  - (b) the likely cause or causes of the pollution; and
  - (c) the source, or likely source, of the pollution.

**Division 3 Remedial plan for soil pollution**

**6.14 Occupier may prepare remedial plan**

- (1) An occupier of an area, at an airport, that is reported, under regulation 6.13, to be the source, or likely source, of soil pollution, may submit to the airport environment officer for the airport a plan for cleaning up, remedying or rectifying the pollution, as appropriate.
- (2) The plan must be developed in consultation, and agreement, with the assessor who has reported the pollution, regarding:
  - (a) if the plan is for cleaning up — the soil quality standards that can reasonably be achieved, and a timetable for a clean up that will:
    - (i) end migration of pollution from the area occupied (if that is occurring) within the shortest time reasonably practicable; and

**Regulation 6.15**

- (ii) restore all affected potential beneficial uses, within the meaning of subregulation 2.03 (1), before the occupier ceases occupation; and
  - (iii) restore all beneficial uses, within the meaning of subregulation 2.03 (1), of subterranean groundwater (if any) before the occupier ceases occupation; or
- (b) otherwise — an appropriate risk management program that will, at least:
  - (i) end migration of pollution from the area occupied (if that is occurring) within the shortest time reasonably practicable; and
  - (ii) ensure that any ongoing effects of the pollution are minimised.
- (3) The airport environment officer must, before the end of 30 days after receipt of the plan:
  - (a) approve or refuse to approve the plan; and
  - (b) give the applicant written notice of the decision; and
  - (c) if the decision is a refusal — mention in the notice the reasons for refusal.
- (4) In this regulation:
  - occupier*** of an area at an airport means:
    - (a) if the area is not subject to a sublease or licence subordinate to the relevant airport lease — the airport-lessee company; or
    - (b) if the area is subject to such a sublease or licence — the person having the right to occupy the area under:
      - (i) the sublease or licence; or
      - (ii) any lease or licence subordinate to the sublease or licence.

**6.15 Reporting of plan**

- (1) Until a plan has achieved its objectives, the occupier must give an airport environment officer for the airport concerned a report of progress under the plan:
  - (a) at 6 monthly intervals; and

**Regulation 6.16**

- (b) if the occupier is ceasing occupation of the area to which the plan applies — before ceasing occupation.
- (2) When a plan has achieved its objectives, in the opinion of the occupier, the occupier must give an airport environment officer for the airport concerned a report giving details of the achievement of the objectives.
- (3) A report under subregulation (1) or (2) must be accompanied by a copy of the results of any test or other monitoring exercise carried out with the intention of ascertaining progress under the plan.

**6.16 Duty of airport environment officer to monitor plan**

An airport environment officer who approves a remedial plan must monitor the implementation of the plan.

**Division 4 Remedial work: powers of airport environment officer**

**6.17 Interpretation**

In this Division:

*remedial work*, at an airport site, includes any action taken for any of the following purposes:

- (a) to find out whether there is pollution on, or in connection with, the airport;
- (b) to find out the nature, cause and extent of any pollution;
- (c) to find out the nature and extent of the effects of any pollution;
- (d) to identify measures likely to prevent, reduce or control any pollution or its effects;
- (e) to identify the effects of measures taken to prevent, reduce or control any pollution or its effects;
- (f) to prevent, reduce or control any pollution or its effects (for example, by fixing or adjusting equipment, or by removing a pollutant);

**Regulation 6.18**

- (g) in accordance with an order under regulation 6.18 — to tell members of the public (whether or not present at the airport concerned) about the existence or effects of such pollution and about measures taken, or being taken, to prevent, reduce or control it;

and includes anything reasonably incidental to any of those actions, such as taking measurements and samples, making recordings or analyses and preparing reports, plans or drawings.

**6.18 Power to order remedial work**

- (1) If an airport environment officer believes, on reasonable grounds, that a person (**‘the polluter’**), has caused, or is causing, pollution at an airport the airport environment officer may make an environmental remedial order, in writing, directing a person to carry out specified remedial work in respect of the pollution.
- (2) The person so directed may be:
  - (a) the polluter; or
  - (b) if the polluter is unidentifiable, beyond jurisdiction or known to be insolvent — the operator of the undertaking that occupies, or occupied, the site on which the pollution occurred; or
  - (c) if both the polluter and the operator are unidentifiable, beyond jurisdiction or known to be insolvent — the lessor or licensor for the site on which the pollution is occurring, or occurred; or
  - (d) if all of the polluter, the operator, and the lessor or licensor are unidentifiable, beyond jurisdiction or known to be insolvent, and the lessor or licensor is not the airport-lessee company — the airport-lessee company.
- (3) However, if the occupier of the area that is the source or likely source of the pollution has submitted a remedial plan for the pollution under regulation 6.14, and is carrying out the plan according to its terms, the airport environment officer must not make an order under subregulation (1) directing the occupier to carry out remedial work.

**Regulation 6.19**

- (4) To avoid doubt, in the application of paragraphs 2 (b), (c) and (d) to pollution that is no longer occurring:
- (a) references in those paragraphs to the undertaking include the undertaking at the time the pollution occurred and any undertaking that has subsequently occupied the site; and
  - (b) references in those paragraphs to the operator of the undertaking include the operator of the undertaking that occupied the site at the time the pollution occurred and the operator of any undertaking that has subsequently occupied the site.
- (5) In subregulation (2), *lessor or licensor* means the lessor or licensor of the area that is the location, or source, of the pollution.
- (6) An order may specify a period of time within which the remedial work must be undertaken.
- (7) An order may be served even though:
- (a) a prosecution or other proceeding in relation to the pollution has been commenced; or
  - (b) the undertaking is not operating at the time the notice is served; or
  - (c) the undertaking is not causing further pollution of the kind to which the notice relates at the time it is served; or
  - (d) the pollution occurred, or is occurring, because of something done before these regulations commenced.
- (8) A person who receives an order under this regulation must comply with the order.

Penalty for contravention of this subregulation: 50 penalty units.

**6.19 Power to enter and perform remedial work**

- (1) At any reasonable time an airport environment officer or an authorised person may enter an area of the airport occupied by an undertaking at the airport and carry out necessary environmental remedial work if:

**Regulation 6.19**

- (a) the operator of the undertaking has been given an order under regulation 6.18 requiring it to carry out remedial work, but the work has not been carried out to the satisfaction of the airport environment officer:
    - (i) within the period stated for the purpose in the notice;  
or
    - (ii) if no period is stated — within a reasonable period;  
or
  - (b) the airport environment officer believes, on reasonable grounds, that because of circumstances of urgency, or in the interests of public health or safety, it is necessary to enter the area and carry out the work.
- (2) For subregulation (1), *authorised person* means a person engaged by an airport environment officer to carry out the necessary environmental remedial work.
- (3) Subregulation (1) applies even if:
- (a) the pollution occurred before these Regulations commenced; or
  - (b) the pollution occurred, or is occurring, because of something done before these Regulations commenced.
- (4) Remedial work that may be carried out under this regulation is not limited to remedial work specified in the order mentioned in paragraph (1) (a).

**Regulation 7.01**

## **Part 7                    Enforcement**

### **Division 1                Environment protection orders**

#### **7.01            Pollution**

- (1) An airport environment officer may make an environment protection order directing the operator of an undertaking at an airport, in writing:
  - (a) to comply with a duty under regulation 4.01, by taking a particular action:
    - (i) to prevent, or minimise, the generation of pollution; or
    - (ii) to capture generated pollution; or
  - (b) to cease generating a pollutant of a type, or at a level, in relation to which a duty under that regulation does not otherwise arise.
- (2) The airport environment officer must not make an order under subregulation (1) unless he or she:
  - (a) finds:
    - (i) the undertaking is creating, or contributing to, a level of environmental pollution that is likely to become harmful or offensive; and
    - (ii) the operator is not taking all measures that are reasonable and practicable to ensure that the undertaking ceases to generate the pollution; and
  - (b) gives the operator at least 48 hours in which to make a submission to the airport environment officer, or an officer authorised for the purpose of this regulation, and takes account of any submission made by the operator.
- (3) Paragraph (2) (b) does not apply to an order that the airport environment officer declares to be an emergency environment protection order.

