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Committee Secretary  
Senate Rural and Regional Affairs and Transport Legislation Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

3 March 2017

Dear Secretary,

**Re: Inquiry into Airports Amendment Bill 2016**

Archerfield Airport Corporation (AAC) welcomes the Rural and Regional Affairs and Transport Legislation Committee's inquiry into the Airports Amendment Bill 2016 and thanks the Committee for giving AAC the opportunity to make comment on the proposed amendments.

Before providing comments specifically on the Bill, AAC believes it would be beneficial for the Committee to understand some relevant facts regarding the history of the Airports Act so the reasoning behind AAC's submission can be fully considered.

We have been concerned at the propensity to impose increasing expectations on the compliance regime for certain Airports Act airports. These disproportionate expectations serve only to highlight growing inconsistencies in the regulation of aviation across Australia. We believe this review is a welcome opportunity to examine the momentum towards standardised procedures that distort original intentions and current realities.

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The Airports Act was devised as a mechanism to facilitate the transfer of vital national assets, such as Sydney Airport, from Commonwealth control. The Act embedded elements of consultation, planning and review that were considered appropriate for oversight of the major airports to secure the nation's interests. Those elements demanded sophisticated response, and presupposed a level of resources consistent with the stature of the assets envisaged during the framing of the Act.

During the privatisation of the FAC airports in the 1990s, the Commonwealth consistently said that the smaller General Aviation (GA) airports would be subject to a different and less onerous regulatory regime than the major airports.

Three of the major airports, Brisbane, Melbourne and Perth, were to be leased to private operators in Phase I of the Privatisation process in 1997. The eight other major airports, consisting of Adelaide, Alice Springs, Canberra, Coolangatta, Darwin, Hobart, Launceston and Townsville were to be part of the Phase II Privatisation process and *"offered for lease, similar to the airports privatised earlier [in*

1997] in the first sales tranche.” *“Four other airports, Sydney Kingsford Smith, Bankstown, Camden and Hoxton Park, all in the Sydney Basin, [were not to be] part of the privatisation process at [that] stage”.* (Appendix A)

The Sydney Basin airports were later added into the mix, and all 15 airports were leased and came under the auspices of the Airports Act, as was originally intended.

The seven smaller airports, consisting of Essendon, Mount Isa, Archerfield, Jandakot, Moorabbin, Parafield and Tennant Creek, were originally destined for freehold sale. (Appendix A) The expectation being that the *“provisions of the Airports Act will not apply to a purchaser of a freehold airport site”* and that the *“imposition of planning and environmental controls etc. for [these] airports is expected to be left to the relevant State or Territory”.* (Appendix B)

It was noted at that time that *“in the event that agreement with the State/Territories is not forthcoming for the freehold option then the fallback option as such would see these Airports being leased in accordance with the Airports Act 1996....”*. *“...there are a number of provisions in the Airports Act which will not, as of right, apply. In particular, those provisions related to land use, planning and the environment would not normally apply.”* *“It is possible that in recognition of the nature of these Airports that a lighthanded approach to regulation by the Commonwealth might be adopted.* (Appendix B)

The Commonwealth’s *Sale of the Phase 2 Federal Airports* document went on to say *“Some parts of the Airports Act could be applicable to these airports”*. ***“The Commonwealth’s intention is to apply a limited regulatory approach to the remaining seven airports, Archerfield, Essendon, Jandakot, Moorabbin, Mount Isa, Parafield and Tennant Creek if sold by leasehold.”*** (Appendix C)

In the lead-up to privatisation, the Commonwealth failed to secure agreement with the States and as a result, the seven smaller airports were shoe-horned into the Airports Act and wrapped up in the same legislation that was originally written and intended only for the majors. It is clear that the original owner of these airports, the Commonwealth, understood the unique environment in which these airports operated and knew they would be served best by a less stringent and onerous regime than that of the major airports.

