

Chapter 3

Issues

3.1 This chapter presents the views of submitters concerning the key provisions of the bill, both in support of, and against, the proposed amendments.

Response to the bill

3.2 Overall, there was broad support for the bill and its key elements. However, as indicated throughout this chapter, submitters supportive of the bill did raise concerns over specific provisions.

3.3 The Australian Airports Association (AAA), as the representative of 260 major and other airports, stated that it 'strongly supports' the amendments. AAA argued that the amendments will reduce regulatory burdens, and could have even been more extensive.¹

3.4 Sydney Metro Airports (Bankstown and Camden) supported the intent and the majority of the provisions of the bill. Its submission noted that the bill allowed the Act:

to remain contemporary in the way it is administered in particular in relation to Airport Master Plans and Major Development Plans whilst ensuring that a balance of interests of the Airport operators, aviation industry and the community is maintained.²

3.5 The Canberra Airport was in strong support of the bill, submitting that the bill was a result of rigorous public consultation, and of government and industry working to 'resolve a planning and development regime that weighs legislative costs with benefits'. Canberra Airport also supported the bill's approach in treating large and medium-sized airports differently.³

3.6 The ACT Government supported all proposed amendments, and suggested that the changes to the MP timeframes and the MDP monetary triggers were both sensible provisions that would streamline airport operations.⁴

3.7 Similarly, Brisbane Airport Corporation was in strong support of the bill, stating that the amendments proposed reflected changes in the economic environment in which airports now operate.⁵

1 Australian Airports Association, *Submission 14*, pp. 1-2.

2 Bankstown Airport Limited and Camden Airport Limited (Sydney Metro Airports), *Submission 1*, p. 2.

3 Canberra Airport, *Submission 15*, p. 2.

4 ACT Government, *Submission 19*.

3.8 The Hobart International Airport Community Aviation Consultation Group (CACG) supported the bill, and considered the MP and MDP changes as beneficial to airport management, with no disadvantages to the community.⁶

3.9 The Queensland Department of Transport and Main Roads was also in support of the amendments, particularly the changes to the MP timeframes, the increase to the MDP monetary threshold, the new requirements in relation to ANEFs, and the withdrawal of MDPs in certain circumstances.⁷

3.10 Qantas Group expressed its support for the amendments to MP and MDP timeframes and processes, stating that they would streamline administrative requirements. Qantas Group noted that the current arrangements were generating inefficient outcomes for industry while increasing administrative, financial and compliance costs.⁸

3.11 However, Perth Airport submitted that, while supportive of the bill, many of the provisions did not go far enough. Perth Airport expressed its view that the bill was:

a missed opportunity for significant red tape reduction and cost efficiencies to be realised by airports, particularly considering the lengthy period between initial consultation and legislative amendments and the unlikelihood of another review being undertaken in the near future.⁹

The Master Plan process

Airport Master Plans

3.12 While a number of submitters were in support of amending the MP timeframes from five to eight years for some airports, there were concerns raised that the amendments either did not go far enough, or that the MP process in general needed reconsideration.

3.13 Adelaide Airport Limited (AAL), on behalf of the Adelaide and Parafield airports, supported the move from five to eight years for MPs. AAL argued that the current MP cycle was onerous, a significant financial burden, and did not reflect the 'strategic long-term nature of such facilities'.¹⁰

5 Brisbane Airport Corporation, *Submission 16*, p. 1.

6 Hobart International Airport Community Aviation Consultation Group, *Submission 2*.

7 Queensland Government Department of Transport and Main Roads, *Submission 21*.

8 Qantas Group, *Submission 23*, p. 1.

9 Perth Airport, *Submission 6*, p. 4.

10 Adelaide Airport Limited, *Submission 12*.

3.14 The amendments to the MP process were supported by Sydney Metro Airports (Bankstown and Camden). Camden Airport in particular argued it will benefit from the changes, as 'aeronautical activity and development have been stagnant for several years whilst the cost of carrying out a Master Plan equates to 1.7 years of aeronautical revenue for that airport'.¹¹

3.15 Airservices Australia supported the amendments to the MP timeframes, and in particular the retention of the five year review period for the five major airports. Airservices stated that retention of the five year MP timeframe allowed it, and similar agencies, to consider, plan and implement industry changes, while meeting the expectations of the travelling public.¹²

3.16 However, the AAA submitted that the five year cycle retained for the major airports could be more flexible. As an MP took up to two years to complete, the AAA noted that there was effectively a three-year gap between plans, resulting in a significant regulatory burden.¹³