**Regulation 7.03**

**7.02 Preservation of habitat, etc**

- (1) An airport environment officer may make an environment protection order directing the operator of an undertaking at an airport, in writing, to comply with a duty under regulation 4.04 by taking a particular action to avoid, or minimise, a particular adverse consequence.
- (2) The airport environment officer must not make an order under subregulation (1) unless he or she:
  - (a) finds that the operator is not taking all measures that are reasonable and practicable to ensure that the undertaking avoids, or minimises, the adverse consequence; and
  - (b) gives the operator at least 48 hours in which to make a submission to the Secretary, or an officer authorised for the purpose of this regulation, and takes account of any submission made by the operator.
- (3) Paragraph (2) (b) does not apply to an order that the Secretary declares to be an emergency environment protection order.

**7.03 Excessive noise**

- (1) An airport environment officer may make an environment protection order directing the operator of an undertaking at an airport, in writing, to comply with a duty under regulation 4.06 by taking a particular action to minimise the generation of excessive noise.
- (2) The airport environment officer must not make an order under subregulation (1) unless he or she:
  - (a) finds that the operator is not taking all measures that are reasonable and practicable to ensure that the undertaking ceases to generate noise that is excessive; and
  - (b) gives the operator at least 48 hours in which to make a submission to the Secretary, or an officer authorised for the purpose of this regulation, and takes account of any submission made by the operator.
- (3) Paragraph (2) (b) does not apply to an order that the Secretary declares to be an emergency environment protection order.

**Regulation 7.04**

**7.04      Order must not conflict with authorisation**

An airport environment officer must not make an order under subsection 7.01 (1) or 7.03 (1) if:

- (a) the order relates to an action, or thing, for which an authorisation under Part 5, has been granted; and
- (b) compliance with the order would be inconsistent with the authorisation.

**7.05      Compliance with order**

- (1) An operator of an undertaking who is given an order under regulation 7.01, 7.02 or 7.03 must:

- (a) comply with the order; and
- (b) if a period is specified in the order — comply before the end of the period.

*Note* An operator of an undertaking that fails to comply with this regulation commits an offence against subsection 132 (2) of the Act. That subsection provides for a penalty of 250 penalty units for each such offence.

- (2) For subsection 132 (2) of the Act, the maximum number of penalty units for a contravention of subregulation (1) is 250 penalty units.

*Note* See also Part 15 of the Act, which provides for the grant of injunctions for certain contraventions of the Act.

**7.06      Compliance with condition of authorisation**

- (1) If an airport environment officer considers that the holder of an authorisation under Part 5 is not complying with a condition of the authorisation, the airport environment officer may:
  - (a) direct the holder, by an environment protection order, given in writing, to comply with the condition; and
  - (b) if the airport environment officer thinks it necessary — to comply by taking a particular action to minimise the generation of pollution, or excessive noise, as the case may be.
- (2) The holder must:
  - (a) comply with the order; and

**Regulation 7.06**

- (b) if a period is specified in the order — comply before the end of the period.

*Note* An operator of an undertaking that fails to comply with this regulation commits an offence against subsection 132 (2) of the Act. That subsection provides for a penalty of 250 penalty units for each such offence.

- (3) An authorisation ceases to have effect if:
  - (a) the holder fails to comply with the order; and
  - (b) is given a notice under subregulation (4).
- (4) An airport environment officer must give the holder written notice that the authorisation has ceased to have effect as soon as:
  - (a) the airport environment officer finds that the direction is not being complied with; and
  - (b) if the direction allows a period within which compliance must occur — the period has expired.
- (5) For subsection 132 (2) of the Act, the maximum number of penalty units for a contravention of subregulation (2) is 250 penalty units.

*Note* See also Part 15 of the Act, which provides for the grant of injunctions for certain contraventions of the Act.

**Regulation 8.01**

## **Part 8                    General penalty provisions**

### **Division 1                Continuing offences**

#### **8.01            Continuing offences**

For the purposes of section 4K of the *Crimes Act 1914*, a requirement in a provision of Part 6 or Part 7 to do, or not do, an act or thing is a requirement that arises every day and is to be complied with on that day.

### **Division 2                Infringement notices**

#### **8.02            Purpose of this Division**

The purpose of this Division is to provide a procedure under which a person who is alleged to have committed an offence against Part 6 of the Act or these regulations may, as an alternative to having the matter dealt with by a court, dispose of the matter by payment of a monetary penalty (an **‘infringement notice penalty’**) specified in a notice (an **‘infringement notice’**) served on the person.

#### **8.03            Infringement notices**

- (1) If an airport environment officer believes, on reasonable grounds, that a person has committed an offence against these regulations, the airport officer may serve an infringement notice, or cause an infringement notice to be served, on the person.
- (2) The notice must set out the following information:
  - (a) the name and address of the person served;
  - (b) the provision of these regulations that it is alleged has been contravened;
  - (c) details of the alleged offence, including:
    - (i) the day, and (if appropriate) the time, on which it is alleged to have been committed; and

**Regulation 8.03**

- (ii) the place at which it is alleged to have been committed;
- (d) the maximum penalty that may be imposed by a court for the offence;
- (e) the amount payable as the infringement notice penalty;
- (f) a statement that, if the person prefers that the matter not be dealt with by a court, he or she may signify that preference by paying the infringement notice penalty:
  - (i) before the end of 28 days after the day the notice is served; or
  - (ii) if a further period is allowed by an airport environment officer under regulation 8.04 — before the end of that further period; or
  - (iii) if payment by instalments is permitted under regulation 8.05 — in accordance with the permission;
- (g) how, and where, the infringement notice penalty may be paid;
- (h) a statement that if, before the end of 28 days after service of the notice, the person notifies the Secretary, in the manner set out in the infringement notice, of any facts or matters that the person believes ought to be taken into account in relation to the alleged offence, time for payment of the penalty will be extended to the extent necessary to enable a decision to be made in relation to those facts or matters;
- (i) a statement that, if the infringement notice penalty is paid in time:
  - (i) the person's liability in respect of the offence is discharged; and
  - (ii) further proceedings cannot be taken against the person for the offence; and
  - (iii) the person is not taken to have been convicted of the offence;
- (j) a statement to the effect that, if none of the things mentioned in paragraph (f) or (h) is done within the time specified, the person may be prosecuted in relation to the alleged offence;

**Regulation 8.04**

(k) the name of the airport environment officer by whom the notice is served.

- (3) An infringement notice may contain any other information that the airport environment officer considers necessary.
- (4) The notice must be served on the person not more than 12 months after the alleged commission of the offence.

*Note* The infringement notice penalty in respect of an offence is set at one-fifth of the maximum fine that a court could impose for the offence — see Act, s. 138 (2).

**8.04      Extension of time to pay**

- (1) On written application by a person on whom an infringement notice has been served, the Secretary or an airport environment officer may permit, if satisfied that in all the circumstances it is proper to do so, a further period for payment of the infringement notice penalty, whether or not the period of 28 days after the date of service of the notice has ended.
- (2) If application is made after the end of the 28 day period, the application must include an explanation why the alleged offender could not deal with the notice within that period.
- (3) The Secretary or airport environment officer must:
- (a) grant or refuse a further period; and
  - (b) give the applicant written notice of the decision; and
  - (c) if the decision is a refusal — mention in the notice the reasons for refusal.
- (4) The person must pay the penalty:
- (a) if a further period is granted — before the end of that period; or
  - (b) if the decision is a refusal — before:
    - (i) the end of a period 7 days after receiving notice of the refusal; or
    - (ii) the end of the period of 28 days after the date of service of the notice;whichever event occurs later.

**Regulation 8.06**

**8.05 Payment by instalments**

- (1) If the Secretary, or an airport environment officer, is satisfied that in all the circumstances it is proper to do so, he or she may make an arrangement with a person on whom an infringement notice has been served (whether or not the period of 28 days after the date of service of the notice has ended) for the payment of the amount of the infringement notice penalty by instalments.
- (2) The Secretary or airport environment officer must:
  - (a) grant or refuse to make an arrangement; and
  - (b) give the applicant written notice of the decision; and
  - (c) if the decision is a refusal — mention in the notice the reasons for refusal.
- (3) The person must pay the penalty:
  - (a) if an arrangement is made — in accordance with the arrangement; or
  - (b) if the decision is a refusal — before the end of the later of:
    - (i) the 28 day period; and
    - (ii) the period of 7 days following receipt of notice of the refusal.