Although a lighthanded approach was initially anticipated, the expediency of the privatisation process resulted in the smaller airports being unreasonably restricted by legislated requirements for land use, planning and the environment (namely Master Plans) which were never originally intended for them. (see Appendix B)

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In Archerfield’s case, we have been unreasonably restricted in our ability to maximise the potential of the asset entrusted to us. The continual increase in red tape through amendments to the Airports Act<sup>1</sup> and ever increasing expectations of continuous consultation and environmental requirements since 1996, whilst perhaps easily absorbed by the major airports, has become debilitating for our

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<sup>1</sup> Additional Regulations over the past 10 years include: 71(2)(ga) – Ground Transport Plan; 71(2)(gb) – detailed information on developments; 71(2)(gc) – employment levels; 71(2)(d) & (da) & 78(2A) – ANEFs and flight paths; 79(2)(a)(iii) – demonstration of due regard to all comments; 95(2)(c) – Minor variation subject to public comment; 2.04A and 2.04B – Publication of all building applications and decisions

airport. This is particularly noticeable during the master planning process through which the majority of the Airports Act amendments over the past 18 years have applied.

Archerfield Airport consisted of eight full-time equivalent staff when the airport was privatised in 1998. This compares to the major airports with an average of well over 10 times this number. AAC now operates with a full-time equivalency of 13 staff. Our previous Master Plan iteration began with consultation in December 2008. That Master Plan, after being subject to a three year AAT review, was finally completed in July 2015.

Master planning is a very laborious and expensive process. AAC does not have the internal resources to carryout this entire process in-house, as many of the major airports do, and so much of this work is farmed out to external consultants and advisers to assist. The previous iteration distracted AAC from operating the airport for nearly seven years. Due to legislative requirement, the whole process started again just six months after the previous iteration had completed and our staff continue to be distracted by it.

It is 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. Like-wise, it is of little benefit to require development and endorsement of new ANEFs prior to every Master Plan iteration, if there has been no significant change that would warrant a revision of the noise profile. Doing so only consumes the resources of both the airport licensee and Airservices Australia, the endorsing authority. We sometimes feel that Archerfield airport is drowning in red tape that was never originally intended to apply to it.

The notion of an extension of time intervals for some of the Airports Act airports from five years to eight years does very little to alleviate the compulsion of the present regime. This regime now includes a number of additional legislative requirements that came into effect following the National Aviation Policy White Paper released in 2009.<sup>2</sup> The measures proposed in this paper neglected to consider the original intent proposed for the seven smaller airports and so these airports became engulfed in the same legislation that was adopted for the major airports, further complicating the master planning process for them.

Furthermore, the latest proposal to include mandatory endorsement of ANEFs for each Master Plan iteration, a similarly time consuming and costly process, simply exacerbates this issue for the smaller GA airports.

It is difficult to justify the imposition of a timeline and ANEF requirements on Archerfield, when Mount Isa, Cairns, Mackay, Proserpine, Emerald, Longreach, Sunshine Coast, Wellcamp and the majority of other larger airports throughout Australia are exempt. They have been allowed the flexibility to undertake these activities as and when required and when resources permit. The iniquity of the present situation was highlighted during the sales of Cairns and Mackay airports, when the absence of Airports Act impositions was highlighted by the vendors as a feature of each of the businesses.

We perceive that the current applications of the Airports Act are causing unnecessary distortions of commerciality between Australia's airports and also imposing unnecessary burdens on the smaller Airports Act airports that were never intended to be shoe-horned into the master planning process in the first place.

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<sup>2</sup> Department of Infrastructure, Transport, Regional Development and Local Government, *FlightPath to the Future: National Aviation Policy White Paper*.

We understand that history recalls the smaller airports were destined for the Airports Act when an agreement with the States could not be secured and that this destiny will remain. We also recognise the benefits that communities, external stakeholders and government departments gain by having the smaller airports adopt similar master planning and consultative processes as the major airports.