3.17 While the AAA was generally supportive of the eight year cycle, it argued that a more appropriate timeframe would be ten years, which would align with the airport planning processes of many state and local government planning authorities. The AAA suggested that a ten year cycle review could be supported by a five year review option, triggered only if significant or unforeseen developments had occurred. It was argued that MP processes under such a scheme would save the industry 'tens of millions of dollars'.¹⁴

3.18 A similar view was put forward by the Australia Pacific Airports Corporation (APAC), which considered a ten year MP cycle period as more appropriate. APAC argued that the MP process attracts significant time and resources, and that there did not appear to be 'significantly improved outcomes for stakeholders or communities of interest' from implementing an eight-year timeframe.¹⁵

3.19 Perth Airport expressed its disappointment that it had been excluded from the proposed changes introducing an eight year MP submission cycle, and did not support the differential submission cycle. Perth Airport argued that, in its development of MPs over the past 30 years, only 'incremental or marginal' changes had been made to each iteration. Therefore:

Perth Airport believes that an eight year cycle for all airports is sufficient review at a timeframe that provides confidence to the Minister and the

11 Bankstown Airport Limited and Camden Airport Limited (Sydney Metro Airports), *Submission 1*, p. 2.

12 Airservices Australia, *Submission 18*, p. 1.

13 Australian Airports Association, *Submission 14*, pp. 2-3.

14 Australian Airports Association, *Submission 14*, p. 3.

15 Australia Pacific Airports Corporation, *Submission 13*, p. 1.

community that the plans for Perth Airport are appropriate having regard to providing suitable airport services and compatibility of Perth Airport's plans with surrounding urban planning and development.

...Perth Airport is not aware of any airport for which the planning or development is so dynamic that it would warrant a master plan review more frequently than 8 years.¹⁶

3.20 Some submitters argued against any changes to the five-year MP cycle. The City of Cockburn, for example, stated that there did not appear to be 'any significant pressures on the current timeframe that would suggest any significant change is required'.¹⁷

3.21 The City of Cockburn further argued that an eight year MP review cycle would not allow social, environmental or economic factors to be adequately addressed, placing airports at risk when operating within local planning frameworks.¹⁸

3.22 The Archerfield Airport Corporation (AAC) was of the view that the MP process was 'very laborious and expensive', particularly for smaller airports like the AAC, where regulatory processes had become 'debilitating'. AAC argued that the amendment to eight year MP cycles for some airports 'does very little to alleviate the compulsion of the present regime'. The AAC went on to state that it was of:

dubious merit to have such impediment prescribed, and the resources of airport licensees consumed, for the development of a new master plan that is essentially a carbon-copy of the previously approved plan....We sometimes feel that Archerfield airport is drowning in red tape.¹⁹

3.23 Rather than moving to an eight year MP cycle, the AAC submitted that smaller airports should have their MPs remain current:

until the licensee initiates a review, or proposed developments become inconsistent with the currently approved Master Plan, rather than being precipitated by an arbitrary time line.²⁰

Australian Noise Exposure Forecast (ANEF)

3.24 The inclusion of a new ANEF in each new MP was supported by a number of submitters.²¹

16 Perth Airport, *Submission 6*, p. 2.

17 City of Cockburn, *Submission 4*, p. 1.

18 City of Cockburn, *Submission 4*, p. 1.

19 Archerfield Airport Corporation, *Submission 7*, p. 3.

20 Archerfield Airport Corporation, *Submission 7*, p. 4.

21 Hobart International Airport Community Aviation Consultation Group, *Submission 2*; Canberra Airport, *Submission 15*; Qantas Group, *Submission 23*.

3.25 Airservices Australia supported the amendment. Airservices noted that over an eight year period, there may be significant change in aircraft operations, that could 'substantially change ANEF contours around the airport and therefore development planning'.²²

3.26 The Sutherland Shire Council welcomed the ANEF amendments and considered them to be significant. The Council stated that the new requirements would help local governments and communities to 'better assess, manage and respond to the potential impacts from changes to aircraft activity and noise'.²³

3.27 Some submitters, however, expressed concerns about the procedures around the ANEF. Perth Airport, while supportive of the inclusion of ANEFs in MPs, did not support the requirement to update the ANEF with each MP. Perth Airport argued that ANEFs were unlikely to significantly change, with the endorsement process for ANEFs being lengthy and costly. Perth Airport suggested that airport lessees should be given the discretion to determine whether to update an ANEF.²⁴