**8.06 If infringement notice disputed**

- (1) Whether or not a notice is received under subregulation (2), the Secretary, if satisfied that in all the circumstances it is proper to do so, may withdraw an infringement notice.
- (2) If, before the end of 28 days after receiving an infringement notice, a person gives the Secretary notice under paragraph 8.03 (2) (h), the Secretary must decide whether to withdraw the infringement notice.
- (3) The Secretary must:
  - (a) withdraw, or refuse to withdraw, the notice; and
  - (b) give the applicant written notice of the decision; and
  - (c) if the decision is a refusal — mention in the notice the reasons for refusal.

**Regulation 8.07**

- (4) If the Secretary decides to refuse to withdraw an infringement notice, notice of that decision must state:
  - (a) that if the amount of the infringement notice penalty is paid within 28 days after notice of the decision is given to the person, the person will not be prosecuted for the alleged offence; and
  - (b) that if that amount is not so paid, the person may be prosecuted for the alleged offence.
- (5) In making a decision, the Secretary must consider:
  - (a) the facts or matters set out in the notice (if any) given under paragraph 8.03 (2) (h); and
  - (b) the circumstances in which the offence mentioned in the notice is alleged to have been committed; and
  - (c) whether the person has been convicted previously of an offence against these Regulations; and
  - (d) whether an infringement notice has previously been given to the person for an offence of the same kind as the offence mentioned in the notice; and
  - (e) any other matter the Secretary considers relevant to the decision.

**8.07        Payment of penalty if infringement notice not withdrawn**

If the Secretary refuses to withdraw an infringement notice, the applicant for withdrawal must pay the infringement notice penalty before the end of 28 days after receiving notice of the refusal.

**8.08        Effect of payment of infringement notice penalty**

- (1) If a person served with an infringement notice pays the infringement notice penalty in accordance with this Division:
  - (a) the person's liability in respect of the offence is discharged; and
  - (b) further proceedings cannot be taken against the person for the offence; and
  - (c) the person is not convicted of the offence.

**Regulation 8.12**

- (2) Subregulation (1) applies to a person who makes an arrangement to pay the infringement notice penalty by instalments, only if the person makes payments in accordance with the arrangement.

**8.09 Admissions under paragraph 8.03 (2) (h)**

Evidence of an admission made by a person in a notice under paragraph 8.03 (2) (h) is inadmissible in proceedings against the person for the alleged offence.

**8.10 Matter not to be taken into account in determining sentence**

- (1) This regulation applies if a person served with an infringement notice:
- (a) elects not to pay the infringement notice penalty; and
  - (b) is prosecuted for, and convicted of, the alleged offence mentioned in the infringement notice.
- (2) In determining the penalty to be imposed, the court must not take into account the fact that the person chose not to pay the infringement notice penalty.

**8.11 Refund of infringement notice penalty if notice withdrawn**

If an infringement notice penalty is paid in accordance with an infringement notice that is subsequently withdrawn, an airport environment officer must arrange for payment of an amount equal to the amount so paid, in refund to the person who paid the penalty.

**8.12 Evidence for hearing**

- (1) At the hearing of a prosecution for an alleged offence specified in an infringement notice, a certificate signed by an airport environment officer and stating:
- (a) that the infringement notice was duly served on the alleged offender; and

**Regulation 8.13**

(b) that the infringement notice penalty has not been paid in accordance with this Division;  
is evidence of those facts.

- (2) At the hearing of a prosecution for an alleged offence specified in an infringement notice, a certificate signed by an airport environment officer and stating that the notice was withdrawn on a day specified in the certificate is evidence of that fact.
- (3) A certificate that purports to have been signed by an airport environment officer is taken to have been signed by that officer unless the contrary is proved.

**8.13      Payment of penalty by cheque**

If a cheque is given to the Commonwealth in payment of all or part of the amount of an infringement notice penalty, the payment is taken not to have been made unless the cheque is honoured on presentation.

**8.14      Infringement notice not compulsory, etc**

Nothing in this Division is to be taken to:

- (a) require that a person suspected of having contravened a provision of these regulations be served an infringement notice; or
- (b) affect the liability of a person to be prosecuted for an alleged offence, if:
- (i) an infringement notice is not served on the person for the offence; or
  - (ii) an infringement notice is served, and withdrawn; or
- (c) limit the penalty that may be imposed by a court on a person convicted of an offence.

## **Part 9                      Reconsideration and review of    certain decisions**

### **Division 1                Decisions of airport environment    officer**

#### **9.01        Decisions reviewable by Secretary**

- (1) Application may be made by a person affected by a decision of an airport environment officer for review, by the Secretary, of the decision:
  - (a) under subregulation 5.09 (1) — to grant, refuse, or grant conditionally, an authorisation; or
  - (b) under subregulation 5.16 (1) — to revoke, vary or refuse to vary, an authorisation; or
  - (c) under subregulation 5.19 (2) — that assignment of an authorisation is not permitted; or
  - (d) under subregulation 6.01 (2) — to direct an occupier to give a copy of information; or
  - (f) under subregulation 6.14 (3) — to refuse to approve a remedial plan; or
  - (g) under regulation 6.18 — to direct a person to carry out remedial work; or
  - (h) under subregulation 7.01 (1) — to direct compliance with a duty under regulation 4.01; or
  - (i) under subregulation 7.02 (1) — to direct compliance with a duty under regulation 4.04; or
  - (j) under subregulation 7.03 (1) — to direct compliance with a duty under regulation 4.06; or
  - (k) under subregulation 7.06 (1) — to direct compliance with a condition of an authorisation, or to direct compliance in a particular way.
- (2) An application must be in writing and must set out the reasons for the application.

**Regulation 9.02**

**9.02 Review by Secretary**

- (1) On application under regulation 9.01, the Secretary must review the decision to which the application relates and must:
  - (a) affirm the decision; or
  - (b) substitute his or her decision for the decision reviewed.
- (2) The Secretary must give written notice of his or her decision to the applicant and the airport environment officer, and, if the decision is in substitution for the decision reviewed, must include in the notice the reasons for the Secretary's decision.
- (3) A decision supplanted by a substitute decision ceases to have effect, and the substitute decision is taken, for these Regulations (except this Division), to be the decision of the airport environment officer.

**9.03 Secretary to obtain advice**

A decision by the Secretary under regulation 9.02 must be based on expert environmental advice, and, for that purpose, the Secretary may consult:

- (a) Commonwealth and State bodies, or officers, having relevant expertise; and
- (b) relevant independent experts.

**Division 2 AAT review**

**9.04 Interpretation**

In this Division:

*decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

*reviewable decision* means a decision by the Secretary:

- (a) under subregulation 6.05 (3) — to direct an occupier to comply with subregulation 6.05 (1) or (2); or
- (b) under subregulation 8.04 (1) — refusing to grant a period of time for payment of an infringement notice penalty; or

**Regulation 9.06**

- (c) under subregulation 8.05 (2) — refusing to make an arrangement for periodical payment of an infringement notice penalty; or
- (d) under subregulation 8.06 (3) — refusing to withdraw an infringement notice; or
- (e) under subregulation 9.02 (1).

**9.05 Statement to accompany notification of reviewable decisions**

- (1) Notice given to a person affected by a reviewable decision informing the person of the decision must include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, if the person is dissatisfied with the decision, the person may apply to the Administrative Appeals Tribunal for review of the decision.
- (2) A failure to comply with subregulation (1) in relation to a decision does not affect the validity of the decision.

**9.06 AAT review of decisions**

Subject to the *Administrative Appeals Tribunal Act 1975*, a person affected by a reviewable decision may apply to the Administrative Appeals Tribunal for review of the decision.

