



AUSTRALIAN
AIRPORTS
ASSOCIATION

Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600

6 March 2017

Inquiry into the Airports Amendment Bill 2016

Dear Committee Secretary,

I am writing to you in relation to the Senate Inquiry into the provisions of the *Airports Amendment Bill 2016*. The Australian Airports Association (AAA) welcomes the opportunity to provide a submission to this inquiry as the proposed amendments in this Bill directly impact the AAA's federally leased airport members.

The AAA is the national industry voice for airports in Australia. The AAA represents the interests of more than 260 airports and aerodromes Australia wide – from local country community landing strips to major international gateway airports. The AAA's members include Adelaide, Brisbane, Cairns, Canberra, Darwin, Gold Coast, Hobart, Perth, Melbourne and Sydney airports. There are a further 130 corporate members who provide goods and services to airports. The Charter of the AAA is to facilitate co-operation among all member airports and their many and varied partners in Australian aviation, whilst maintaining an air transport system that is safe, secure, environmentally responsible and efficient for the benefit of all Australians.

At the outset, the AAA would like to confirm that it strongly supports the proposed amendments in the *Airports Amendment Bill 2016* on the basis that they reduce unnecessary regulatory burden on the industry and assist the federally leased airports to continue providing significant contributions to our national economy. It is important to note that there are few Australian industry sectors that are subject to the extent of regulation and Government policy settings that Australia's federally leased airports are subjected to. This regulation covers a vast array of issues, with everything from movement caps and curfews, through to safety, security and prescribed business planning content and processes. Much of this regulation is a factor of historical and portfolio ownership within the Commonwealth, as well as the perceived community profile with airports. In this context, sensible initiatives to reduce unnecessary regulatory burden on this sector of the industry is welcomed by the AAA and its members.

The following submission addresses the key proposed amendments outlined in the *Airports Amendment Bill 2016* and illustrates how these changes improve the regulatory framework for the industry.

I would welcome the opportunity to discuss any of these issues with you further and should you have any questions, please do not hesitate to contact me via Simon Bourke (AAA Policy Manager) on 02 6230 1110 or sbourke@airports.asn.au.

Yours sincerely,

Caroline Wilkie
Chief Executive Officer

1. Background

The AAA has been involved in two separate consultation processes regarding potential amendments to the *Airports Act 1996* in relation to Master Plan (MP) and Major Development Plan (MDP) requirements.

The Department of Infrastructure and Regional Development (DIRD) began formal consultation with airports in September 2014 through the provision of a discussion paper that explored potential efficiency proposals in relation to MP and MDP requirements. The AAA welcomed the Department's consultation on this issue and provided a submission that outlined the industry's suggested changes to the existing legislative requirements.

DIRD then later undertook a second round of formal consultation in May 2015, which built on the first round of consultation by providing industry a series of specific reform proposals regarding MP and MDP requirements. Again, the AAA welcomed this consultation process and provided the Department with a submission that outlined the industry's position on each of the reform proposals.

It is the AAA's understanding that following this second and final round of consultation, the Department considered the feedback provided by the AAA and other relevant stakeholders and developed a finalised position which is reflected in the *Airports Amendment Bill 2016*.

While the finalised proposed reforms reflected in the Bill are very much welcomed by the AAA and its members, they are not as extensive as we had recommended to the Department. That being said, the AAA acknowledges the Government's need to consider feedback from all stakeholders and to arrive at an acceptable position that reflects the most appropriate policy outcome for all parties. The AAA believes that the *Airports Amendment Bill 2016* meets that objective.

2. Key Amendments proposed in the Airports Amendment Bill 2016

Master Plans

2.1 Implement a differential Master Plan submission cycle

The AAA notes that the Bill proposes to implement a differential MP submission cycle for federally leased airports (excluding Mount Isa and Tennant Creek) to facilitate:

- an 8 year MP submission cycle for Adelaide, Alice Springs, Archerfield, Bankstown, Camden, Canberra, Darwin, Essendon, Gold Coast, Hobart, Jandakot, Launceston, Moorabbin, Parafield and Townsville airports; and
- retain the current 5 year MP submission cycle for Brisbane, Melbourne, Perth, Sydney (Kingsford-Smith), and Sydney West airports.

The AAA supports the current 5 year Master Plan cycle being extended to 8 years for the federally leased airports listed above. That being said, the AAA has previously recommended that it would be more appropriate for this extended cycle to be increased to 10 years. This change would more closely align the airport planning process with those of many local and state government planning authorities, which operate on 10 year planning cycles. The AAA is unaware of any other infrastructure sector or otherwise in Australia that is required under legislation to submit a new Master Plan every 5 years for Government approval, forecasting 20 years in advance.