3.28 Similar to its views on the MP process, the AAC saw little benefit in the need to update ANEFs for each new MP, if there had been 'no significant change that would warrant a revision of the noise profile'. AAC argued that such updates would be costly and time consuming, especially for smaller airports. As an alternative, AAC suggested that the requirement of a new ANEF in each new MP only apply to the major airports.²⁵

3.29 The AAC further commented on the requirement introduced by the bill that a new MP be developed within 180 days of each newly endorsed ANEF. AAC submitted that this had:

the potential to drag airports into a never ending whirlpool of expensive and time consuming master planning and discourages airport operators from updating their ANEFs at intervals that aren't suitably aligned with their Master Plan cycles.²⁶

3.30 The Melbourne CACG raised general concerns in relation to the adequacy of the ANEF. The Melbourne CACG suggested that limitations with the ANEF were 'widely recognised', with ANEF metrics being outdated and holding no meaning for those residents currently exposed to aircraft noise. The Melbourne CACG called for the mandatory inclusion of alternative noise metrics in MPs, in addition to the ANEF,

22 Airservices Australia, *Submission 18*, p. 2.

23 Sutherland Shire Council, *Submission 20*.

24 Perth Airport, *Submission 6*, pp. 2-3.

25 Archerfield Airport Corporation, *Submission 7*, pp. 3, 4.

26 Archerfield Airport Corporation, *Submission 7*, p. 4.

to achieve better planning outcomes and to provide airport communities with more meaningful information about aircraft noise.²⁷

Draft and final ANEFs

3.31 The AAA supported the amendments relating to the ANEF, but raised concerns over the fact that a final and endorsed ANEF must be included with a draft MP, rather than a draft ANEF.²⁸ It was argued that this resulted in a 'convoluted and inefficient consultation process'. The AAA suggested that the bill be amended to allow for draft, rather than final, ANEFs to be included in the draft MP. Such a process would allow the draft ANEF to be endorsed in conjunction with approval of a new MP.²⁹

3.32 APAC held the same position, suggesting that the requirement for ANEFs to be endorsed prior to inclusion with a draft MP be reviewed. APAC argued that requiring an endorsed ANEF, rather than a draft, would add complexity to the process, and 'for limited value'.³⁰

Monetary triggers for Major Development Plans

3.33 There was mixed support among submitters for the increase to the MDP monetary trigger, from \$20 million to \$35 million.

3.34 The AAL fully supported the increase, and expressed the view that the raised threshold would 'increase the ability for airports to unlock the economic and employment potential of on-airport developments'.³¹

3.35 The AAA supported the monetary threshold amendments, and strongly supported the monetary threshold being increased every three years. The AAA noted that it had previously recommended the threshold be increased to \$50 million, especially in light of the other MDP triggers in the Act that were invoked, regardless of cost.³²

3.36 Perth Airport was of a similar view, and argued that for the increase to be of any benefit to airports, the threshold should be \$40 to \$50 million.³³

27 Melbourne Airport Community Aviation Consultation Group, *Submission 10*, pp. 1-2.

28 ANEFs are endorsed by Airservices Australia, which assesses their technical accuracy. Airservices Australia, *ANEF and ANEI*, March 5 2014, <http://www.airservicesaustralia.com/services/anef-and-anei/> (accessed 24 November 2017).

29 Australian Airports Association, *Submission 14*, p. 3.

30 Australia Pacific Airports Corporation, *Submission 13*, p. 2.

31 Adelaide Airport Limited, *Submission 12*.

32 Australian Airports Association, *Submission 14*, p. 4.

33 Perth Airport, *Submission 6*, p. 3.

3.37 Sydney Airport argued that 'inflation has significantly eroded the value of the [current] threshold', leading to relatively minor developments being subject to the 'complex, lengthy and costly' MDP process. Sydney Airport therefore supported both the increase to the threshold, and the proposal to index this threshold with regard to construction costs, noting that the change would not affect the other non-monetary MDP triggers contained in the Act.³⁴

3.38 However, the City of Cockburn considered the current threshold of \$20 million as appropriate, arguing that any developments over this value could potentially have a significant detrimental impact on airport operations and surrounding lands and communities. The City of Cockburn argued that:

Deciding to lift the MDP threshold especially for general aviation airports creates a further level of risk for the community and local government in its ongoing relationship with federally regulated airports.³⁵