**Regulation 10.01****Part 10                      Miscellaneous****10.01    Airport environment officers**

- (1) The Secretary may appoint, as an airport environment officer for these Regulations, an individual, corporation or other body, that:
  - (a) has qualifications and experience suitable for the day-to-day oversight of the operation of these regulations, and the carrying out of the prescribed functions of an airport environment officer; and
  - (b) does not hold a stake (within the meaning given by clause 11 of the Schedule to the Act) of more than 5% in the airport-lessee company for the airport; and
  - (c) in the case of a body or corporation — in which the airport-lessee company does not hold a stake (within the meaning given by clause 11 of the Schedule to the Act) of more than 5%; and
  - (d) has made a written agreement with the Secretary about the responsible and accountable exercise of powers under the appointment.
- (2) When a person is appointed, the Secretary must:
  - (a) give written notice of the appointment to the airport-lessee company for the airport concerned; and
  - (b) publish notice of the appointment in a newspaper having daily circulation generally in the State in which the airport concerned is located.
- (3) A notice under subregulation (2) must include the business address of the airport environment officer.

**10.02    Airport environment officer's records**

- (1) An airport environment officer must keep a record of:
  - (a) actions taken by him or her under these Regulations; and
  - (b) any information and reports received by him or her in relation to these Regulations.

**Regulation 10.03**

- (2) If the appointment of an airport environment officer for an airport site ceases, the airport environment officer must pass the record:
  - (a) to the Secretary; or
  - (b) if, before the cessation, the Secretary has given the airport environment officer notice of the name and address of the proposed succeeding airport environment officer for the site — to the proposed succeeding airport environment officer.
- (3) The Secretary, or an authorised officer, after giving reasonable notice to the airport environment officer, may inspect the record at the office of the airport environment officer, and may copy any part of the record, during normal office hours.

**10.03 Oversight of airport environment officer**

- (1) To enable monitoring of an airport environment officer's actions under the Regulations, the Secretary, or an authorised officer, may require, by notice in writing, an airport environment officer to give the Secretary, or authorised officer, any of the following documents or things:
  - (a) a copy of an application made to the airport environment officer;
  - (b) a copy of a document, or a thing, given to the airport environment officer;
  - (c) a copy of a document made by the airport environment officer;
  - (d) a copy of a document made, for a purpose of the Regulations, by a person other than the airport environment officer and in the possession of the airport environment officer.
- (2) The documents to which paragraph (1) (d) applies include documents made by an authority of a State.
- (3) The airport environment officer must comply with the notice before the end of 28 days after it is given.

**Regulation 10.04****10.04 Giving notices, directions, etc**

- (1) A written notice, direction or other instrument to be given to a person under these Regulations may be given:
  - (a) to an individual:
    - (i) by delivering it to the individual personally; or
    - (ii) by leaving it at, or sending it by pre-paid certified post to, the last known address of the place of residence, or of business, of the individual; or
  - (b) to a corporation — by leaving it at, or sending it by pre-paid certified post to, the head office, a registered office or a principal office, of the corporation; or
  - (c) to a lessee or licensee of a building on an airport site — in accordance with paragraph (a) or (b), as appropriate, or by fixing it, in a prominent position, to the building.
- (2) A written notice or application to be given, under these Regulations:
  - (a) to the Secretary — may be given by:
    - (i) delivering it to the head office of the Department at any time when that office is open for business; or
    - (ii) sending it by pre-paid certified post to the head office of the Department; or
  - (b) to an airport environment officer — may be given by:
    - (i) delivering it to the office of that officer at the airport at any time when his or her office is open for business; or
    - (ii) sending it by pre-paid certified post to the last known address of that officer's office.

**Regulation 10.07**

- (3) In this regulation, a reference to certified post is a reference to a mail delivery service that provides written acknowledgement of the receipt and delivery of an article.

*Note* At the time of commencement of these regulations, the address of the Department is:

Department of Transport and Regional Development  
Trace Building  
Cooyong Street  
Canberra, ACT  
GPO Box 594,  
Canberra, ACT, 2601  
Fax: (06) 274 7804.

**10.05 Immunity from certain liability**

An airport environment officer has no liability for anything done, or omitted to be done, for these Regulations in good faith, in reliance on advice given:

- (a) under Part 6 — by an assessor; or
- (b) by a person who has environmental or other appropriate expertise in the matter on which the advice is given.

**10.06 Confidential information in hands of airport environment officer**

Information given to, or obtained by, an airport environment officer in the performance of a power or function under these Regulations must not be disclosed to any person who does not have a lawful, and proper, need to see the information.

**10.07 Delegation**

The Secretary may, by instrument, delegate to a Senior Executive Service officer performing duties in the Department any of the Secretary's powers under these Regulations, other than this power of delegation.

**Regulation 11.01****Part 11                      Transitional****11.01    Commenced actions that are otherwise lawful**

- (1) An action that, under these regulations would constitute an offence, does not constitute the offence if the action:
  - (a) is commenced before these Regulations commence; and
  - (b) is one that in all other respects is a lawful action.
- (2) Subregulation (1) does not apply to an action if, after these Regulations commence:
  - (a) the character, or the environmental consequence, of the action significantly changes and no authorisation is obtained under these Regulations in relation to the change;  
or
  - (b) the action continues for a period longer than 6 months.

## Schedule 1      **Air pollution — accepted limits**

(subregulation 2.01 (2),  
paragraph 4.02 (a)  
and paragraph 5.09 (2) (c))

### Part 1      **Air pollutants emitted from a stationary source**

#### 1.01      **Definitions**

(1) In Table 1:

*Bacharach*, followed by a number, means the unit of measurement represented by that number under the system of measurement provided by Bacharach equipment.

*gaseous emission* means an emission of a gas or vapour, whether or not it carries suspended liquid or solid matter.

*ICP standard method* means the method of estimation of metal particles in air, known as the inductive coupled plasma method and set out in AS 2800.

*Ringelmann*, followed by a number, means the unit of measurement represented by that number under the system of measurement provided by Ringelmann equipment.

*volatile organic liquid* means:

- (a) crude oil; or
- (b) crude petroleum; or
- (c) a liquid suitable for use as fuel for a spark-ignition engine; or
- (d) a liquid consisting of more than 50% by volume of heptene, toluene, trichlorethylene, xylene, or any mixture of those substances;

but does not include kerosene, jet fuel, or tractor vaporising oil.

***Meaning of 12% CO<sub>2</sub> reference level***

- (2) If the expression ***12% CO<sub>2</sub> reference level*** appears in column 4 of an item in Table 1, the level in exhaust or combustion gas of the pollutant referred to in the item is taken to be the level that would be in the gas if the gas contained 12% CO<sub>2</sub> by volume.

***Meaning of concentration of NO<sub>2</sub>***

- (3) In Table 1, mention of a concentration of NO<sub>2</sub> at a particular oxygen reference concentration is a mention of the measured concentration of NO<sub>2</sub> adjusted in accordance the following formula:

$$\text{measured NO}_2 \text{ concentration} \times \frac{(21 - \text{ROC})}{(21 - \text{MOC})}$$

where:

***measured NO<sub>2</sub> concentration*** means the measured concentration of oxides of nitrogen, expressed as NO<sub>2</sub>.

***MOC*** means the measured oxygen concentration.

***ROC*** means the particular oxygen reference concentration.

***Accepted limits — measurement assumptions***

- (4) In Table 1, the expression, in column 4 of Table 1, of a volume of gas or vapour assumes the gas or vapour to be measured dry, at a temperature of 0 C. and at an absolute pressure of one atmosphere (101.325 kPa).

***Measurement of rate of emission***

- (5) For Table 1, the rate of emission of a substance is assumed to be ascertained:
- (a) unless the contrary intention appears, by measurement of samples:
    - (i) at, or taken from, the point of emission into the air; and
    - (ii) that are undiluted; and
  - (b) in accordance with the method of measurement, analysis or monitoring mentioned for the substance in column 5.

## 1.02 Table 1 — accepted limits of contamination

This table sets out, for subparagraph (a) (i) of the definition of *pollutant* in subregulation 2.01 (2), the accepted limit for contamination of air by a substance mentioned in column 2 deriving from a source mentioned in column 3.