However, we also know first-hand the limitations that such requirements have on the growth of Archerfield airport in particular and the disproportionate resource costs that these master planning requirements have on the smaller GA airports. This is a cost that is ultimately passed onto the aircraft operators of these airports, stifling the growth of those businesses and GA as a whole.

As such, we urge the Committee to consider the original intentions of the Commonwealth. We urge that those intentions be revisited and that **consideration be given for the smaller GA airport Master Plans to 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.** Although the original intention was to exclude the seven smaller GA airports from the master planning process entirely, the method proposed above would ensure the Commonwealth still retains the same overarching legislative controls under the Airports Act, whilst at the same time honouring the general intention of the Commonwealth at a time when it experienced first-hand the substantially different environments in which its airports operated.

We urge also that the government's mandate to remove red tape<sup>3</sup> be given due consideration and that mandatory ANEFs, along with other recently introduced regulations surrounding master planning, such as the requirement for Ground Transport Plans and detailed information on future developments, be restricted only to the major airports.

**At the very least, we urge that the proposal for the Bill to mandate the inclusion of a new ANEF in each new Master Plan apply only to the major airports.** Due to the multitude of runway configurations, flight paths and extensive age and types of aircraft that the smaller GA airports operate, the ANEF endorsement process can often be more costly and time consuming for them than it is for the major airports. This has an exponentially disproportionate cost impediment for the smaller airports, an outcome that was never intended by those who originally drafted the Airports Act.

As it stands, not only does the Bill propose the mandatory endorsement of a new ANEF prior to every Master Plan, but it also requires that a new Master Plan be developed within 180 days of every newly endorsed ANEF. This has 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.

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The original intention of administering the smaller GA airports within the Airports Act by sensitive interpretation of compliance requirements has been subsumed. A model of uniform compliance has prevailed. Such a model is administratively attractive, but in the case of the Airports Act, it fails those smaller GA airports, and in doing so the GA businesses and aircraft operators, that fell awkwardly under its mantle.

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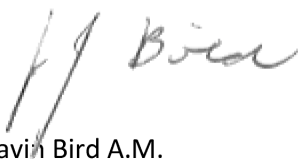
<sup>3</sup> The Australian Government Guide to Regulation. Commonwealth of Australia, Department of the Prime Minister and Cabinet, 2014



Twenty years ago the smaller GA airports became embedded in the Airports Act not by design but by mischance. We believe national benefit has been unnecessarily restricted by that mischance. Twenty years ago the Commonwealth assumed dual responsibilities to regulate the privatised airports and to facilitate their contributions to the fabric of society. By objective criteria, the Commonwealth has performed well in the area of regulation. We believe the current review presents an opportunity to focus on facilitation.

We thank the Committee for allowing us the opportunity to present our views. We hope that the original intention of the Commonwealth can be recognised and restored and that the disproportionate effect that ever growing regulation has had on the smaller GA airports will dissipate, rather than grow even further.

Yours sincerely,

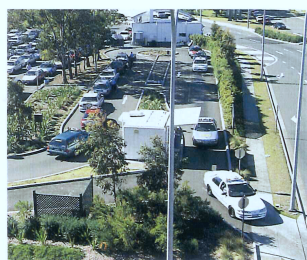
A handwritten signature in dark ink, appearing to read 'Gavin Bird', with a stylized flourish at the end.

Gavin Bird A.M.

**Managing Director  
Archerfield Airport Corporation**

## What's Inside...

- Upgrade program  
Page 2



- Airports' own logos  
Page 3



- Super Scooper  
Page 3



- Kerry's Farewell  
Page 4



- Boost to Red Cross supplies  
Page 4



## Freehold sales planned for seven FAC airports

**S**even out of the FAC's 15 primary, regional and general aviation airports to be privatised during the next 12 months will be put under State planning and environmental controls and offered freehold for sale.

