



Australian Government
**Department of Infrastructure
and Regional Development**



Operations Manual

Airport Environment Officer (AEO)

VERSION v2.0

August 2013

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GLOSSARY

AAT	Administrative Appeals Tribunal
ABC	Airport Building Controller
Act	<i>Airports Act 1996</i>
AEO	Airport Environment Officer
AIRS	Airport Infrastructure Regulation Section
ALC	Airport-Lessee Company
BCA	Building Code of Australia
CMP	Compliance Management Process
Department	Department of Infrastructure and Regional Development (Commonwealth)
EPO	Environment Protection Order
ERO	Environment Remediation Order
MDP	Major Development Plan
Minister	Minister for Infrastructure and Regional Development (Commonwealth)
Operators	An operator includes sublessees, tenants and so on
Regulation/s	Airports (Environment Protection) Regulations 1997
Secretary	Secretary to the Department of Infrastructure and Regional Development

VERSION CONTROL

DOCUMENT REVIEW

The manual will be reviewed on an annual basis, to coincide with the Annual ABC/AEO Conference, or on an ad-hoc basis as required.

Suggestions for revision of the manual may originate from the Department, AEOs, or other stakeholders. All changes to the manual must then be authorised by the Department.

SUMMARY OF KEY AMENDMENTS

Below is a list of key amendments that have been made to the current version.

Version	Date	Description of amendment	Approved by
2.0	AUGUST 2013	Amendments to manual to incorporate and align to Compliance Framework	Director, Airports Infrastructure Regulation Section
1.0	JULY 2000	Original	

1. Introduction

- 1.1 The purpose of the Airport Environment Officer (AEO) Operations Manual (the manual) is to outline the environmental management requirements at leased federal airports according to the *Airports Act 1996* (the Act) and the Airports (Environment Protection) Regulations 1997 (the Regulations).
- 1.2 The Airport Infrastructure Regulation Section (AIRS) within the Department of Infrastructure and Regional Development (the Department), is responsible for the oversight of Airport-Lessee Companies' (ALC) compliance with regulatory requirements. The Department administers compliance of the building control and on-ground environmental management regulatory regime at leased federal airports using the Compliance Framework, which aims to drive consistent, effective and comprehensive compliance management.
- 1.3 The manual provides guidance to all AEOs, staff, ALCs and other interested parties as to how they should fulfil their obligations under the Act and Regulations, and will refer to sections of the Compliance Framework to support this role.
- 1.4 A copy of the manual is available on the Department's website at: www.infrastructure.gov.au. This document is intended as a **guide only**. All parties subject to legislative obligations under the Act and Regulations should refer to the relevant legislation for further support.

2 Roles and Responsibilities

Airports Branch

- 2.1 The Airports Branch is responsible for the regulation of the 21 leased federal airports on Commonwealth land. The Branch administers the *Airports Act 1996*, its associated regulations and the airport head leases; to provide ongoing assessment and oversight of all major airport developments.

Airport Infrastructure Regulation Section

- 2.2 Within the Airports Branch, AIRS has primary responsibility for managing the airport environment and building control regulations prescribed in the Airports (Environment Protection) Regulations 1997 and the Airports (Building Control) Regulations 1996.

Airport-Lessee Company

- 2.3 An Airport-Lessee Company (ALC) has the primary responsibility to manage the broad duties and obligations required to maintain and improve the environment of an airport, as set out in the *Airports Act 1996* and associated regulations. Therefore the overall approach places the principal responsibility for positive environmental outcomes upon the ALC and, to a lesser extent, operators of undertakings and airport users.

Airport Building Controller

- 2.4 The fundamental objective of the Airport Building Controller (ABC) is to administer Part 5 Division 5 of the Act and the Airports (Building Control) Regulations 1996. Each ABC administers and advises airport operators on building control issues as contained in the Regulations and implements the building approval system that regulates ongoing building activity at the airport. Following the provisions of the Act, the ABC must also ensure an appropriate standard of building work is achieved at the airport.

Airport Environment Officer

- 2.5 AEOs are Departmental employees appointed and authorised to oversight ALC compliance with Part 6 (Environmental management) and Section 83A of Part 5 of the *Airports Act 1996* and the Airports (Environment Protection) Regulations 1997. As departmental staff, AEOs are part of AIRS.

- 
- 2.6 In monitoring ALC compliance with its legislative responsibilities, the AEO may:
- consult with and assist the ALC to manage environmental issues at the airport in accordance with their Environment Strategy,
 - exercise appropriate monitoring powers as an authorised officer,
 - assess an application for an authorisation to exceed pollution limits, and monitor performance of holders of an authorisation,
 - direct an operator of an undertaking to provide information or undertake investigation,
 - order remedial work to be carried out,
 - direct an operator of an undertaking by making an environment protection order.
- 2.7 AEOs are the Department's primary source for information regarding compliance with the environmental regulatory regime. AEOs have the authority and the responsibility to make decisions regarding compliance with regulations and standards and, where necessary take compliance action against parties found to be in breach of their obligations under the regulatory framework.
- 2.8 Participating in the appropriate governance forums, AEOs are able to engage in discussions to determine compliance action, which aligns with the processes and procedures outlined in the *Airports Building Control and On-ground Environment Compliance Framework*.
- 2.9 As such, the intent of the AEO is to promote awareness of environmental issues and to facilitate the establishment of, and then monitor, management systems that deal with the pollution, noise and other environmental impacts that are produced by and on airports, with a view to reducing those environmental impacts and increasing public amenity over time. The AEO does so by focusing its day-to-day duties on:
- Raising awareness amongst all operators of undertakings at the airport of their obligations and responsibilities under the Regulations.
 - Consulting with the ALC on environmental issues at the airport, including provision of appropriate feedback on implementation of the airport Environment Strategy.
 - Assisting the ALC, where requested and as appropriate, to ensure all operators of undertakings are aware of their obligations under the airport Environment Strategy.
 - Consulting on airport environmental issues with other relevant State and Commonwealth authorities, the community and interest groups, as appropriate.
 - Participating in the development of emergency response plans with the ALC and other relevant authorities.
 - Monitoring existing or potential environmental impacts associated with airport operations.
 - Assessing applications for authorisations to exceed pollution limits under certain conditions, and monitoring the performance of the holders of authorisations.

- Assessing applications for local standards, and monitoring the performance of affected activities where such standards are issued.
- Liaising regularly with the ALC to ensure procedures for investigation of environmental complaints or suspected breaches of the Regulations are clearly understood.
- Investigating reports or indication of breaches of environmental standards.
- Initiating tests at sites where a breach of environmental standards is discovered or suspected.
- Deciding on an appropriate course of action where a breach of environmental standards is discovered or suspected, using the Compliance Framework.
- Issuing and monitoring of Environment Protection Orders (EPO) and Environmental Remedial Orders (ERO) as deemed necessary.
- Liaising with the ABC and undertaking duties as outlined in Chapter 5.

2.10 Where issues arise that are not covered under the Regulations, the AEO will refer the matter to other authorities for further guidance as appropriate, such as:

- Any issues that may arise in relation to engine emissions or noise generated by aircraft in flight, taking off, landing and taxiing will be referred to Airservices Australia in the first instance.
- Any matters that may arise in relation to motor vehicle pollution, waste disposal, the disposal of hazardous materials, ozone depleting substances, the use and sale of pesticides, or occupational health and safety issues will be referred to the appropriate state or territory authorities.
- Similarly, issues related to off-site impacts including surface water and groundwater contamination; soil contamination; air and/or noise emissions will be referred by the AEO to the appropriate state or territory authorities.

3 Overview of legislation

Introduction

- 3.1 The purpose of the Regulations is to establish a Commonwealth system of regulation for air, water and soil pollution, and excessive noise, to promote environmental outcomes at leased federal airports.
- 3.2 The objectives of the Regulations as defined in r1.02, aims to:
- (a) 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 the potential to generate:
 - (i) pollution; or
 - (ii) excessive noise; and
 - (b) promote improving environmental management practices for activities carried out at leased federal airport sites.
- 3.3 It is important to note, the Regulations do not apply to pollution generated by an aircraft, or noise generated by an aircraft in flight or when landing, taking off or taxiing at an airport, as further outlined in r1.03.