3.39 AIPA considered that the increase of the monetary trigger would exacerbate existing operational risks, as the higher threshold value would exclude a number of projects from the MDP process on the basis of cost, and would therefore not properly consider risk. AIPA argued that it:

recognises the advantages of creating regulatory divisors for planning approval processes using dollar costing as a proxy for project size and complexity. However, like all proxies, it has limitations. The most significant of these limitations is that environmental and operational risk consequences are not well correlated with project size and complexity.³⁶

3.40 DIRD was of the view that the increased monetary threshold would not reduce the visibility of airport developments, especially in light of the other MDP triggers in the Act, and the fact that MDPs had to be consistent with an airport's approved MP.³⁷

3.41 The Melbourne CACG asserted that the proposed increase of the MDP monetary threshold was far in excess of inflation since 2007, when the \$20 million threshold was determined. It was argued that it was 'not credible' to increase the threshold on the basis of construction industry costs and marketplace conditions. The Melbourne CACG maintained that:

arbitrarily increasing the trigger threshold by amounts greater than inflation will deny the community an opportunity to review and comment on some significant development proposals.

The CACG submits that the MDP monetary trigger threshold should not be increased beyond \$25 million at this time.³⁸

34 Sydney Airport, *Submission 5*, pp. 2-4.

35 City of Cockburn, *Submission 4*, p. 2.

36 Australian and International Pilots Association, *Submission 3*, pp. 2- 3.

37 Department of Infrastructure and Regional Development, *Submission 22*, p. 7.

3.42 The Melbourne CACG also offered its support for the review of the monetary threshold every three years. It did, however, raise concerns that there were insufficient safeguards to protect community interests, given the increase would be at the absolute discretion of the Minister. The Melbourne CACG argued that the bill should be amended, to compel the Minister to consider the actual index of construction activity costs (published by the Australian Bureau of Statistics) when determining a new threshold, as this would improve transparency.³⁹

Cost of construction

3.43 The bill proposes to allow the Minister to determine, via legislative instrument, what constitutes the cost of construction for the purposes of determining the MDP monetary threshold. Some submitters, while generally supportive of this measure, held some concerns over the content of the legislative instrument.

3.44 Sydney Metro Airports (Camden and Bankstown) argued that, while supporting the use of a legislative instrument to determine cost of construction, there should be flexibility when considering what this constitutes. The submission argued that costs should not include, among other things,⁴⁰ finance and legal costs, tenant-specific fit-out costs, and site remediation costs.

3.45 This view was also put forward by AAA, who argued that it was important to ensure that internal building fit-out costs were not included in determining construction costs.⁴¹

3.46 Perth Airport went further, stating that it did not support the proposal to include base building fit-out in the cost of construction, given that there was a high degree of uncertainty as to the costs of such work at the time of preparing an MDP. An airport could therefore be at risk of overestimating or underestimating construction costs, with direct implications for the MDP trigger.⁴²

3.47 The committee notes that the content of the instrument is a matter for consideration by the Minister, subsequent to successful passage of the bill. However, as part of its submission, DIRD provided a general description of the costs of construction that should be considered. These included, among other things, site establishment, groundworks, footings, cladding and roofing, and base building fitout

38 Melbourne Airport Community Consultation Group, *Submission 10*, p. 2.

39 Melbourne Airport Community Consultation Group, *Submission 10*, p. 3.

40 Bankstown Airport Limited and Camden Airport Limited (Sydney Metro Airports), *Submission 1*, pp. 2-3.

41 Australian Airports Association, *Submission 14*, p. 4.

42 Perth Airport, *Submission 6*, p. 3.

and finishes. DIRD agreed that costs should not include items such as legal fees, site remediation costs or design fees.⁴³

MDP processes

Consultation periods

3.48 There was some support for the bill's proposal to automatically approve a request from an airport lessee for a shorter public consultation period, in the absence of a ministerial decision within 15 business days.