Column 1 Item no.	Column 2 Substance	Column 3 Type of source	Column 4 Accepted limit for substance	Column 5 Reference level, or method of measurement, analysis or monitoring
1	Dark smoke	Any stationary activity involving the burning of fuel	Ringelmann 1	AS 3543
2	Solid particles, not otherwise specified	(a) Boiler (other than a power station boiler burning solid fuel)	0.25 g/m <sup>3</sup>	12% CO <sub>2</sub> reference level
		(b) Incinerator, or group of incinerators, capable of consuming less than 300 kg/hr of combustible material	0.5 g/m <sup>3</sup>	12% CO <sub>2</sub> reference level
		(c) Incinerator, or group of incinerators, capable of consuming 300 kg/hr or more of combustible material	0.25 g/m <sup>3</sup>	12% CO <sub>2</sub> reference level

Column 1 Item no.	Column 2 Substance	Column 3 Type of source	Column 4 Accepted limit for substance	Column 5 Reference level, or method of measurement, analysis or monitoring
		(d) Any other source	0.25 g/m <sup>3</sup>	Isokinetic sampling method specified in BS893 or AS 4323.2-1995
3	Soot	Oil-fired or gas-fired plant (including boilers):	Bacharach 5	Bacharach equipment
		(a) during lighting-up, unless lighting-up emissions during a 24-hour period continue, in total, for longer than 20 minutes		
		(b) during soot-blowing, unless soot-blowing emissions during an 8-hour period continue, in total, for longer than 5 minutes	Bacharach 10	
		(c) otherwise	Bacharach 3	

Column 1	Column 2	Column 3	Column 4	Column 5
Item no.	Substance	Type of source	Accepted limit for substance	Reference level, or method of measurement, analysis or monitoring
4	Sulphuric acid mist and sulphur trioxide	(a) Any source (except a sulphuric acid plant or fuel-burning equipment)	0.1 g/m <sup>3</sup> expressed as SO <sub>3</sub>	USEPA Method 8; or Method prescribed in the <i>Manual of Air Quality Testing</i> , published by the NSW Environment Protection Authority, as in force on 1 August 1997, for determination of sulphuric acid and sulphur trioxide with analysis by NATA-accredited laboratory
		(b) Fuel-burning equipment	0.2 g/m <sup>3</sup> expressed as SO <sub>3</sub>	as in item 4 (a)
		(c) Sulphuric acid plant	0.07 kg/tonne expressed as 100% H <sub>2</sub> SO <sub>4</sub>	USEPA Method 8
5	Acids and acid gases not elsewhere specified	Any process (including aircraft maintenance) except manufacture of glazed terracotta roof tiles	0.4 g/m <sup>3</sup> expressed as HCl	AS 3580.3.1

Column 1 Item no.	Column 2 Substance	Column 3 Type of source	Column 4 Accepted limit for substance	Column 5 Reference level, or method of measurement, analysis or monitoring
6	Oxides of nitrogen	(a) Steam boiler, burning liquid or solid fuel, for electricity generation (if producing a rated output of 30 MW or less), or for general industry	0.5 g/m <sup>3</sup> , calculated as NO <sub>2</sub> at a 7% oxygen reference concentration	AS 3580.5.1
		(b) Steam boiler, burning liquid or solid fuel, for electricity generation (if producing a rated output of more than 30 MW)	0.8 g/m <sup>3</sup> , calculated as NO <sub>2</sub> at a 7% oxygen reference concentration	AS 3580.5.1
		(c) Steam boiler, burning gaseous fuel	0.35 g/m <sup>3</sup> , calculated as NO <sub>2</sub> at a 7% oxygen reference concentration	AS 3580.5.1
		(d) Gas turbine, burning gaseous fuel, producing a rated electrical output of 10 MW or less	0.09 g/m <sup>3</sup> , calculated as NO <sub>2</sub> at a 15% oxygen reference concentration	AS 3580.5.1

Column 1	Column 2	Column 3	Column 4	Column 5
Item no.	Substance	Type of source	Accepted limit for substance	Reference level, or method of measurement, analysis or monitoring
		(e) Gas turbine, burning gaseous fuel, producing a rated electrical output of more than 10 MW	0.07 g/m <sup>3</sup> , calculated as NO <sub>2</sub> at a 15% oxygen reference concentration	AS 3580.5.1
		(f) Gas turbine, using fuel other than gaseous fuel, producing a rated electrical output of 10 MW or less	0.09 g/m <sup>3</sup> , calculated as NO <sub>2</sub> at a 15% oxygen reference concentration	AS 3580.5.1
		(g) Gas turbine, using fuel other than gaseous fuel, producing a rated electrical output of more than 10 MW	0.15 g/m <sup>3</sup> , calculated as NO <sub>2</sub> at a 15% oxygen reference concentration	AS 3580.5.1

Column 1 Item no.	Column 2 Substance	Column 3 Type of source	Column 4 Accepted limit for substance	Column 5 Reference level, or method of measurement, analysis or monitoring
7	Vapour of a volatile organic liquid—in storage in large stationary tanks	(a) Incineration of emitted vapour	1.5 g/m <sup>3</sup> of unburnt vapour	12% CO <sub>2</sub> reference level
		(b) Recovery of emitted vapour	110 mg of vapour per litre of liquid passing into the tank during any period of 4 hours	Environment Protection Authority of Victoria method B20: Volatile Organic Compounds
8	Vapour of a volatile organic liquid—during transfer into a delivery tank of capacity more than 12 kL at a rate exceeding 30 ML per year	(a) Incineration of emitted vapour	1.5 g/m <sup>3</sup> of unburnt vapour	12% CO <sub>2</sub> reference level

Column 1 Item no.	Column 2 Substance	Column 3 Type of source	Column 4 Accepted limit for substance	Column 5 Reference level, or method of measurement, analysis or monitoring
		(b) Recovery of emitted vapour	110 mg of vapour per litre of liquid passing into the tank during any period of 4 hours	Environment Protection Authority of Victoria method B20: 'Volatile Organic Compounds'
9	Fluorine compounds	Any source	0.05 g/m <sup>3</sup> (expressed as hydrofluoric acid)	AS 3580.13.1 and AS 3580.13.2
10	Chlorine and chlorine compounds (except hydrochloric acid)	Any source	0.2 g/m <sup>3</sup> (expressed as chlorine)	Sampling by Greenburg-Smith impingement techniques, as set out in the <i>Manual of Air Quality Testing</i> , published by the NSW Environment Protection Authority, as in force on 1 August 1997, for determination of chlorine
11	Carbon monoxide	Any source (except a stationary industrial diesel vehicle or standby generator)	1.0 g/m <sup>3</sup>	AS3580.7.1— 1992: direct-reading instrumental method
12	Hydrogen sulphide	Any source	5.0 mg/m <sup>3</sup>	AS 3580.8.1

Column 1 Item no.	Column 2 Substance	Column 3 Type of source	Column 4 Accepted limit for substance	Column 5 Reference level, or method of measurement, analysis or monitoring
13	Antimony, arsenic, cadmium, lead, mercury or vanadium, or a compound of any of those substances	Any source	10.0 mg/m <sup>3</sup> in aggregate, in any combination (expressed in each case as the relevant metal)	ICP standard method, with analysis, by NATA accredited laboratory, of collected particulate matter for heavy metals content
14	Cadmium and its compounds	Any source	3.0 mg/m <sup>3</sup> (expressed as cadmium)	ICP standard method, with analysis, by NATA accredited laboratory, of collected particulate matter for heavy metals content
15	Nickel and its compounds (except nickel carbonyl)	Any source	20.0 mg/m <sup>3</sup> (expressed as nickel)	ICP standard method
16	Nickel carbonyl	Any source	0.5 mg/m <sup>3</sup> (expressed as nickel)	Environment Protection Authority of Victoria method B20: 'Volatile Organic Compounds'; or NIOSH method 6007

Column 1	Column 2	Column 3	Column 4	Column 5
Item no.	Substance	Type of source	Accepted limit for substance	Reference level, or method of measurement, analysis or monitoring
17	gaseous emission (excluding the effect of water vapour in the emission)	any undertaking	opacity greater than 20%	AS4323: 1995, Part 1

*Note* This Schedule does not set out accepted limits for air pollutants emitted from a source other than a stationary source.