Duties of operators of undertakings

- 3.4 An Operator of an Undertaking is any person operating businesses, facilities, plants, machines or equipment, dealing or carrying out an activity, operation or process; as defined at r1.07. The activity of "whole-of-airport management" is not considered to be an undertaking.
- 3.5 Part 4 of the Regulations sets out general environmental duties and obligations that every operator of an undertaking at an airport is expected to comply with. These general duties are to:
- avoid polluting (r4.01);
 - use and maintain pollution control equipment (r4.03);
 - ensure habitat, biota, ecosystems, endangered and vulnerable species, and sites of indigenous and heritage significance are properly protected (r4.04);
 - give notice of cultural discovery (r4.05); and
 - prevent offensive noise from occurring (r4.06).

3.6 The objective of imposing these duties is designed to make people aware of the environmental impacts associated with their activities, whilst enforcing compliance with standards or authorisations.

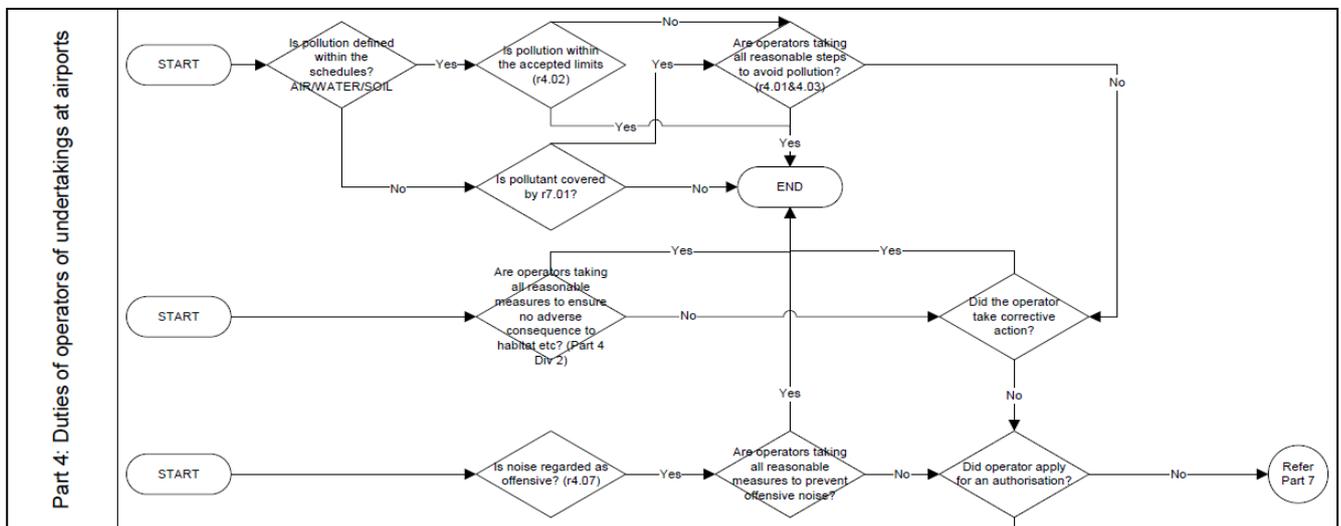
Compliance with a general duty not to pollute or generate excessive noise, and a general duty to preserve habitat

3.7 There are three ways in which an operator can assume to be in compliance with the general duty not to pollute (r4.02). These include:

- complying with a pollution or noise standard set out in one of the Schedules of the Regulations; or
- complying with a local pollution or noise standard approved by the Minister under Division 1 of Part 5 of the Regulations; or
- complying with the terms and conditions of an authorisation granted under Division 2 of Part 5 of the Regulations.

Figure 1: ‘Duties of Operators of Undertakings’ extract.

Airports Building Control and On-ground Environment Compliance Framework, AEO Approval Process for Regulatory Compliance process map.



3.8 As indicated in Figure 1 above, there are three possibilities as to how an operator can become non-compliant with the general duty not to pollute. These are further outlined below and include the responsibility of the AEO in each case.

Unacceptable pollution limits

- 3.9 Where pollution is defined within the schedules as being Air, Water or Soil, the AEO must assess whether the pollution falls within the accepted limits as per r4.02. If the pollution falls outside of these accepted limits, the AEO must determine whether the operator has taken all reasonable steps to avoid pollution in accordance with r4.01 and r4.03.

Preservation of habitat

- 3.10 In circumstances where an AEO believes operators are not taking all reasonable measures to ensure the preservation of habitat, the AEO must determine whether effective actions are in place to guarantee no adverse consequences to the habitat may occur as per r4.04.

Offensive noise

- 3.11 In instances where noise is regarded as offensive, the AEO must determine whether the operator has taken all reasonable and practicable measures to prevent or minimise the generation of offensive noise from the undertaking as per r4.06.

Action against non-compliance

For each of the circumstances above, where it is determined that all reasonable and practicable measures have been undertaken, and the operator has not undertaken corrective action or applied for an authorisation; the AEO must undertake enforcement action as per Chapter 4.

- 3.12 For each of the circumstances above, where it is determined that all reasonable and practicable measures have been undertaken, and the operator has not undertaken corrective action or applied for an authorisation; the AEO must undertake enforcement action as per Chapter 4.

Local standards and authorisations

- 3.13 The ALC may apply to the Minister for approval of a local standard that relates to air, water or soil pollution, or the generation of noise [r5.03]. This is in recognition that the pollution or noise standards set out in the Schedules to the Regulations may not be appropriate to certain airports given climatic, topographical, geological or other local conditions.
- 3.14 The ALC may apply to the AEO for an authorisation to allow an airport user to exceed pollution limits set out in the Schedules or in a local standard. In doing so, the ALC must demonstrate the environment will not be any worse off for their activities, and have a management plan that will, over a specified period of time, bring the consequences of their activities within acceptable limits.

Local standards

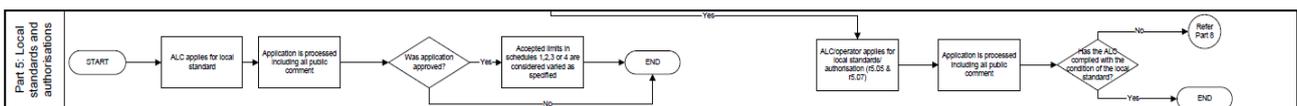
- 3.15 The AEO is to ensure the standard being sought is appropriate to the airport environment and reflects naturally occurring circumstances rather than poor practices from past activities. Once a Local Standard has been declared, it replaces the relevant regulatory standard and is administered by the AEO in the same way as other regulatory standards.

Authorisations

- 3.16 Authorisations are granted by the AEO, who may attach any conditions considered to be appropriate to them. The matters an AEO must take into account in determining whether or not to grant, and what conditions to impose upon, are set out in r5.09.
- 3.17 Authorisations (other than urgently required short-term ones), must be backed up by environmental management plans detailing how the applicant intends to minimise negative environmental consequences associated with his or her activities, and to reduce those consequences over time [r5.07(3)].
- 3.18 Long-term authorisations will only be granted to those operators of undertakings who can demonstrate a commitment to minimising and improving the environmental performance of their organisation and activities.

Figure 2: 'Local Standards and Authorisations' extract.

Airports Building Control and On-ground Environment Compliance Framework, AEO Approval Process for Regulatory Compliance process map.



Authorisation application

- 3.19 As indicated in Figure 2 above, an application must be made in writing and addressed to the AEO of the relevant airport in accordance with r5.07(1).
- 3.20 The application must be supported by an *Environment Management Plan* which clearly sets out the actions proposed by the applicant during the period of the authorisation as per r5.07(3).
- 3.21 As such, supporting documentation must clearly indicate the overall effect of the emissions or discharges during the authorisation period will not be more damaging to the environment than would be the case if the accepted limits being exceeded had been complied with. If the applicant believes this can only be achieved by incremental improvements over time,

then the management plan must demonstrate how satisfactory progress is to be made towards that end.

- 3.22 The application for an authorisation may need to be advertised in a newspaper which has general circulation in the State in which the airport is located in accordance with r5.08(2).
- 3.23 The applicant for the authorisation must pay the reasonable costs of the advertisement, including the cost of preparing the advertisement.