The airports are Essendon, Mount Isa, Archerfield, Jandakot, Moorabbin, Parafield and Tennant Creek.

The other eight airports - Adelaide, Alice Springs, Canberra, Coolangatta, Darwin, Hobart, Launceston and Townsville - will be offered for lease, similar to the airports privatised earlier this year in the first sales tranche.

Four other airports, Sydney Kingsford Smith, Bankstown, Camden and Hoxton Park, all in the Sydney Basin, will not be part of the privatisation process at this stage.

Formal expressions of interest for the 15 airports are expected to be called in October, and the sales process completed by the end of June, 1998.

The decision to sell seven of them was announced in a joint statement by the Minister for Transport and Regional Development, John Sharp, and the Minister for Transport, John Fahey.

They said the option of freehold sale, reverting the airports to State planning and environmental controls, would not affect the Commonwealth powers over safe operations, flight paths and aircraft noise.

However, the Ministers said the question of how the individual airports interacted with the community in which they were located would become a matter for the States.

It was not unusual for Australian airports to be released for freehold sale, they



Parafield Airport, one of seven which will be released by the Federal Government for freehold sale.

said. A total of 234 local airports had been transferred out of Commonwealth ownership on a freehold basis under the former Government.

In their statement, Mr Sharp and Mr Fahey said: "As previously announced, the Government is expecting to call for Expressions of Interest in 15 airports currently operated by the Federal Airports Corporation in October.

"The sales will be built on the recent successful sales of Brisbane, Melbourne and Perth airports and will provide further opportunity for the private sector to provide innovative and quality airport services in Australia and for local communities

to engage further in the economic development of the specific geographic regions in which their airports are located.

"As with the assessment of bids for Phase 1 airports, all bids will be assessed on their merits having regard to the Government's overall sale and ongoing privatisation objectives, as well as the evaluation criteria that will be issued to bidders."

The Ministers said the task of offering 15 airports for simultaneous individual sale had not been attempted before and represented a significant undertaking by the Government, given the number of airports involved and their diverse locations.

## Upgrade wanted in Adelaide sales bid

**T**he Premier of South Australia, John Olsen, says he has been assured by the Federal Government that it will give favourable consideration to bidders who undertake to upgrade Adelaide Airport's international and domestic terminals after privatisation.

Mr Olsen, who discussed the airport's future with Finance Minister, John Fahey, in Sydney this month, said the upgrading of Adelaide Airport was crucial to South Australia's economic development over the next five to ten years.

"The Commonwealth acknowledges that Adelaide Airport requires major upgrading in the nature and extent of both domestic and international passenger facilities and will give considerable weight to this in the bids for the Adelaide Airport lease," Mr Olsen said.

"The Commonwealth has also agreed to include the State's preferred development option, which is an integrated facility, and will request all bidders to consider this as an option for terminal upgrading at the airport."

Adelaide Airport is one of 15 Corporation airports included in Phase 2 of the privatisation program. Bids are expected to be called later this year with the sales to be completed by June next year.

"The purpose of selling the airport is not to raise revenue but to attract private investment and private operators who can deliver better services and contribute to South Australia's economic development and reduce airport landing charges," Mr Olsen said.

"In the event that none of the bids proposed an upgrade of the airport, the sale would not proceed," he said.

## Souvenirs of visit to national capital

**V**isitors to Canberra can now obtain a souvenir of their visit to the national capital as they depart Canberra Airport following the opening by Souvenir World of a retail outlet at the airport.

The souvenir shop stocks an extensive selection of gifts, books and clothing as well as Canberra regional wines and products.

"We were after a retailer to provide a wide range of products, from newspapers to gifts and toiletries," said Canberra Airport General Manager, Peter Wych.

"Souvenir World knows the airport market well, and the decision to operate an airport shop has been justified by the overwhelming feedback from customers."

### ... STOP PRESS ...

Manager Finance and Commercial at Essendon Airport, Bill Coustley, has been appointed the new Airport General Manager.