## Part 2 Ambient air quality objectives

### 2.01 Ambient objectives

The ambient objective for a substance mentioned in column 2 of table 2 is that concentrations of the substance in air at an airport, measured over the period of time mentioned in column 3, do not exceed the averaged concentration mentioned in column 4.

**Table 2**

Column 1	Column 2	Column 3	Column 4	
Item no.	Substance	Averaging period	Ambient objective (maximum averaged concentration)	
<b>Part 1</b>				
			$\mu\text{g}/\text{m}^3$	(ppm)
1	Lead	3 months		1.5
2	Photochemical oxidants	1 hour	210	0.10
		4 hours	170	0.08
3	Sulphur dioxide	1 year	60	0.02
		1 hour	570	0.20
		10 minutes	700	0.25
4	Total suspended particulates	1 year	90	
5	Nitrogen dioxide	1 hour	320	0.16
6	Sulphates	1 year	15	
<b>Part 2</b>				
			$\text{mg}/\text{m}^3$	(ppm)
7	Carbon monoxide	8 hours	10.0	9

*Note* The goals for photochemical oxidants assume measurement of ozone only (the major constituent of photochemical oxidant).

## Schedule 2      **Water pollution — accepted limits**

(subregulation 2.02 (3)  
and paragraph 4.02 (a))

### 1.01      **Interpretation**

In this schedule:

*fresh water* means water containing total dissolved solids of less than 1000 mg/l, and includes any water of that quality in a pipe, drain or man-made channel delivering water for use by humans or animals.

*MPN/100ml* means most probable number of coliform count per 100 millilitres.

*marine water* means ocean, sea, coastal or estuarine water, and includes river water affected by the tide.

*seasonal mean TSS* means the mean total of suspended solids for a climatic season, calculated in accordance with methodology acceptable to an airport environment officer for the airport concerned, taking into account the climatic and topographic conditions of the locality in which the airport is located.

*waters* has the same meaning as it has in regulation 2.02.

### 1.02      **Indicators of adverse chemical effect**

- (1) Without limiting subregulation 2.02 (1), the chemical condition of water is adversely affected if an event mentioned in this clause occurs.

*Dissolved oxygen*

- (2) There is an adverse effect if, because of the entry of a substance into waters, the dissolved-oxygen content of the waters falls:
  - (a) below 6 mg/l; or

- (b) to 80% of the average saturation level for a normal 24 hour period.

### *pH*

- (3) There is an adverse effect if, because of the entry of a substance into waters, the pH of the waters:
  - (a) for fresh water — falls below 6.5, or rises above 9.0; or
  - (b) for marine water — rises by more than 0.2 pH unit.

### *Salinity*

- (4) There is an adverse effect if, because of the entry of a substance into waters:
  - (a) the salinity of the water rises above 1000 mg/l; or
  - (b) the salinity rises by more than 5%.

### *Turbidity*

- (5) There is an adverse effect if, because of the entry of a substance into waters:
  - (a) the TSS (total suspended solids) of the waters changes by more than 10% from the seasonal mean TSS; or
  - (b) visual clarity within the euphotic zone is reduced by more than 10% from the seasonal mean clarity.

### *Faecal coliforms*

- (6) There is an adverse effect if, because of the entry of a substance into waters:
  - (a) the median faecal coliform count of test samples of the waters exceeds 150 faecal coliform organisms/100 ml; and
  - (b) the faecal coliform count of more than 20% of at least 5 test samples of the waters, taken at regular intervals during a period no longer than 1 month, exceeds 600 faecal coliform organisms/100ml.

*Temperature*

- (7) There is an adverse effect if, because of the entry of a substance into waters, the temperature of the waters rises by more than 2° C above the seasonal mean temperature.

**1.03 Table — accepted limits of contamination**

This table sets out, for paragraph 4.02 (a) of the regulations, the accepted limit for contamination of fresh water or marine water by a substance mentioned in column 2.

Column 1 Item no.	Column 2 Substance	Column 3 Accepted limit for fresh water (µg/l)	Column 4 Accepted limit for marine water (µg/l)
<b>Inorganic toxicants:</b>			
1	Aluminium	100.0	
2	Ammonia	20.0	
3	Antimony	30.0	500.0
4	Arsenic	50.0	50.0
5	Beryllium*	4.0	
6	Cadmium	0.2	2.0
7	Chromium	10.0	50.0
8	Copper*	2.0	5.0
9	Cyanide	5.0	5.0
10	Iron	1000.0	
11	Lead	1.0	5.0
12	Mercury (except as provided in item 13)	0.1	0.1
13	Mercury, occurring as methylmercury	0.012	0.025
14	Nickel*	15.0	15.0
15	Selenium	5.0	70.0

Column 1 Item no.	Column 2 Substance	Column 3 Accepted limit for fresh water (µg/l)	Column 4 Accepted limit for marine water (µg/l)
16	Silver	0.1	1.0
17	Sulphide	2.0	2.0
18	Thallium	4.0	20.0
19	Tin (tributyltin)	0.008	0.002
20	Zinc*	5.0	50.0
	<b>Organic toxicants:</b>		
21	Surfactants and oil dispersants	<0.05 for a 96 hour period	<0.05 for a 96 hour period
	<i>Total petroleum hydrocarbon</i>		
21A	Fuel (C <sub>6</sub> -C <sub>9</sub> fractions)	150.0	
21B	Mineral oil (>C <sub>9</sub> fractions)	600.0	
	<i>Halogenated aliphatic compounds:</i>		
22	Hexachlorobutadiene	0.1	0.3
	<i>Monocyclic aromatic compounds:</i>		
23	Benzene	300.0	300.0
24	Ethylbenzene	140.0	
25	Phenol	50.0	50.0
26	Toluene	300.0	
	<i>Chlorinated benzenes</i>		
27	Monochlorobenzene	15.0	
28	1,2 dichlorobenzene	2.5	
29	1,3 dichlorobenzene	2.5	
30	1,4 dichlorobenzene	4.0	
31	1,2,3 trichlorobenzene	0.9	
32	1,2,4 trichlorobenzene	0.5	

Column 1 Item no.	Column 2 Substance	Column 3 Accepted limit for fresh water (µg/l)	Column 4 Accepted limit for marine water (µg/l)
33	1,3,5 trichlorobenzene	0.7	
34	1,2,3,4 tetra- chlorobenzene	0.1	
35	1,2,3,5 tetra- chlorobenzene	0.1	
36	1,2,4,5 tetra- chlorobenzene	0.2	
37	Pentachlorobenzene	0.03	
38	Hexachlorobenzene	0.007	
	<i>Chlorinated phenols</i>		
39	Monochlorophenol	7.0	
40	2,4 dichlorophenol	0.2	
41	Trichlorophenol (total)	18.0	
42	2,4,5 trichlorophenol	1.0	8.0
43	2,4,6 trichlorophenol	10.0	
44	Tetrachlorophenol	1.0	
45	2,3,4,6 tetra- chlorophenol	1.0	
46	Pentachlorophenol	0.05	0.2
	<b>Nutrients (in river or stream waters)</b>		
47	Phosphorus	10.0	
48	Nitrogen	100.0	
	<b>Nutrients (in lake or reservoir waters)</b>		
49	Phosphorus	5.0	
50	Nitrogen	100.0	
51	Chlorophyll-a	2.0	

Column 1 Item no.	Column 2 Substance	Column 3 Accepted limit for fresh water (µg/l)	Column 4 Accepted limit for marine water (µg/l)
	<b>Nutrients (in estuarine or embayment waters)</b>		
52	Phosphates, expressed as P		5.0
53	Nitrates, expressed as N		10.0
54	Ammonium, expressed as N		5.0
55	Chlorophyll-a		1.0
	<b>Nutrients (in coastal waters)</b>		
56	Phosphates, expressed as P		1.0
57	Nitrates, expressed as N		10.0
58	Ammonium, expressed as N		5.0
59	Chlorophyll-a		1.0
	<b>Pesticides:</b>		
	<i>Organochlorines</i>		
60	Aldrin	0.01	0.01
61	Chlordane	0.004	0.004
62	DDE	0.014	0.014
63	DDT	0.001	0.001
64	Dieldrin	0.002	0.002
65	Endosulfan	0.01	0.01
66	Endrin	0.003	0.003
67	Heptachlor	0.01	0.01
68	Lindane	0.003	0.003
69	Methoxychlor	0.04	0.04
70	Mirex	0.001	0.001