Application assessment

- 3.24 The AEO will assess the application taking into account [r5.09(2)]:
- any reasonable alternative actions that are available to the applicant including carrying out the undertaking in a different location;
 - whether the applicant has taken all reasonable measures to avoid, or minimise the need for an authorisation;
 - all reasonably likely consequences of the proposed action in relation to the health and safety of any person and the environment;
 - if noise issues are involved, all reasonably likely consequences of the proposed action in relation to the comfort of any person;
 - if air quality is involved then compliance or otherwise with the ambient air quality objectives listed in Part 2 of schedule 1 of the regulations;
 - the period of time the authorisation would reasonably be required for;
 - the adequacy of the environmental management plan and the likelihood of the plan being realised;
 - whether the need for the authorisation is to enable remedial work to be carried out on existing airport pollution;
 - whether the granting of the authorisation would be consistent or otherwise with the objectives and proposed measures set in the draft or final environment strategy;
 - whether the granting of the authorisation would have a significant impact on the interests of another person or organisation;
 - any submission made about the application; and
 - any other matter the AEO considers relevant.
- 3.25 Where the AEO considers the information is insufficient to properly assess the application, and the information is reasonably necessary to enable assessment; the AEO may request additional information in writing from the applicant [r5.10(1)(b)]. In these circumstances, the requirement to notify the applicant in writing within 30 days of receipt of the application for authorisation changes, in order to properly assess the application. Therefore the 'clock' effectively stops until all the required information is submitted and then recommences with a further period of 30 days to notify the applicant of the decision [r5.10].

Urgent authorisations

3.26 If there is an urgent need for an authorisation, and it is impracticable to make a written application, the application may be made orally to the AEO. The application will be assessed as though it were made in writing but having consideration for the urgency involved. An authorisation granted in this manner may be for any period up to but not exceeding 48 hours. The applicant must give the AEO written confirmation of the application as soon as is practicable [r5.13].

Conditional Authorisation

3.27 When considering whether a conditional authorisation is appropriate, the AEO must [r5.09(3)]:

- 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
- Take into account, if practicable, whether a decision to grant an authorisation will undermine the incentive for an applicant to improve environmental performance and compliance with the Regulations.

Notification of decision

Notification of decision to the ALC

3.28 Within 2 days of granting an authorisation, the AEO shall provide a copy of the authorisation to the ALC [r5.14(b)].

Notification of decision to the applicant

3.29 The AEO must notify the applicant in writing of the decision before the end of 30 days after receipt of the application or, where further information is required, before the end of 30 days after the receipt of that information. If the application is refused or is granted subject to condition(s) then the notification must set out the reasons for the decisions [r5.10].

Public notification

3.30 All authorisations granted by the AEO in a quarter, must be published in the Commonwealth Gazette and in the Annual Report for the Department, in accordance with r5.14, together with a notice that a copy of the authorisation can be inspected at the office of the ALC [r5.15].

Variation of an authorisation

3.31 The holder of the authorisation may apply to the AEO for a variation, or the AEO may initiate a variation. The AEO must be satisfied in all circumstances that the variation is proper, and may vary an authorisation as per r5.16.

3.32 An application to vary an authorisation must set out [r5.16(3)]:

- the act or class of acts for which the variation is sought;
- the reasons why the variation is needed; and
- the period for which the variation is sought.

3.33 A variation to extend the period of an authorisation beyond the 3 year maximum is not permitted [r5.12(2)] and a variation does not take effect until it is notified in writing to the holder of the authorisation [r5.16(5)].

Emergency variation

3.34 If a variation to an authorisation is needed to deal with an emergency, the application may be oral and the AEO may grant a variation for any period up to but not exceeding 48 hours unless a written application is provided within that time [r5.16(4)].

3.35 The AEO may declare the variation is to take effect immediately to deal appropriately with an emergency and notify the holder of the authorisation orally. In this case there shall be no requirement for a written notification [r5.16(5)].

Revocation of authorisation

3.36 The holder of the authorisation may apply to the AEO for revocation, or the AEO may initiate the revocation of an authorisation. The AEO must be satisfied in all circumstances that the revocation is proper. A revocation shall not take effect until it is notified in writing to the holder of the authorisation [r5.16(1) & 5.16(5)].

Emergency revocation of authorisation

3.37 There is scope for AEOs to grant authorisations for up to 48 hours where they are needed urgently [r5.13]. Such authorisations would be issued in emergency situations, for example, to release dangerous pressures inside containment vessels or in order to remove pollution control equipment for repair.

3.38 If a revocation of an authorisation is needed to deal with an emergency, the AEO may declare the revocation is to take effect immediately to deal appropriately with an emergency and notify the holder of the authorisation orally. In this case there shall be no requirement for a written notification [r5.16(1), 5.16(4) & 5.16(5)].

Compliance with an authorisation

3.39 Compliance with an authorisation is deemed to be compliance with the general duties, relating to pollution and noise control in as much as the authorisation extends to them [r4.02(c) & 4.07(b)(ii)]. The holder of an authorisation is obliged to notify the relevant AEO of a failure to comply with a condition of the authorisation within 24 hours of becoming

aware of the failure [r5.16]. An AEO may direct compliance with an authorisation by issuing an EPO under Part 7 of the Regulations, whereby failure to comply with the EPO is a criminal offence.

Annual report

- 3.40 For all authorisations granted for periods in excess of 1 year, an annual report for each year that the authorisation has effect, shall be provided by the holder to the AEO [r5.17], detailing:
- the implementation of the environmental management plan;
 - the progress on reduction of pollution and /or noise; and
 - any failure to comply with any conditions in the authorisation.

Transfer of an authorisation

- 3.41 When ownership of an undertaking to which an authorisation applies is being transferred the holder may assign his/her interest in the authorisation to another person in accordance with r5.19. Under these circumstances, the AEO has seven days to consider the matter and respond in writing to the holder of the authorisation. If the AEO gives written notice that the assignment of the authorisation is not permitted it must not be assigned.

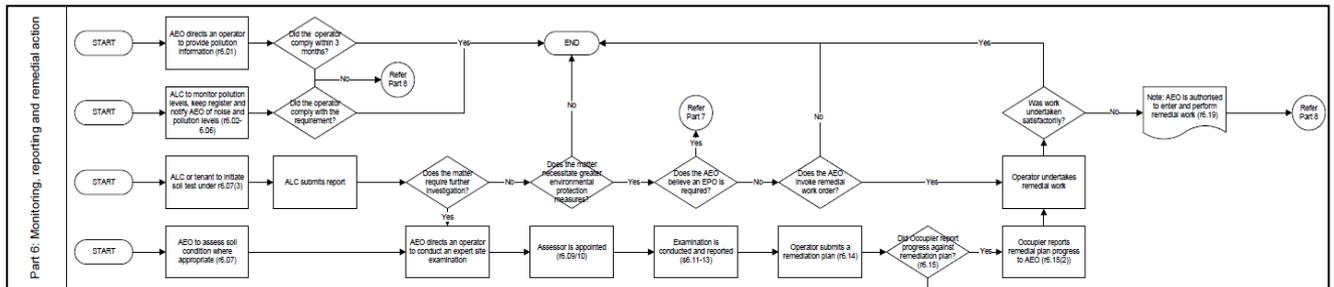
Monitoring, reporting and remedial action

Monitoring and reporting

- 3.42 An AEO has a duty to monitor the level of compliance with the Act and Regulations in order to properly determine what regulatory actions may be necessary and to assist the ALC to manage the airport in accordance with its *Environment Strategy*. This duty includes the assessment of information forwarded by occupiers on matters specified under r6.01, and by the ALC under r6.04, as well as direct monitoring of the state of the environment and the activity of airport occupiers by the AEO.

Figure 3: 'Monitoring, Reporting and Remedial Action' extract.

Airports Building Control and On-ground Environment Compliance Framework, AEO Approval Process for Regulatory Compliance process map.



3.43 The AEO is responsible for monitoring the airport site, individual premises and operations in order to ascertain whether or not the requirements of Part 6 of the Act have been complied with.

Provision of pollution information

3.44 An AEO for an airport may direct the occupier of an area of that airport, in writing, to give to the AEO a copy of any information held by, or available to, the occupier relating to that part of the airport site, as per r6.01.

Monitor pollution levels

3.45 An ALC must monitor in accordance with its environment strategy, the levels of pollution if any, present in air, water or soil at the airport; and the level of noise generated at the airport, as per r6.02.