Mr Coustley, whose appointment was effective August 18, succeeds Graeme Owens who retired last year.

Appendix B



FEDERAL AIRPORTS  
PHASE 2 PRIVATISATION

THE LEGAL AND CONTRACTUAL  
FRAMEWORK

John Scala/Paul Lang



## (2) FREEHOLD AIRPORTS

The Airports (Transitional) Act is currently being amended to provide for flexibility for the Commonwealth to sell all but the eight core regulated airports by way of a freehold sale. It is presently anticipated that these amendments will provide for the Commonwealth to effect the transfer of the freehold site to the new owner in the following way.

A new Part 7A will be inserted into the Transitional Act to deal specifically with the freehold sale option. The Minister for Finance will be empowered to declare, by written instrument, that the FAC's right, title and interest in the airport site vests in a specified entity (ie. the successful purchaser) at a specified time without conveyance, transfer or assignment.

This declaration effectively transfers the airport site and fixtures to the successful purchaser. All existing interests in land are preserved (easements, all existing leases etc.)

An important aspect of this structure is that the transfer of the airport site to the successful purchaser would be via Ministerial Declaration. The transfer will not be effected by virtue of a transfer under State/ Territory legislation. The sale agreement in respect of a freehold sale would make provision for the Commonwealth to procure that the Declaration is made by the Minister effecting the transfer of the site coincidental with the receipt of payment from the prospective purchaser.

The provisions of the Airports Act will not apply to a purchaser of a freehold airport site. This is a matter which Peter Harris, from the Department of Transport and Regional Development will address further in his presentation this afternoon.

Accordingly, it is not expected to be the case that there would be any specific requirement that the purchaser of a freehold site of an airport must be, for instance, a qualified company. Nor is it presently expected that there would be any specific legislative ownership limitations applied to the purchaser of a freehold site although a two year sell down restriction may be applied via the sale contract. Peter Harris will discuss the Commonwealth's ongoing Privatisation

objectives for the Airports later on today. As mentioned in this paper, the imposition of planning and environmental controls etc. for freehold airport sites is expected to be left to the relevant State or Territory.

Annexure B sets out the proposed transfer structure for the Freehold Airports.

### **Lighthanded Leasehold Option.**

I should note that in the event that agreement with the States/Territories is not forthcoming for the freehold option then the fallback option as such would see these Airports being leased in accordance with the Airports Act 1996 and the Airports (Transitional) Act 1996. As these airports are not “core regulated” airports under the Airports Act there are a number of provisions in the Airports Act which will not, as of right, apply. In particular, those provisions related to land use, planning and the environment would not normally apply. In contrast, those provisions in the Airports Act dealing with ownership would. It will be a matter for the Minister for Transport to determine as to what extent the Airports Act will be made to apply to these Airports if this option is chosen. It is possible that in recognition of the nature of these Airports that a lighthanded approach to regulation by the Commonwealth might be adopted.

### **(3) JOINT USER AIRPORTS**

As mentioned at the beginning of this paper, the Phase 2 Airports include three Airports which are currently jointly controlled/operated by the FAC and the Department of Defence. These Airports are situated at Canberra, Townsville and Darwin.