Column 1 Item no.	Column 2 Substance	Column 3 Accepted limit for fresh water ( $\mu\text{g}/\text{l}$ )	Column 4 Accepted limit for marine water ( $\mu\text{g}/\text{l}$ )
71	Toxaphene <i>Organophosphate</i>	0.008	0.008
72	Chlorpyrifos	0.001	0.001
73	Demeton	0.1	0.1
74	Guthion	0.01	0.01
75	Malathion	0.07	0.1
76	Parathion	0.004	0.004
77	Acrolein	0.2	0.2
	<b>Phthalate esters:</b>		
78	di-n-butylphthalate	4.0	4.0
79	di(2-ethylhexy) phthalate	0.6	0.6
80	other phthalate esters	0.2	0.2
	<b>Polyaromatic hydro- carbons:</b>		
81	Polychlorinated biphenyls	0.001	0.001
82	Polycyclic aromatic hydrocarbons	3.0	3.0

## Schedule 3      Soil pollution — accepted limits

(subregulation 2.03 (1),  
paragraph 4.02 (a)  
and regulations 6.07 and 6.08)

### 1.01      Table 1 — areas of an airport generally

- (1) Table 1 mentions in column 3, for paragraph 4.02 (a) of the Regulations, the accepted limits of the pollutant substances mentioned in column 2.
- (2) The table mentions in column 2, for paragraph 6.07 (1) (a) of the Regulations, certain pollutant substances that could cause an effect described in subregulation 2.03 (1).
- (3) The table mentions in column 3, for each substance mentioned in column 2, the trigger level for subregulation 6.08 (2).

Column 1 Item no.	Column 2 Substance	Column 3 Accepted limit/trigger Level (mg/kg)
1	Aldrin (including aldrin and dieldrin in combination)	50
2	Arsenic (total)	500
3	Benzo (a) pyrene	5
4	Beryllium	100
5	Cadmium	100
6	Chlordane	250
7	Chromium (III)	600,000
8	Chromium (VI)	500
9	Copper	5,000
10	Cyanides (complexed)	2,500

Column 1 Item no.	Column 2 Substance	Column 3 Accepted limit/trigger Level (mg/kg)
11	Dieldrin (including dieldrin and aldrin in combination)	20
12	DDT	1,000
13	Heptachlor	50
14	Lead	1,500
15	Manganese	7,500
16	Methyl mercury	50
17	Mercury (inorganic)	75
18	Nickel	3,000
19	Polycyclic aromatic hydrocarbon	100
20	PCB (total)	50
21	Phenol	42,500
22	Zinc	35,000
23	Total petroleum hydrocarbon — fuel (C <sub>6</sub> –C <sub>9</sub> fractions)	800
24	Total petroleum hydrocarbon — mineral oil (>C <sub>9</sub> fractions)	5,000
25	Benzene	1
26	Ethylbenzene	50
27	Toluene	130
28	Xylene	25

### 1.02 Table 2 — areas of environmental significance

- (1) Table 2 mentions in column 3, for paragraph 4.02 (a) of the Regulations, the accepted limits of the pollutant substances mentioned in column 2.
- (2) The table mentions in column 2, for paragraph 6.07 (1) (b) of the Regulations, certain pollutant substances that could cause an effect described in subregulation 2.03 (1).

- (3) The table mentions in column 3, for each substance mentioned in column 2, the trigger level for subregulation 6.08 (2).

*Note* A soil pH outside the range pH6 to pH8 is a **trigger level** for the purpose of subregulation 6.08 (2) — see paragraph 6.08 (2) (b).

Column 1 item no.	Column 2 Substance	Column 3 Accepted limit/trigger Level (mg/kg)
<b>Heavy Metals</b>		
1	Antimony	20
2	Arsenic	20
3	Barium	200
4	Cadmium	3
5	Chromium	50
6	Cobalt	170
7	Copper	60
8	Lead	300
9	Manganese	500
10	Mercury	1
11	Molybdenum	20
12	Nickel	60
13	Tin	50
14	Zinc	200
<b>Mineral pollutants</b>		
15	Boron	75
<b>Phenolic compounds</b>		
16	Phenols (total)	0.5
<b>Aromatic hydrocarbons</b>		
17	Benzene	0.5
18	Toluene	3
18A	Ethylbenzene	5

Column 1 item no.	Column 2 Substance	Column 3 Accepted limit/trigger Level (mg/kg)
18B	Xylene	5
	<b>Total petroleum hydrocarbon</b>	
18C	Fuel (C <sub>6</sub> -C <sub>9</sub> fractions)	100
18D	Mineral oil (>C <sub>9</sub> fractions)	1,000
	<b>Polyaromatic hydrocarbons</b>	
19	PAH (total)	5
	<b>Chlorinated hydrocarbons</b>	
20	PCB (total)	1
	<b>Pesticides</b>	
21	Aldrin	0.05
22	Dieldrin	0.2
23	DDT	0.97
	<b>Other chemicals</b>	
24	Sulphate	2,000

## Schedule 4 Excessive noise — guidelines

(subregulation 2.04 (2),  
and subparagraphs 4.07 (a) and (b))

### Part 1 Introductory

#### 1.01 Purpose of Schedule

For subregulation 2.04 (2) of the Regulations, this Schedule sets out indicators of noise that is excessive.

*Note* Generation of excessive noise is not, of itself, an offence under the Regulations.

#### 1.02 Interpretation

In this Schedule:

*average maximum A-weighted sound pressure level* has the same meaning as it has in AS 1055.

*A-weighted sound pressure level* has the same meaning as it has in AS 1055.

*background noise level*, at a particular place, means the level of noise, calculated as the A-weighted sound pressure level measured at that place, using time weighting 'F', that is exceeded for 90% of a period of at least 15 minutes.

*equivalent continuous A-weighted sound pressure level* has the same meaning as it has in AS 1055.

*time weighting 'F'* has the same meaning as it has in AS 1259.

### Part 2 Sensitive receptors

#### 2.01 Application

This Part applies to sites of sensitive receptors, and a reference in a provision of this Part to a sound pressure is a reference to sound pressure audible at the site of a sensitive receptor.

## **2.02 Noise from construction, etc**

- (1) Noise generated from construction, maintenance or demolition of a building or other structure at an airport should not exceed 75 dB(A), calculated in accordance with subclause (2), at the site of a sensitive receptor.
- (2) For subregulation (1), the sound pressure level of a particular noise is the sound pressure level that is exceeded for 10% of a period of at least 15 minutes, adjusted to take account of tonal character and impulsiveness (if any) of the noise.

## **2.03 Noise from road traffic**

Noise generated from road traffic on the site of an operator of an undertaking at an airport should not exceed:

- (a) 60 dB(A), calculated as the equivalent continuous A-weighted sound pressure level for a 24 hour period of measurement; and
- (b) 55 dB(A), calculated as the equivalent continuous A-weighted sound pressure level for an 8 hour period of measurement from 22:00 hours on a particular day to 06:00 hours on the following day.

## **2.04 Noise from rail traffic**

Noise generated from rail traffic operated at an airport should not exceed:

- (a) 87 dB(A), calculated as the average maximum A-weighted sound pressure level for a period of at least 15 minutes measurement; and
- (b) 60 dB(A), calculated as the equivalent continuous A-weighted sound pressure level for a 24 hour period of measurement; and
- (c) 55 dB(A), calculated as the equivalent continuous A-weighted sound pressure level for an 8 hour period of measurement from 22:00 hours on a particular day to 06:00 hours on the following day.