3.46 The ALC is to record and notify the AEO of any noise and pollution levels that may exceed the requirements as set out in the relevant environmental strategy.

Initiate soil test

3.47 The AEO must assess the condition of soil in an area of the airport if [r6.07]:

- the AEO suspects that current practices or incidents may have resulted in non-compliance with schedule 3 to the Regulations, including an area of environmental significance;
- previous practices or incidents may have resulted in some pollution and the area is subject to a licence or lease which is about to expire or is proposed to be terminated or transferred; or
- there is a proposed change of use under the Airport master plan which will necessitate greater environmental protection.

Duty to assess soil condition

- 3.48 An AEO making an assessment under r6.07 must ensure testing occurs in accordance with regulation 1.08, samples of soil or groundwater that will indicate whether or not soil contamination has occurred.
- 3.49 An AEO who is making an assessment under r6.07 of the condition of soil in an area of an airport, or who has decided 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 [r6.09(1)]

Reporting

- 3.50 If testing indicates contamination of the soil, the AEO must decide whether:
- measures are being taken by the occupier of the affected site are likely to manage, or mitigate the effect of the indicated contamination, or
 - because of the possibility that the contamination is causing or could cause, and effect described in r2.03(1), a conclusive expert examination of the site is required.
- 3.51 A copy of the record of the result of the test, and of the AEOs decision, must be given to the ALC.

Remedial action

- 3.52 If an AEO believes on reasonable grounds that a person has caused, or is causing pollution at an airport, the AEO may make an environmental remedial order, in writing directing a person to carry out specified remedial work in respect of the pollution.
- 3.53 An AEO who approves any remedial plan prepared by an occupier for cleaning up, remedying or rectifying pollution at any site at the airport, must monitor the implementation of that plan [r6.16].
- 3.54 The AEO has the power to enter a site at any reasonable time to carry out necessary environmental remedial work, including the investigation of pollution [r6.19].
- 3.55 The AEO must undertake the following prior to entry to airport premises [s235]:
- inform the occupier that they may refuse to give consent (in which case a warrant authorising entry may be sought);
 - obtain consent from the occupier; and
 - provide proof of identity if requested.
- 3.56 In undertaking these monitoring duties, the AEO is able to exercise any of the monitoring powers to the extent that they are required to ascertain whether Part 6 of the Act is being complied with.

4 Enforcement

- 4.1 The AEO has the primary responsibility for the enforcement of the environmental provisions of the Act and Regulations in consultation, where appropriate, the AIRS. The AEO has a range of enforcement tools that may be employed. These include:
- warnings;
 - directions;
 - environmental protection orders;
 - environmental remediation orders;
 - infringement notices;
 - prosecutions; and
 - injunctions.
- 4.2 Information regarding infringement notices, prosecutions and injunctions is currently not included in this manual.

Enforcement measures

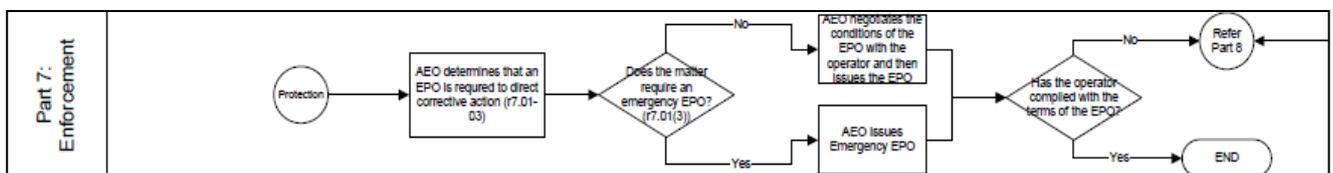
- 4.3 Where enforcement measures are instituted, the decision will be based on the critical evaluation of the circumstances surrounding each individual case. In all cases where enforcement measures may be required, the AEO shall liaise with the relevant AIRS manager and together will give due consideration to the following criteria in conjunction with the circumstances unique to the matter in question in order to arrive at a proper and appropriate course of action to be undertaken:
- the degree of harm to the environment and whether there was actual impact or the lesser degree, a potential for harm;
 - whether the offence was serious, or of a technical nature, or trivial;
 - the culpability of the offender whether it be an individual or a corporation and whether there are aggravating or mitigating circumstances;
 - the history of the offender and whether enforcement measures are necessary to ensure compliance with the Act and Regulations;
 - the prevalence of the offence, the level of concern generated in the airport community, and amongst the public and the consequent need for both a specific and a general deterrent;
 - actions taken against others for similar offences in the past and the consequent need to be consistent;
 - whether or not actions will be taken against others in this matter;
 - the precedent that may be set by a failure to take some enforcement action;

- the attitude adopted by the offender; specifically, whether there has been cooperation extended in the investigation, or whether obstruction, intimidation or assault has occurred;
- whether specific directions, or orders have been issued, and whether or not they have been ignored;
- the time elapsed since the offence and the likely outcome of enforcement proceedings; and
- the cost of enforcement and whether enforcement proceedings may be counter productive.

4.4 Enforcement actions the AEO may impose can be one single measure or a combination of measures depending on what the AEO considers appropriate to the circumstances.

Figure 4: 'Enforcement' extract.

Airports Building Control and On-ground Environment Compliance Framework, AEO Approval Process for Regulatory Compliance process map.



Warnings

4.5 Where breaches of the Regulations are detected, or where circumstances arise where there is potential for a breach, then except for trifling matters that will not be proceeded with, a warning is appropriate.

4.6 The warning in the first instance may be verbal but must always be confirmed in writing. A warning in writing is essential as it is proof of knowledge of the circumstances on the part of the responsible person of failure to comply i.e. that which was either done, allowed to continue or was omitted to be done was illegal. This is an essential element to be established should further proceedings become necessary.

Directions

4.7 There are two instances under the Regulations where the AEO may give specific written directions. In both cases the directives are investigative tools, specific in focus and enforceable under penalty. The first type of direction deals with obtaining information and requires the occupier of any airport site to provide information in their possession or

available to them about the history of a site and its associated activities relevant to pollution [r6.01(1)].

- 4.8 The second type of direction deals with the examination of sites and requires the occupier to appoint experts to investigate and assess the contamination of the soil at the site [r6.09(1)]. Further details are provided below.

Direction to furnish further information

- 4.9 This 'direction' is to be used when the AEO suspects the land in an area of the airport may be polluted and it is likely that there are documents available that will assist in the investigation of the history of that site. The AEO may direct the occupier of an area on the airport, in writing, to provide a copy of information either held by them or readily available to them about [r6.01(1)]:

- the former uses of the land and other activities of the occupier or a former occupier and when such uses or activities occurred;
- the manner in which a former land use or activity was undertaken;
- how wastes or other material to be disposed of were disposed of;
- if any part of the land is contaminated, and the extent and character of that contamination; and
- any known impact of pollution generated either on-site or off-site.

- 4.10 This 'direction' can be applied to any corporation or individual that is the occupier of an area of an airport site. The 'direction' must be complied with before the end of 3 months after service of the direction [r6.01(3)].

Maximum penalty for contravention:

50 penalty units for individuals; or

250 penalty units for bodies corporate [r6.01(3)].

- 4.11 The AEO must give a copy of the information derived to the ALC, unless the information was provided by the ALC [r6.01(4)].

Maximum penalty for contravention by AEO:

10 penalty units [r6.01(4)].

Direction to appoint experts to examine a site

- 4.12 This 'direction' is to be used when the AEO has carried out the required analysis [r6.07], and is satisfied that the soil in an area of the airport is contaminated [r6.08(3)] or the AEO has reason to suspect contamination is present [r6.07(1)], and believes expert examination of the site is required to quantify the contamination and determine the extent of impact [r6.09(1)].

4.13 The AEO can direct the occupier of the site to undertake an expert examination of the site in question by appointing a site investigator with appropriate qualifications and experience and an approved assessor to carry out the required work [r6.09(2)].

Maximum penalty for contravention:

50 penalty units for individuals;

250 penalty units for bodies corporate [r6.09(2)].