3.49 Support for the amendment was provided by Perth Airport and AAA. AAA stated that this amendment would provide airports with certainty around timeframes, and therefore would benefit the strategic and operational business decisions made in relation to the MDP.⁴⁴

3.50 An alternative view of the amendment was put forward by a number of submitters. For example, the Sydney Airport Community Forum (SACF), while being mostly supportive of the bill, argued that the automatic approval for reduced consultation periods set the default as 'one of acceptance rather than rejection'. SACF members felt this would 'set a dangerous precedence and could lead to accidental abuse'. SACF argued that the bill should be amended, so that an extension request was declined if the Minister did not respond within the statutory timeframe.⁴⁵

3.51 A similar argument was made by Mr Robert Hayes, who submitted that an extension decision should be deemed not approved if the Minister does not make a decision within the required timeframe. Mr Hayes argued that an 'airport-lessee could unreasonably use this [provision] to gain unfair advantage, to avoid reasonable consultation or to otherwise act to the detriment of the community'.⁴⁶

3.52 However, DIRD submitted that this 'deemed approval' provision was consistent with the current decision-making powers contained in the Act regarding MPs and MDPs.⁴⁷ DIRD further argued that without this amendment, the lack of certainty around the decision-making timeframe would impact on 'commercial timeframes and broader opportunity costs'.⁴⁸

43 Department of Infrastructure and Regional Development, *Submission 22*, pp. 13-14.

44 Perth Airport, *Submission 6*, p. 3; Australian Airports Association, *Submission 14*, p. 4.

45 Sydney Airport Community Forum, *Submission 8*.

46 Mr Robert Hayes, *Submission 9*, p. 2.

47 Under the Act, if no Ministerial decision is made on a draft MP or MDP within 50 business days, the draft MP or MDP is deemed approved. Department of Infrastructure and Regional Development, *Submission 22*, p. 9.

48 Department of Infrastructure and Regional Development, *Submission 22*, pp. 8.

3.53 In considering this bill, the Parliamentary Library raised questions about this proposed amendment. The Bills Digest stated that:

This amendment seems to raise the possibility that the Minister could simply not decide on the request, and then be deemed to have approved the short period, even if the development is inconsistent with the airport master plan, or raises issues that have a significant impact on the local or regional community. In other words, it appears that new subsection 92(2BA) could potentially be used to circumvent the requirements in subsection 92(2B).

Note also that this amendment does not seem to have been among the amendments proposed in the Department's second discussion paper in 2015.⁴⁹

Substantial completion of an MDP

3.54 Qantas Group expressed its support for the amendments which would allow the Minister to extend the completion date for a major development as many times as required. Qantas Group argued that this amendment:

minimises regulatory uncertainty for the airline industry and ensures a more streamline process. Furthermore, this allows airports to factor in unforeseen delays or significant changes in forecast demand to better align the delivery of infrastructure in line with demand.⁵⁰

3.55 AAA likewise favoured the amendment, but expressed concern that the wording of the amendment was not suitable. AAA proposed amending the provision to provide that an extension could be given if a project was 'substantially commenced' rather than 'substantially completed'. It was argued that 'substantially commenced' would align with the approach taken by state planning authorities, and would provide more clarity than 'substantially completed', which was considered by AAA to be ambiguous and ill-defined.⁵¹

Ceasing an MDP approval

3.56 The bill provides that airport lessees can withdraw from an MDP without penalty, in exceptional circumstances.

3.57 While the AAA supported these amendments it did, however, urge for clarity around what would constitute 'exceptional circumstances', noting that the definition should still ensure flexibility to include any issues that may have been unforeseeable when the MDP was prepared.⁵²

49 Sophie Power, Airports Amendment Bill 2016, *Bills Digest No. 73*, 2016-17, Parliamentary Library, Canberra, 2017, p. 10.

50 Qantas Group, *Submission 23*, p. 2.

51 Australian Airports Association, *Submission 14*, p. 5. The same view was put forward by Perth Airport, *Submission 6*, p. 4.

52 Australian Airports Association, *Submission 14*, p. 5.

3.58 APAC expressed a similar view, and requested further explanation as to what may constitute 'exceptional circumstances'. APAC contended that a number of factors, including 'market conditions and a change in financial circumstances', could influence investment decisions and development progress, but it was unclear from the bill what circumstances would be considered exceptional.⁵³

3.59 Perth Airport was supportive overall of the inclusion of an MDP retraction provision. However, it did not support the clause that proposed to allow an MDP to be withdrawn, only if a building approval was not already in place. Perth Airport suggested that there were 'many circumstances outside an airport lessee's control which may result in the development becoming unviable after site works have already commenced', and that 'project circumstances may change due to market, economy or investment reasons'.⁵⁴

53 Australia Pacific Airports Corporation, *Submission 13*, pp. 2-3.

54 Perth Airport, *Submission 6*, p. 4.