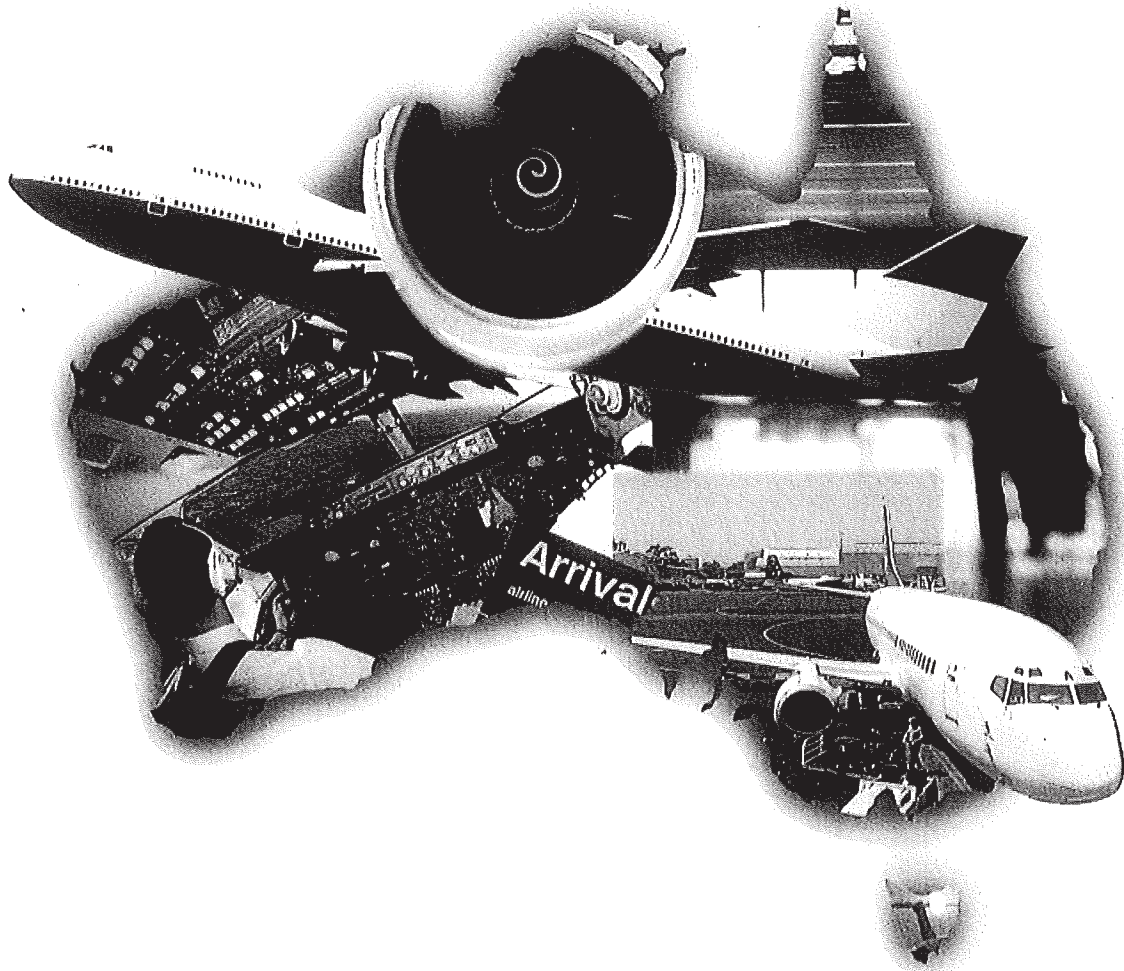
A common feature of these airports is that the main runways, some taxiways and aprons are effectively located on Defence land.

The joint user airports will be the subject of leasehold and not freehold sales as outlined earlier in this paper. In that context, some of the current options for dealing with the joint user airports under consideration include:

Appendix C



COMMONWEALTH OF AUSTRALIA



SALE OF THE PHASE 2 FEDERAL AIRPORTS  
AUGUST 1997



## 1. Sale Of The Federal Airports

1.2 SALES PROCESS  
AND TIMETABLE

The Commonwealth currently plans to invite interested parties to lodge formal Expressions of Interest in October 1997, ahead of a formal bidding process. The Commonwealth's intention is to complete all 15 airport sales by 30 June 1998.

The Commonwealth proposes to sell long term leasehold interests in the 8 core regulated airports. The 8 core regulated airports, as defined in the Airports Act 1996, are

Adelaide, Alice Springs, Canberra, Coolangatta, Darwin, Hobart, Launceston and Townsville. The other Phase 2 airports will be offered for sale on either a leasehold or freehold basis.