4.14 This 'direction' can be applied to any corporation or individual who is the occupier of an area of an airport site. The examination must be completed by the site investigator and a report given to the site assessor before the end of 2 months after service of the direction. The assessor shall provide a written report to the AEO before the end of 2 months after receipt of the investigators' report [r6.09(4)].

4.15 Upon request by the occupier, the AEO must provide a list of persons eligible to be appointed as an assessor [r6.09(3)].

Orders

Environmental Remediation Orders (EROs)

4.16 Specifically, an ERO may be issued by the AEO if he believes on reasonable grounds that a person has caused or is causing pollution at an airport and the effect of that pollution is of significance and requires some form of remediation. The ERO will specify works that the AEO determines must be carried out to remedy the pollution.

4.17 In practice it may well be that an ERO would require substantive investigations, reports and action plans to be submitted detailing how the recipient intends to address the works to be actioned. Following receipt of a satisfactory plan, this could well be incorporated in a subsequent ERO detailing the works and a monitoring program to validate the clean-up that is to be conducted or the measures to be put in place or other actions as may be appropriate.

4.18 An ERO will be served on [r6.18(2)]:

- the person who has caused or is causing the pollution; or
- the operator of an undertaking whose activities have caused the pollution; or
- where the person who caused the pollution cannot be found and the operator is insolvent or beyond jurisdiction then; the lessor or ultimately the licensor (ALC).

4.19 An ERO should be used to address situations where site remediation is required. An ERO must not be issued where an existing remediation plan for soil pollution is in force and the occupier is carrying out that plan in accordance with the specified terms and conditions contained in the plan [r6.18(3)]. They should not be used instead of an EPO where an EPO is the most appropriate tool; however an ERO may be used in conjunction with an EPO.

4.20 The ERO can specify timelines [r6.18(6)]. Discussions should be held with the prospective recipient of the order to determine approximate costs and resource availability and acceptable timelines.

4.21 The order shall be in writing [r6.18(1)]. A sample ERO is included in the Appendices.

4.22 If works are not carried out, or not carried out satisfactorily within the timeframe or a reasonable time if time-frames are not specified, and the AEO considers on grounds of urgency, public health or safety it is necessary, then the AEO or an authorised officer may enter the site at a reasonable time and carry out remedial works [r6.19]. Refer to failure to comply with an EPO, under Chapter 4: Enforcement, for further guidance.

Maximum penalty for contravention of an ERO:

50 penalty units for individuals;

250 penalty units for bodies corporate [r6.18(8)].

Environment Protection Orders (EPOs)

4.23 In general, an EPO is the next step up from an ERO in the tools available. It will generally apply to circumstances of greater significance and as a consequence carries a far greater penalty for non compliance. EROs and EPOs have similarities in application and the criteria for use of an EPO should be factored in when considering an ERO. Care should be taken to ensure that the most appropriate tool, or combination of tools, for the purpose are used.

4.24 The general purpose of an EPO is to compel an operator of an undertaking at an airport to take a particular action(s) to comply with one or more of the general duties required under Part 4 of the Regulations.

4.25 This EPO will apply to the operator of an undertaking who is not complying with its general duties under Part 4 of the Regulations, and has not taken all reasonable and practicable measures to mitigate these circumstances. Refer to failure to comply with an EPO, under Chapter 4: Enforcement, for further guidance.

4.26 For an EPO made under r7.01(1) to compel an operator of an undertaking to comply with a duty under r4.01 there must be hard evidence obtained through investigation and analysis. Before issuing an EPO to prevent pollution, the AEO must be satisfied that:

- the pollution is likely to become harmful or offensive; and
- the operator is not taking all measures that are reasonable and practicable to cease to generate the pollution.

4.27 In addition, unless the AEO declares an EPO to be an emergency EPO:

- the AEO must give the operator of the undertaking 48 hours to make a submission to the AEO in relation to the circumstances; and

- the AEO must take account of that submission.

4.28 Unless all of the above are complete, the AEO must not issue an EPO.

Application of EPO to preserve habitat

4.29 This EPO will apply to the operator of an undertaking made under r7.02(1) to compel an operator to comply with the duty under r4.04 to ensure there are no adverse consequences for:

- the local biota, and the ecosystems and habitats of native species;
- existing aesthetic, cultural, historical, social and scientific values of the local area including archaeological and anthropological values;
- flora and fauna that is known to be endangered, or vulnerable as a species;
- an ecological community known to be endangered; and
- sites of indigenous significance at the airport.

4.30 Before issuing an EPO under r7.02(1), the AEO must be satisfied that:

- the operator is not taking all measures that are reasonable and practicable to ensure the undertaking avoids or minimises the adverse consequence;

4.31 In addition, unless the AEO declares an EPO to be an emergency EPO:

- the AEO must give the operator of the undertaking 48 hours to make a submission to the AEO in relation to the circumstances; and
- the AEO must take account of that submission.

4.32 Unless all of the above are complete, the AEO must not issue an EPO.

Application of EPO to prevent offensive noise

4.33 This EPO would apply to the operator of an undertaking made under r7.03(1) to compel an operator to comply with a duty under r4.06 to:

- prevent the generation of offensive noise; or
- if prevention is not reasonable, then to minimise the generation of that noise.

4.34 Before issuing an EPO, the AEO must be satisfied that:

- the operator is not taking all measures that are reasonable and practicable to ensure the undertaking ceases to generate noise that is excessive.

4.35 In addition, unless the AEO declares an EPO to be an emergency EPO:

- the AEO must give the operator of the undertaking 48 hours to make a submission to the Secretary of the Department in relation to the circumstances; and

- the AEO must take account of that submission.

4.36 Unless all of the above are complete, the AEO must not issue an EPO.

Emergency EPOs

4.37 The requirement to allow the operator 48 hours to make a submission does not apply where the AEO declares the order to be an emergency EPO. The conditions under which an AEO may declare an EPO to be an emergency EPO are not defined in the Regulations, but would normally include an evaluation by the AEO that indicates significant environmental harm would be caused in the case of a delay of 48 hours which could otherwise be prevented by the immediate issue of an EPO.

4.38 An EPO should not be issued:

- if a warning would be appropriate;
- if the cause of the breach has been identified and rectified and there is very little chance of the breach recurring; or
- prior consultation with the recipient has not occurred, other than in cases of an emergency or where it would otherwise be inappropriate to do so.

4.39 The EPO can specify timelines. In practice a reasonable time should be negotiated with the recipient of the EPO having regard to:

- the circumstances of the pollution;
- the likely effects on the environment;
- the cost of the exercise; and
- the availability of resources to perform the works.

4.40 Discussions should be held with the prospective recipient of the notice to determine approximate costs and resource availability and acceptable timelines. The content of the EPO should be discussed and where possible a draft provided to the prospective recipient for comment prior to issue.

4.41 Non compliance with an EPO is an offence under s132(2).

Maximum penalty for contravention of an EPO:

250 penalty units for individuals;

1250 penalty units for bodies corporate [s132(2)].

General penalty provisions

Offences under the *Airports Act 1996*

- 4.42 There are three principal environmental offences contained in s131B, s131C and s131D. These offences are independent of the environmental duties and methods of enforcing those duties contained in the Regulations. Offences in the Regulations are structured in one of two ways:
- regulations that merely prescribe the "content" of an offence under s132. That is, the offence appears at s132(2), but the elements of the offence appear in the regulation; and
 - regulations that impose offences directly.
 - In practice, the only difference between the two is the maximum fine that may be imposed on an offender.

Section 131B - Offence of causing serious environmental harm

- 4.43 This is the most serious environmental offence contained in the Act. What constitutes "serious environmental harm" is really a matter of judgement, but some minimum criteria are set out in s131B(1)(a) to (d).
- 4.44 To prosecute this offence successfully the court must be convinced beyond reasonable doubt that the environmental harm caused by the offender satisfies at least one of the criteria listed in s131B(1)(a) to (d). However, because of the effect of s131E(l), even though a court may not be convinced that serious environmental harm has been caused by a person, the court has the discretion to convict the person of one of the lesser offences of causing material environmental harm or causing environmental nuisance if it is satisfied that is the case.
- 4.45 This offence does not extend to environmental harm caused by noise pollution. Potential charges are as follows:

Cause serious environmental harm

- 4.46 A person commits an offence if the person engages in conduct that results in environmental pollution that harms, or has the potential to harm the environment:
- s131B(1)(a) - an environmentally significant site identified in the final environment strategy
 - s131B(1)(b) - pollution resulted, or has potential to result in irreversible high impact
 - s131B(1)(c) - pollution resulted, or has potential to result in substantial harm to public health or to public safety

- s131B(1)(d) - pollution resulted, or has potential to result in substantial damage to property.