While the AAA accepts the decision to retain a 5 year Master Plan cycle for Sydney, Melbourne, Brisbane and Perth airports, there may be value in consideration being given to the introduction of more flexibility in the current requirements for those airports. It is well understood that the Master Planning process for each of the four major international gateway airports is critically important for the Government to maintain both sufficient oversight and a degree of control over essential Australian infrastructure. However, the

development of Master Plan documents is a very resource intensive exercise that imposes a multi-million dollar financial burden on each of these airports. Combine this with the fact that the development of a Master Plan can take up to 2 years to complete – effectively resulting in a 3 year gap between plans rather than 5 years.

The AAA and its members recognise the importance of continuity with each airport's long-term planning objectives and the importance of stakeholder engagement. It is for this reason that the AAA has previously recommended that a 10 year Master Plan cycle be applied to all Commonwealth airports, with the exception that Sydney, Melbourne, Brisbane and Perth airports be provided the option to undertake a review and update of their Master Plan at the 5 year point in the Master Plan cycle. The intention of this review or 'refresh' process would be to allow the airport an opportunity to update their Master Plan to reflect any significant or material unforeseen developments or changes in circumstances at the mid-point of the 10 year cycle, rather than developing a completely new Master Plan.

It may appropriate that certain triggers/thresholds are identified to make it clear for all parties, the circumstances required for the 5 year review process to be triggered. This would also result in the Government maintaining an appropriate level of oversight and control over the four international gateway airports, with a high level of confidence that any significant changes would be captured in the proposed 5 year review process. The AAA believes that should the review process be required, it would also be prudent to conduct an appropriate level of community and stakeholder engagement to ensure all parties have an opportunity to provide comment on any updates to the Master Plan.

In the event that consideration is given to amending the Bill to recommend that all airports under the Airport Act 1996 move to a 10 year Master Plan cycle (with a 5 year review option for the four international gateways) the regulatory compliance cost savings to industry would be very significant, in the order of tens of millions of dollars. This is a prime opportunity for the Government to make significant in-roads on reducing regulatory burden on industry by simply amending legislation that does nothing more than bring the Airports Act 1996 requirements in line with those of other planning systems across the country.

With that being said, the AAA acknowledges that the preparation of the amendments for this Bill involved consultation with a range of stakeholders with differing views. For that reason, the AAA supports the proposed Master Plan cycle amendments and while not ideal, they provide for significant improvement on the current arrangements.

2.2 Inclusion of a new Australian Noise Exposure Forecast in each new Master Plan

The AAA supports the proposed amendment in the Bill to make it mandatory to include a new Australian Noise Exposure Forecast (ANEF) in each new iteration of an airport Master Plan. The AAA recognises that including this requirement ensures community and other airport stakeholders are provided with the most current and up-to-date ANEF information available.

However, the AAA does note the requirement in the Bill for the ANEF to also be endorsed. As the AAA understands it, prior to May 2008 the use of a draft ANEF was permitted for inclusion in draft Master Plans released for stakeholder consultation. This arrangement worked well and allowed feedback to be provided on the draft ANEF in conjunction with the draft Master Plan. However, a Ministerial decision then resulted in draft ANEFs needing to be endorsed for inclusion in draft Master Plans. This resulted in a convoluted and inefficient consultation process, where the consultation requirements for an endorsed ANEF overlapped with the consultation process for a draft Master Plan.

The AAA recommends that the legislation be amended to reflect the processes in place pre-May 2008, which allowed for the draft ANEF to be included in the draft Master Plan and provided a clear and efficient consultation process. This would also allow for the draft ANEF to be endorsed in conjunction with the approval of a new Master Plan

Major Development Plans (MDPs)

2.3 Increasing the monetary trigger for MDPs (including indexation and included costs)

The AAA notes that the Bill proposes to increase the current \$20 million monetary trigger for MDPs to \$35 million and allow the Minister for Infrastructure and Transport to issue legislative instruments:

- for the purpose of increasing the threshold amount (monetary trigger) for MDPs every three years, taking into account price indexations indicating changes in construction activity costs; and
- for the purpose of specifying the costs that must be included, and must not be included, when calculating the cost of construction for an MDP.