Each of the Phase 2 airports will be disposed of as ongoing businesses with staff and management in place.

BZW has been engaged by the Office of Asset Sales to manage the sales process on behalf of the Commonwealth.

## 1.3 AIRPORT SUMMARY DATA

## RPT AIRPORTS

Year to 30 June	Adelaide	Alice Springs <sup>(1)</sup>	Canberra	Coolangatta	Darwin	Hobart	Launceston	Mt Isa	Townsville
Total Revenue (A\$000s)	26,612	4,405	7,813	9,946	8,035	5,369	3,977	598	4,607
Total Expenditure excl. depreciation (A\$000s) <sup>(1)</sup>	10,285	2,590	2,889	3,803	4,278	2,881	2,071	639	3,007
EBDIT (A\$000s)	16,327	1,815	4,923	6,143	3,757	2,488	1,906	(40)	1,600
Total Passenger Movements (000s)	3,667	865	1,778	1,993	995	861	596	88	663
Total Aircraft Movements (000s)	109	45	109	83	81	16	33	6	57
Average Staff Equivalents	71	18	24	32	26	26	23	3	20
Area (hectares)	762	3,550	149	385	311	499	177	431	82
State/Territory	SA	NT	ACT	QLD	NT	TAS	TAS	QLD	QLD

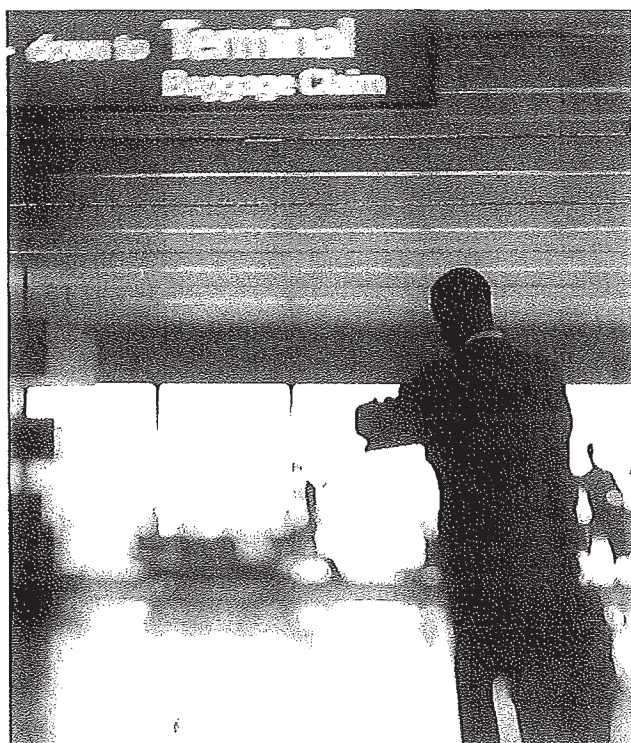
Source: 1996 FAC Annual Report

(1) Includes overhead charges and cost allocations from FAC Head Office

(2) Alice Springs financials and operating statistics include Tennant Creek. Tennant Creek area of 357 hectares is not included

EBDIT - Earnings before depreciation, interest and tax

INTRODUCTION



## GA AIRPORTS

Year to 30 June	Archerfield	Essendon	Jandakot	Moorabbin	Parafield
Total Revenue (A\$000s)	1,073	3,570	1,221	1,740	1,610
Total Expenditure excl. depreciation (A\$000s) <sup>(1)</sup>	1,105	2,798	1,458	1,228	1,040
EBDIT (A\$000s)	(32)	772	(237)	512	569
Total Aircraft Movements (000s)	261	58	405	350	277
Average Staff Equivalents	8	22	11	10	9
Area (hectares)	259	305	618	284	437
State	QLD	VIC	WA	VIC	SA

Source: 1996 FAC Annual Report

(1) Includes overhead charges and cost allocations from FAC Head Office

EBDIT - Earnings before depreciation, interest and tax

## 2. Regulatory Framework

### 2.1 LEASEHOLD OR FREEHOLD SALES

The eight core regulated airports will be sold by long term leasehold. Each lease will be for 50 years with an option for an additional 49 years. Core regulated airports, defined under the Airports Act 1996, are Adelaide, Alice Springs, Canberra, Coolangatta, Darwin, Hobart, Launceston and Townsville.