Maximum penalty for contravention:

500 penalty units for individuals; or

2500 penalty units for bodies corporate [s131B(2)].

Section 131C - Offence of causing material environmental harm

4.47 This offence is of a similar nature to s131B, but the extent of harm to the environment that must be proved is lower. The three alternative criteria for what constitutes “material environmental harm” are contained in sections 131(1)(a) to (c). Because of the effect of s131E(2), if a court is not convinced that a person has caused material environmental harm, but is satisfied that the person has caused environmental nuisance, it may convict the person of the lesser offence instead.

4.48 This offence does not extend to environmental harm caused by noise pollution. Potential charges are as follows:

Cause material environmental harm

4.49 A person commits an offence if the person engages in conduct that results in environmental pollution that harms, or has the potential to harm the environment:

- s131C(1)(a) - pollution resulted, or has potential to result in significant environmental impact.
- s131C(1)(b) - pollution resulted, or has potential to result in harm to public health or to public safety.
- s131C(1)(c) - pollution resulted, or has potential to result in damage to property.

Maximum penalty for contravention:

200 penalty units for individuals; or

1000 penalty units for bodies corporate [s131C(2)].

Section 131D - Offence of causing environmental nuisance

4.50 This is the least serious of the three "stand-alone" environmental offences, and is probably the easiest to establish. The alternative criteria for what constitutes environmental nuisance appear in s131D(l)(a) to (c). This offence does not extend to environmental nuisance caused by noise pollution. Potential charges are as follows.

Cause environmental nuisance contrary to:

4.51 A person commits an offence if the person engages in conduct that results in environmental pollution that affects an area in an airport site:

- s131D(1)(a) - resulting pollution is in the form of smoke, dust or odour.

- s131C(1)(b) - resulting pollution is of low impact and transient.
- s131C(1)(c) - pollution unreasonably interferes, or has potential to unreasonably interfere, with public enjoyment.

Maximum penalty for contravention:

50 penalty units; or

250 penalty units for bodies corporate [s131D(2)].

Offence to mislead regulatory officials

4.52 The AEO is an authorised officer for the purposes of Part 17 of the Act. It is therefore an offence for any person to knowingly or recklessly make a false or misleading statement to an AEO, or to omit from a statement any matter which would make the statement false or misleading [s227].

Maximum penalty for contravention:

imprisonment term of up to 6 months, which translates (under provisions of the Crimes Act 1914) to

30 penalty units for individuals; or

150 penalty units for bodies corporate.

Failure to report cultural, etc. discovery

4.53 People on airports must give the ALC and the AEO notice of any object, species or ecological community that they discover which is of heritage, cultural, or ecological significance. It is an offence to intentionally fail to do so [r4.05]. Because of the nature of the offence, it would appear that the best method of enforcement of this requirement is through education.

Maximum penalty for contravention:

50 penalty units for individuals; or

250 penalty units for bodies corporate [r4.05(1)].

Failure to comply with condition of authorisation

4.54 This offence is not constituted by the failure to comply with a condition of an authorisation issued under the Regulations, but by the failure to report to the AEO about a failure to comply [r5.18].

Maximum penalty for contravention:

50 penalty units for individuals; or

250 penalty units for bodies corporate [r5.18(2) (a) or 5.18(2)(b)].

4.55 Note: A failure to comply with a condition of an authorisation will generally be a breach of an environmental duty, which is enforceable by the issue of an environment protection order under Part 7 of the Regulations.

Failure to report existing pollution

4.56 This regulation [r6.01] contains two offences. Firstly, it is an offence to intentionally fail to disclose certain information to the AEO where that officer has directed that the information be provided.

Maximum penalty for contravention:

50 penalty units for individuals; or

250 penalty units for bodies corporate [r6.01].

4.57 Secondly, it is an offence for an AEO to fail to pass on the information obtained, to the ALC.

Maximum penalty for contravention by AEO:

10 penalty units [r6.01(4)].

Failure of ALC to monitor pollution levels

4.58 There are three separate obligations imposed on ALCs by r6.02, and each must be discharged. Intentional failure to discharge any one obligation is an offence. Since this offence can only be imposed on corporations (under the Act, ALCs must be "constitutional corporations"), the base maximum penalty of 50 penalty units is not increased by a factor of five.

Maximum penalty for contravention by ALC:

50 penalty units [r6.02(1) or 6.02(2)].

Failure of ALC to comply with additional reporting requirements

4.59 Two reporting obligations are required by the ALC under r6.04. Intentional failure to discharge either obligation is an offence. Like r6.02, these offences can only be committed by corporations, so the maximum fine remains at 50 penalty units.

Maximum penalty for contravention by ALC:

50 penalty units [r6.02(1) or 6.02(2)].

Failure to comply with duties of sublessees and licensees

4.60 Two reporting obligations are imposed on "occupiers" of airport land under r6.05. The term "occupier" is defined in r6.05(5). The Secretary of the Department is empowered to direct an occupier to discharge his/her obligations, and intentional failure to do so is an offence.

Maximum penalty for contravention:

50 penalty units for individuals; or

250 penalty units for bodies corporate [r6.05(4)].

Failure to correct inaccurate or incomplete report

- 4.61 A person who has submitted a report under Division 1 of Part 6 of the Regulations, and who becomes aware that the report is inaccurate or incomplete, must submit a corrected or completed report.

Maximum penalty for contravention:

50 penalty units for individuals; or

250 penalty units for bodies corporate [r6.06(2)].

Failure to submit report on soil contamination investigation

- 4.62 A sublessee of land at an airport, where an expert site contamination investigation has been conducted under the Regulations, must submit a written report of that investigation to the AEO within 60 days of the conclusion of the investigation.

Maximum penalty for contravention:

20 penalty units for individuals; or

100 penalty units for bodies corporate [r6.07(3)].

Failure to carry out expert site examination

- 4.63 Where an occupier of land at an airport has received a direction from the AEO to undertake site contamination examination, intentional failure to appoint a site examiner and an assessor is an offence [r6.09].

Maximum penalty for contravention:

50 penalty units for individuals; or

250 penalty units for bodies corporate [r6.09(2)].

Failure to comply with ERO

- 4.64 Regulation 6.18 provides the AEO with a broad power to order remedial work to be carried out in respect of identified pollution. A person who receives such an order and intentionally fails to comply with it commits an offence.

Maximum penalty for contravention:

50 penalty units for individuals; or

250 penalty units for bodies corporate [r6.18(7)].

Failure to comply with an EPO

- 4.65 The offences contained in r7.05 and r7.06 re the two most likely offences to be dealt with by AEOs. Regulation 7.05 relates to enforcement of EPOs issued to require operators of undertakings on airports to comply with their general environmental duties. Regulation 7.06 empowers the AEO to issue an EPO requiring the holder of an authorisation under the

Regulations to comply with the conditions of that Authorisation. It is an offence to fail to comply with the EPO. Where a date for compliance is specified, a separate offence occurs every day that the person fails to comply after that date. Potential charges are as follows:

- Fail to comply with an order pursuant to r7.01(1) contrary to r7.05(a) or (b) (prevent the generation of pollution).
- Fail to comply with an order pursuant to r7.02(1) contrary to r7.05(a) or (b) - (prevent adverse affect on ecosystems, habitat etc.).
- Fail to comply with an order pursuant to r7.03(1) contrary to r7.05(a) or (b) - (prevent the generation of excessive noise).
- Fail to comply with an order pursuant to r7.06.

Maximum penalty for contravention:

250 penalty units for individuals; or

1250 penalty units for bodies corporate [r7.06(5)].

Injunctions

- 4.66 Injunctions restraining conduct in contravention or potential contravention of the Act or Regulations, requiring certain actions be taken to avoid contravention or requiring certain performance be met, may be granted by the Federal Court on the application of the Minister for Infrastructure and Regional Development. Injunctions may be sought regardless of other enforcement actions proceeding at the time (Part 15 of the Act).
- 4.67 If the AEO considers an injunction to be an appropriate response, the AEO is required to escalate the matter to the Department to discuss and determine the actions to be undertaken. In recommending an injunction, the AEO should give careful consideration to the urgency of the situation, the likelihood of other means of achieving the desired result and the likely costs involved if the injunction is not subsequently made out.