## 2.05 Noise from ground-based aircraft operations

- (1) For ground-based aircraft operations, there are no indicators of noise that is excessive, but the following considerations apply in determining whether noise is excessive.
- (2) Noise from ground-based aircraft running for any reason should only be generated in a manner that is consistent with:
  - (a) within 1 year after the airport at which the ground running is being conducted is first leased — guidelines for ground running published by the Federal Airports Corporation and in effect when these Regulations are made; or
  - (b) at a time after 1 year after the airport is first leased — express provision in the final environment strategy for the airport.
- (3) In relation to other ground-based operations and in relation to ground-based aircraft running at times other than a time to which subclause (2) applies, matters to be considered are:
  - (a) the distance between the source of the noise and the site of the sensitive receptor; and
  - (b) the background noise level;
  - (c) the time of day when the noise occurs; and
  - (d) if the noise source is an aircraft engine — the power setting of the engine;
  - (e) anything included in the final environment strategy (if any) for the airport at which ground running is being conducted that is relevant to this clause.
- (4) In this regulation:

***ground-based aircraft operations*** means:

  - (a) operation of an auxiliary power unit of an aircraft; or
  - (b) ground-based aircraft running; or
  - (c) test-bed running of an aircraft engine removed from an aircraft.

***ground-based aircraft running*** means test operation of an engine attached to an aircraft.

## **2.06 Noise from other airport operations**

- (1) This clause applies to noise generated from any of the following activities:
  - (a) aircraft refuelling;
  - (b) activities in connection with aircraft that do not involve the operating of an aircraft engine (for example, moving, maintaining or repairing aircraft);
  - (c) operation of plant or machinery;
  - (d) assembling of passengers or goods in connection with embarkation or disembarkation of aircraft;
  - (e) operation of fixed audible alarm or warning systems.
- (2) Noise generated from an activity mentioned in subclause (1) should not exceed the background noise level at the sensitive receptor site:
  - (a) between the hours of 07:00 and 22:00 — by more than 5 dB(A); and
  - (b) between 22:00 hours of a day and 07:00 hours of the next day — by more than 3 dB(A).
- (3) For subregulation (2), the sound pressure level of a particular noise is the sound pressure level that is exceeded for 10% of a period of at least 15 minutes, adjusted to take account of tonal character and impulsiveness (if any) of the noise.

## **Part 3 Commercial receptors**

### **3.01 Application**

This Part applies to sites of commercial receptors, and a reference in a provision of this Part to a sound pressure is a reference to sound pressure measurable at the site of a commercial receptor.

### **3.02 Noise from any source**

For sites of commercial receptors, the indicators of noise that is excessive are the indicators mentioned for sites of sensitive receptors, but the following considerations also apply in determining whether noise is excessive at a particular site:

- (a) the nature of the business conducted at the site;
- (b) the time of day when the noise occurs;
- (c) the duration of the noise;
- (d) the nature and characteristics (if any) of the noise;
- (e) the background noise level.

## **Part 4 Measuring noise**

### **4.01 Procedures and standards**

- (1) This clause sets out the procedures and standards to be applied by an airport environment officer in measuring noise for the purposes of the regulations.

#### *Procedure*

- (2) In making a measurement, an airport environment officer must do so:
  - (a) at the most affected site of sensitive receptor, or commercial receptor, as the case requires; and
  - (b) by a procedure that is in accordance with:
    - (i) the relevant Australian Standard (if any) as in force at the commencement of these regulations; or
    - (ii) if a procedure is detailed in the final environment strategy (if any) for the airport concerned — that procedure; or
    - (iii) if neither paragraph (a) or (b) apply — a relevant procedure published by the International Organisation for Standardisation (if any), as in force at the commencement of these Regulations.

*Construction of buildings, etc*

- (3) The standard to be applied in determining the level of noise generated from construction, maintenance or demolition of a building or other structure at an airport is AS 1055.

*Road traffic*

- (4) The standard to be applied in determining the level of noise generated from particular road traffic at an airport is AS 2702.

*Rail traffic*

- (5) The standard to be applied in determining the level of noise generated from particular rail traffic at an airport is AS 2377.

*Ground-based aircraft operations*

- (6) The standard to be applied in determining the level of noise generated from particular ground based aircraft operations at an airport is AS 1055.

*Other airport operations*

- (7) The standard to be applied in determining the level of noise generated from an activity mentioned in subclause 2.06 (1), at an airport, is AS 1055.

**Table of Instruments**

**Notes to the *Airports (Environment Protection) Regulations 1997***

**Note 1**

The *Airports (Environment Protection) Regulations 1997* (in force under the *Airports Act 1996*) as shown in this compilation comprise Statutory Rules 1997 No. 13 amended as indicated in the Tables below.

**Table of Instruments**

<b>Year and number</b>	<b>Date of notification in <i>Gazette</i> or <i>FRLI registration</i></b>	<b>Date of commencement</b>	<b>Application, saving or transitional provisions</b>
1997 No. 13	21 Feb 1997	21 Feb 1997	
1997 No. 112	21 May 1997	21 May 1997	—
1997 No. 201	24 July 1997	24 July 1997	—
1998 No. 96	21 May 1998	21 May 1998	—
1998 No. 209	1 July 1998	1 July 1998	—
1998 No. 349	22 Dec 1998	22 Dec 1998	—
2002 No. 13	21 Feb 2002	21 Feb 2002	—
2009 No. 43	17 Mar 2009 (see F2009L01022)	18 Mar 2009	—

**Table of Amendments****Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
R. 1.01 .....	rs. 1998 No. 349
R. 1.03A.....	ad. 1998 No. 96 am. 1998 No. 209; 2009 No. 43
R. 1.05 .....	am. 1998 Nos. 96 and 349
R. 1.06 .....	am. 1997 No. 112
R. 1.08 .....	rs. 1997 No. 112 am. 1998 No. 349
<b>Part 3</b>	
R. 3.01 .....	rs. 1998 No. 96 am. 1998 No. 209; 2009 No. 43
R. 3.01A.....	ad. 1998 No. 96
<b>Part 4</b>	
R. 4.01 .....	am. 1997 No. 112
R. 4.02 .....	am. 1998 No. 349
R. 4.05 .....	am. 1997 No. 112; 2002 No. 13
<b>Part 5</b>	
R. 5.08 .....	am. 1998 No. 349
R. 5.18 .....	am. 1997 No. 112; 2002 No. 13
Note to r. 5.18.....	rs. 1997 No. 112
R. 5.19 .....	am. 1997 No. 112
<b>Part 6</b>	
R. 6.01 .....	am. 1997 No. 201; 2002 No. 13
R. 6.02 .....	am. 1997 No. 112; 1998 No. 349; 2002 No. 13
Note 2 to r. 6.02 (3).....	rs. 1997 No. 112
R. 6.03 .....	am. 1998 No. 349
R. 6.04 .....	am. 1998 No. 349; 2002 No. 13
R. 6.06 .....	am. 1997 No. 112
R. 6.08 .....	am. 1998 No. 349
R. 6.09 .....	am. 1997 No. 201; 1998 No. 349
R. 6.11 .....	am. 1997 No. 112
R. 6.14 .....	am. 1997 Nos. 112 and 201
R. 6.18 .....	am. 1997 No. 112
R. 6.19 .....	am. 1998 No. 349

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
<b>Part 7</b>	
R. 7.05 .....	am. 1997 No. 112
Note to r. 7.05 (1).....	ad. 2002 No. 13
Note to r. 7.05.....	rs. 1997 No. 112
R. 7.06 .....	am. 1997 No. 112
Note to r. 7.06 (2).....	ad. 2002 No. 13
Note to r. 7.06.....	rs. 1997 No. 112
Div. 2 of Part 7 .....	rep. 1997 No. 112
Rr. 7.07, 7.08.....	rep. 1997 No. 112
<b>Part 8</b>	
R. 8.02 .....	am. 1997 No. 112
R. 8.03 .....	am. 1997 No. 112; 1998 No. 96
<b>Part 9</b>	
R. 9.01 .....	am. 1997 No. 112; 1998 No. 349
<b>Part 10</b>	
R. 10.04 .....	am. 1997 No. 112
R. 10.07 .....	ad. 1998 No. 96
<b>Schedule 1</b>	
Schedule 1.....	am. 1998 No. 349
<b>Schedule 2</b>	
Schedule 2.....	am. 1997 No. 112; 1998 No. 349
<b>Schedule 3</b>	
Schedule 3.....	am. 1998 No. 349