Subject to reaching agreement with relevant State or Territory Governments and to the passage of relevant amendments to the Airports (Transitional) Act 1996, the Commonwealth proposes to sell the remaining seven airports (the five General Aviation airports, Mount Isa and Tennant Creek) on a freehold basis. This is in recognition of the regional and local focus of the airports. This should reduce the complexity of

the sales process and, more importantly, simplify ongoing regulation, particularly in relation to planning and zoning matters. It means that only one level of Government (State) will be required to make the key decisions on planning, environment and other related issues at these airports.

Discussions are currently underway with the States and Territories in relation to land use

and planning issues associated with retaining the airports as aviation facilities under a freehold sale option.

The Government, at this stage, retains the flexibility to proceed with leasehold sales for all airports if required. In that case, some parts of the Airports Act could be applicable to these airports.

### 2.2 CORE REGULATED AIRPORTS

The Airports Act 1996 establishes a regulatory framework for the major Federal airports, defined as core regulated airports as listed above.

Key provisions of the Act include the following:

- Requirement that an airport lessee company's business be limited to operating and developing the airport and incidental activities;
- Foreign ownership, airline ownership and cross ownership restrictions;
- Requirement for the airport lessee company to provide an airport master plan, major development plans, environment strategies and to satisfy various building requirements and environmental obligations;
- Quality of service monitoring and reporting;
- Requirement for accounts and reports of airport operator companies;
- Access regimes to apply to the airports; and
- Ability of the Minister to formulate demand management schemes at airports.

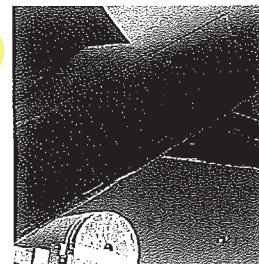




## 2.3 OTHER PHASE 2 AIRPORTS



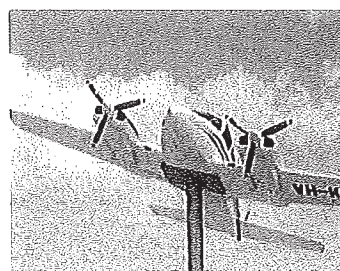
The Commonwealth's intention is to apply a limited regulatory approach to the remaining seven airports, Archerfield, Essendon, Jandakot, Moorabbin, Mount Isa, Parafield and Tennant Creek if sold by leasehold. If sold freehold, regulation will be put in place by the relevant State. The main objective of the Commonwealth Government is to ensure that these airports continue to be operated as airports. These airports will remain subject to generally applicable civil aviation safety and security obligations.



## 2.4 OWNERSHIP

It is a requirement of the Airports Act 1996 that core regulated airports be majority Australian owned and individual airlines or associated interests are limited to 5% ownership.

The remaining airports will be subject to general investment legislation, including the Foreign Acquisitions and Takeovers Act 1975.



## 2.5 PRICE REGULATION



Price regulation using a CPI-X price cap will apply to all eight core regulated airports. Price caps will be determined by the Minister for Transport and Regional Development on advice from the Australian Competition and Consumer Commission (ACCC). The ACCC will also be responsible for the implementation of the price cap; for related price monitoring; and for quality of service monitoring. The pricing arrangements will apply for 5 years. A review will take place at the end of the period to determine if price regulation will continue.

Price regulation is not planned to apply to Tennant Creek, Mount Isa or the 5 General Aviation airports.