Restraining Injunctions

- 4.68 Where any corporation or person has engaged in, is engaging in, or proposes to engage in any conduct which contravenes the Act, the Federal Court, on the application of the Minister for the Department, may grant an injunction:
- restraining the person from engaging in the conduct; and
 - if in the opinion of the court it is desirable to do so, requiring the person to undertake certain specific actions.

Performance Injunction

- 4.69 Where any person has refused or failed, or is refusing or failing, or proposes to refuse or fail to do any act or thing and that refusal or failure would be a contravention of the Act, then the Federal Court, on the application of the Minister for the Department, may grant an injunction requiring the person to carry out that act or task.

5 Additional duties

Compliance reporting

5.1 The Compliance Framework requires that AEOs submit to AIRS the following reports:

- a fortnightly activity report;
- incident reports; and
- an assessment of an airport's annual environment report.

5.2 These three reporting requirements are detailed below.

Fortnightly reporting

5.3 Fortnightly reports summarising the key issues, meetings and outcomes at each airport is required from each AEO. These reports should be provided as an email and be as brief and succinct as possible. The following headings are to be used:

- Key Issues (important currently happening such as community involvement in developments, politically sensitive issues etc.)
- Key Meetings (any meetings relating to key issues, politically sensitive or contentious meetings)
- Outcomes.

5.4 The purpose of fortnightly reports is to document key issues, meetings and outcomes raised between the AEO and the ALC and other proponents. This record will assist the AEO and AIRS in monitoring advice to and compliance by the ALC regarding their environmental management actions. These reports provide AIRS, and other sections within the Airports Branch, with an up-to-date "snapshot" of current environment issues.

Incident reports

5.5 Additional to the fortnightly reporting, incident reports are required on an as-hoc basis. Environmental incidents are those events that have an impact (or potential impact) on the environment including:

- air quality;
- physical, chemical or biological condition of surface water or groundwater;
- chemical or biological condition of the soil;
- native flora and fauna;
- noise sensitive receptors;
- existing or proposed land use under the airport final master plan; or

- existing or proposed land use under the airport final master plan (including beneficial use) of adjacent land (encompassing off-site impact).
- 5.6 The environmental impact of the incident may be contained on-site, or result in off-site impacts. The primary responsibility for containment and/or remedial action is with the person or organisation that caused the incident, in cooperation with the ALC
- 5.7 The role of the AEO in both incident and emergency response is initially to provide advice/direction to the responsible controller on environmental management issues, in consultation with the ALC and other regulatory agencies where appropriate. The AEO should review the effectiveness of the incident response procedures and emergency management arrangements.
- 5.8 The ALC should provide a written incident report to the AEO as soon as practicably possible after the incident, as well as further documentation that is relevant to follow up actions (e.g. monitoring results).
- 5.9 For incidents where immediate AEO notification is undertaken, the AEO should respond with the following:
- inspect scene of incident, and associated areas (e.g. stormwater outfall) and record observations;
 - discuss with ALC grounds staff clean-up strategies undertaken;
 - recommend follow-up action where needed;
 - place all details of incident on an appropriate hard copy file, with a copy to ALC; and
 - advise AIRS of the incident as soon as practicable.
- 5.10 The AEO [r7.01] and the Secretary of the Department [r7.02 & 7.03] may make an 'emergency' environmental protection order directing an operator of an undertaking or the ALC to take a particular action.
- 5.11 The AEO will assess the circumstances that existed at the time the incident occurred, to determine whether enforcement action needs to be undertaken. During the incident, the AEO may have gathered evidence under the AEO's monitoring powers (e.g. samples, photographs, statements) which form the basis of the assessment.

Assessment of annual environment reports

- 5.12 ALCs and other operators of undertakings on the airport must take all reasonable steps to ensure that their environment strategy is complied with (refer to section 83A of the Act). The ALC is required to give to the Secretary an annual environment report (r6.03) for the reporting period, which is the financial year. This report, which is required to be submitted to the Secretary not later than 120 days after the end of the reporting period (i.e. 28 October) must contain:

- information that may have been added to the environmental site register for the preceding year;
- 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
- a report of incidents of pollution and other contraventions of the Regulations that have occurred during the year to which the report applies.

5.13 The AEO may provide guidance to the ALC when drafting the report to ensure the regulatory requirements are met. The report is significant as it presents the ALC's level of compliance with and implementation and progress of environmental commitments and targets are being met and progressed.

5.14 A duty of the AEO is to assess the annual environment report against the regulatory reporting requirements to determine the level of ALC compliance with its environment strategy. The AEO is to use an assessment template available from AIRS.

AEO liaison with ABC

Roles and responsibilities

5.15 The ABC is responsible for regulating building activity at leased federal airports. The types of building activities are defined at section 98 of the Act and include building, works, or demolition activities, and undertaking land clearing. The ABC has the authority to issue a building activity permit with (or without) conditions, and also exempt certain works, including minor works.

5.16 Whilst the AEO may provide advice to the ABC on potential environmental impacts that may be associated with a building activity, only the ABC has the authority to include conditions in a building activity permit.

Building activity applications

5.17 The ABC should liaise with the AEO on all proposals that are considered in any way likely to have environmental implications. The AEO may recommend appropriate actions to the ABC to consider for inclusion on the building activity permit. For example, that a construction environment management plan is developed for large projects. The ABC, however, is not obliged to accept the AEO's recommendation or to act in accordance with such advice. Note: The AEO is not considered an expert for the purposes of building activity applications.

Land clearing applications

- 5.18 The ABC is to refer any building application that includes land clearing to the AEO who needs to independently assess whether the proposed building activity is compliant with the Airport Master Plan and Airport Environment Strategy and any approved Major Development Plan (where applicable).
- 5.19 'Land clearing' is not defined in the Act and guidelines for the AEO, ABC and the ALC have been developed to guide this process. AEOs should refer to the *Land Clearing – leased federal airports Guidelines for ABCs and AEOs* for further guidance. The guidelines can be obtained from AIRS.
- 5.20 Generally, routine garden maintenance, clearing vegetation for firebreaks, security, obstacle limitation surfaces and similar will be considered exempt under the Airports (Building Control) Regulations 1996.

Master plans

- 5.21 The Master Plan (MP) is a 20 year strategic vision for the airport site which is renewed every five years. The MP includes future land uses, types of permitted development, and noise and environmental impacts. The Environment Strategy forms part of the MP and sets out the airport's strategy to manage environmental issues within a five year period and beyond. It is the basis on which the Commonwealth measures the environmental performance of airports and the document by which airport tenants will determine their environmental responsibilities.
- 5.22 In developing their MP ALCs must publish a Preliminary Draft MP and invite public comment. Following the public consultation, the airport must then submit a Draft MP to the Minister. The Minister must either approve or refuse to approve the Draft MP. If the Minister neither approves nor refuses to approve the Draft MP within 50 business days from receiving all the necessary documents and information, the Minister is taken to have approved the Draft MP. Division 3 of Part 5 of the Act specifies the requirements for the preparation and submission of a MP.
- 5.23 The AEO will be required to provide comment on:
- early versions of draft MPs – referred to as exposure drafts. These comments are "informal" insofar as there is no legislative requirement for the ALC to refer exposure drafts to the AEO;
 - the Preliminary Draft MP – refer to AIRS for the assessment template; and
 - the Draft MP to the Minister – the AEO assessment is likely to be the same (or similar) as previously advised for the Preliminary Draft MP, unless the draft MP has been amended significantly.

5.24 The AEO assessment of the Preliminary Draft MP and Draft MP will be incorporated into the Airport Branch's briefings to senior executive and to the Minister.

Major development plans (MDPs)

5.25 All leased federal airports (except for Tennant Creek and Mount Isa Airports) are required to develop a Major Development Plan (MDP) for major airport developments on the airport site. A draft version of the MDP must undergo public consultation before being submitted to the Minister for Infrastructure and Regional Development for a decision. Division 4 of Part 5 of the Act specifies the requirements for the preparation and submission of a MDP.

5.26 The AEO will be required to provide comment on draft MDPs – refer to AIRS for the assessment template. The AEO comment of the Draft MDP will be incorporated into the Airport Branch's briefings to senior executive and to the Minister. AEOs may also be required to provide comment upon exposure drafts of the MDP.

Annual lease review

5.27 Lease Reviews are conducted annually for all leased federal airports. The lease review process was formalised following the *Australian National Audit Office's Report into Management of Federal Airport Leases in 2004*. Lease reviews are a risk management tool that allows the Department to monitor ALC's compliance with lease and sale document obligations. The reviews aim to identify any potential issues of concern or risks for the Commonwealth and methods to minimise these risks.

5.28 Broadly, an Airport's lease requires the ALC to ensure the ongoing operation of the airport as an aerodrome and continued development of the airport site. Lease terms include, but are not limited to, issues such as insurance, tax, operation of the airport and access to the airport. The Airports Branch seeks comments from the Civil Aviation Safety Authority, Office of Transport Security, Airport Building Controllers and the AEOs into the relevant clauses of an airport's lease.

5.29 For environmental management this will generally be in the following format, provided by email to the AEO:

Lease clause	Provisions			Method of Assessment
3.1	Lessee must give access			
3.1	(a)	(iv)	The Lessee must at all times not use, or permit to be used, the Airport Site for any unlawful purpose or in breach of legislation.	Are you aware of any breaches?
6.2	Maintenance of Environment of the Airport Site			

Lease clause	Provisions	Method of Assessment
6.2	Throughout the Term the Lessee must maintain the environment of the Airport Site in accordance with any obligation imposed on it by legislation which from time to time applies to the environment of the Airport Site and at the expiration or earlier determination of the Term the Lessee must yield up the environment of the Airport Site in a condition that complies with such obligation.	Are there any issues that you would like the Department to raise with the Airport about their compliance with the Regulations, the Airport Environment Strategy or the general duty of care requirement?
7.1	Legislation and notices	
7.1	The Lessee must, at its own expense, comply with all legislation (including the Airports Act) from time to time relating to the Airport Site and the Structures or to the use or occupation of the Airport Site and the Structures and with all requirements in notices and orders given or made (whether issued to either the Lessee or the Lessor) by a Governmental Authority.	Are you satisfied that the Airport has complied with all notices, orders and/or approvals issued by the Airport Environment Officer?

6 Administration and Governance

Governance

- 6.1 Governance arrangements provide AEO staff with the ability to:
- **Set direction and make decisions:** by establishing and maintaining environment management requirements at leased federal airports;
 - **Maintain accountabilities:** to manage and demonstrate accountability of the environmental requirements for operators of undertakings;
 - **Manage risk:** to make decisions that are informed by risk assessment processes;
 - **Implement controls:** to use and improve the set of tools, processes and systems required to achieve compliance against regulatory requirements; and
 - **Monitor and influence behaviour and culture:** to develop a shared understanding of the behaviours and culture that aim to drive consistent, effective and comprehensive regulatory compliance.

Records management and accountabilities of decisions

- 6.2 As departmental employees, and particularly as officers authorised with specific regulatory powers, AEOs are fully accountable for their decisions. All decisions made by the AEO should be in accordance with the Act and Regulations, the *AEO Operations Manual*, and all other departmental policies and procedures. These decisions should be based on adequate factual information and the principles of natural justice.
- 6.3 Additionally, AEOs should refer to the appropriate governance forums as outlined in the *Compliance Framework* for further guidance and support when making decisions.

Evidentiary standards

- 6.4 The requirement to keep records and to have evidence to support decision making is a critical part of the administration of the regulator regime. The specific requirements of AEOs to keep relevant records are documented in s10.02.
- 6.5 As matters of public interest the dealings between ABCs, AEOs and ALCs are subject to Freedom of Information (FOI) laws and must therefore be recorded formally, in writing and with due regard for public trust invested in their role.
- 6.6 Evidence should be:
- Documented – including conversations, meetings or other non-text based communications

- Fact-based – free of value judgement
- Relevant – related to the compliance matter
- Defensible – able to withstand external scrutiny

6.7 There is a requirement to document decisions and outcomes that may not be decided through paper or text-based communication. Conversations and decisions that are reached in meetings or by telephone should be documented and retained by AEOs.

6.8 There are varying levels of compliance action that can be taken by compliance officers. Because these actions vary in complexity and severity compliance officers should ensure that they retain enough evidence to substantiate their assessment and validate the course of action they have taken.

Review of AEO decisions

6.9 Part 9 of the Regulations provides for the reconsideration and review of certain decisions of the AEO.

Review by the Secretary

6.10 A person affected by a decision of an AEO made under the Regulations may apply to the Secretary of the Department for review of that decision (regulation 9.01, 9.02 and 9.03). In reviewing a decision the Secretary must take account of specialist advice. The Secretary must give written notice of the decision regarding the review to both the applicant and the AEO, and if the decision was a substitute for the original decision, the notice must include the Secretary's reasons for the decision. The following decisions may be reviewed:

- the granting, refusal, or conditionally granting of an authorisation [r5.09(1)];
- the revoking, variation or refusal of variation of an authorisation [r5.16(1)];
- refusal to grant the transfer of an authorisation [r5.19(2)];
- the direction to an occupier to provide a copy of information [r6.01(2)];
- the direction to an occupier to submit a remedial plan [r6.14 (1)];
- the refusal to approve a remedial plan [r6.14 (3)];
- the direction to a person to carry out remedial work [r6.18];
- the direction to comply with a duty under r4.01 [r7.01 (1)];
- the direction to comply with a duty under r4.04 [r7.02 (1)];
- the direction to comply with a duty under r4.06 [r7.03(1)]; and
- the direction to comply with a condition of an authorisation [r7.06(1)].

Review of decisions by Administrative Appeals Tribunal (AAT)

- 6.11 For airport environmental regulation, the decisions which can be appealed are detailed in s242 of the Act and Division 2 of Part 9 of the Regulations. Only decisions of the Secretary and the Minister are subject to appeal to the AAT.

Freedom of Information

- 6.12 Recent reforms to the *Freedom of Information Act 1982* (the FOI Act) promote a pro disclosure culture across government agencies and build a stronger foundation for greater openness and transparency in government.
- 6.13 A significant change is the introduction of a new information publication scheme for Australian Government agencies. The scheme aims to transform the freedom of information framework from one that responds to individual requests for access to documents to one that requires agencies to take a proactive approach to publishing information. The scheme commenced on 1 May 2011.
- 6.14 The information publication scheme:
- requires Australian Government agencies to publish information publication plans;
 - specifies categories of information that must be published; and
 - provides a means for agencies to proactively publish other government information.
- 6.15 The FOI Act expressly recognises that information held by the Australian Government is a national resource and is to be managed for public purposes. The intention of the scheme is that agencies will publish freely accessible information on their websites. Specifically this includes access to the Compliance Framework, and this Operations Manual.
- 6.16 Any person may apply for access to information under the Act. The information may include hard copy documents, electronic records, photographs or any other conceivable method of storing information.

Emergency response

- 6.17 Every leased Federal airport should have a published Airport Emergency Plan (AEP). The AEP provides a formal record of the agreements reached between those agencies that are expected to respond to an emergency at the airport.
- 6.18 The aim of an AEP is to provide a timely and coordinated response to, and recovery from, an emergency at the airport primarily involving aircraft and/or airport facilities. Each responding agency is responsible for developing its own procedures which represent its method of implementing the AEP.

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- 6.19 The role of the AEO in emergency situations which have potential or actual environmental impacts is initially to provide advice to the responsible controller on environmental management, and assist in the response of the ALC, and the appropriate state or territory regulatory agencies (if involved).
 - 6.20 The AEO does not have authority to direct third parties to take actions to mitigate environmental impacts that occur during an emergency situation. However, the AEO may issue a verbal authorisation in such a situation [r5.13] where there is a need to carry out an action which could result in non-compliance with the Regulations but which is deemed necessary to protect the health and safety of persons in the vicinity (e.g. venting a tank which is being impacted by a fire).
 - 6.21 Potential follow-up enforcement action may be instigated by the AEO in situations where breaches of the Regulations have occurred as a direct result of poor or deliberate management practices.