The AAA supports the proposed increase of the monetary trigger to \$35 million. The AAA had previously recommended this trigger be increased to \$50 million, noting there are existing additional provisions under the legislation which require an MDP for any development (regardless of cost) that is likely to have a significant environmental or community impact. However, any increase to the monetary trigger is most welcome as the AAA believes it goes some way to removing unnecessary regulatory burden.

It is important to note that the financial impost on airports of preparing an MDP can be quite considerable (and varied) depending on the size and nature of the project. For many projects that exceed the current \$20 million trigger, it is not unusual for the cost of an MDP to exceed \$200,000, with some MDPs requiring heavy outsourcing costing in excess of \$1 million. Taking into consideration the overall regulatory regime for federally leased airports, in particular the requirements of the Master Plan process, there are more than adequate measures in place to ensure that there is alignment of developments with each airport's long-term vision and consistency with state and local planning schemes.

The AAA strongly supports the monetary trigger being increased every three years, taking into account price indexations that allow for changes in construction activity costs. This is an important change that will ensure that the revised monetary trigger remains appropriate and flexible enough to adapt to changes in construction costs.

The AAA also supports the amendment to specify the costs that are to be included and excluded from the calculation of the monetary trigger. This is particularly important to ensure that building fit-out costs are not included in this calculation process. Depending on the nature of the development, the costings and details relating to the internal fit-out of a building project are often not known or well understood at the pre-approval stage. More importantly, the inclusion of fit-outs costs in the monetary trigger calculation would result in a situation where two identical developments could be treated differently under the legislation simply because of the internal fit-out. For example, two buildings could be constructed in the same area, with the same physical dimensions and core planning implications and one building could be subject to the MDP process and the other may not – simply due to the costs of the internal fittings. This would clearly result in perverse and unintended outcomes from the MDP approval process and that is why it is essential that this amendment proceed to ensure fit-out costs can be specifically excluded.

2.4 Timeframe for application for reduced consultation

The AAA supports the proposed amendment in the Bill to specify a 15 business day statutory decision timeframe within which the Minister must consider applications from airport-lessee companies for reduced consultation periods for MDPs, with such applications deemed approved if there is no Ministerial decision within this timeframe.

The inclusion of this provision provides airports with timeframe certainty, on any applications they may wish to provide the Minister for an expedited MDP consultation periods. This will assist in both critical strategic and operational business decisions the airport may have to make in relation to a proposed major development.

2.5 Additional extension for approved MDPs

The AAA supports the proposed amendment in the Bill to enable the Minister to extend more than once the period that approved MDPs are required to be substantially completed. This amendment recognises the inherent difficulties and complexities associated with major development projects, including the myriad of unforeseen and/or uncontrollable issues that can occasionally result in timelines needing to be extended.

However, the AAA does suggest that consideration be given to an alternative solution of amending the legislative condition of 'substantial completion' to 'substantial commencement'.

The AAA has concerns that the terminology of 'substantial completion' is rather ambiguous and not well defined or used in other planning legislation. This lack of clarity around what constitutes 'substantial completion' has the ability impose unnecessary risks for airports and those developing on airport land. Whereas the term 'substantially commenced' is well defined and has been tested in numerous court proceedings, and is commonly used by several state planning authorities. The AAA believes that by removing this degree of uncertainty on what constitutes 'substantial completion', industry will no longer be subject to further unnecessary business risk and it would eliminate the need to apply to the Minister for extensions once the project had been 'substantially commenced'.

2.6 Approved MDP not proceeding (exceptional circumstances)

The AAA supports the proposed amendment in the Bill to enable airport-lessee companies to notify the Minister if an approved MDP is not able to proceed on the basis of exceptional circumstances. As mentioned above, this recognises the fact that there may be factors beyond the control of the airport that could result in a major development no longer being tenable to proceed.

The AAA would recommend that clarity be provided on what constitutes 'exceptional circumstances'. It is important the definition or interpretation of 'exceptional circumstances' is not overly restrictive and has a degree of flexibility. As with any industry, there are often times where a substantial development may no longer be able to proceed due to any number of factors, including unforeseen changes in financial, operational or market circumstances. The AAA recommends that the definition of 'exceptional circumstances' provide for sufficient flexibility to include any issues that may have been unforeseeable at the time of the MDP preparation.

3. Conclusion

The proposed amendments outlined in this Bill are a significant step forward by the Government in recognising opportunities to reduce unnecessary regulatory burden on the federally leased airport industry and streamline processes.

The AAA strongly supports the proposed amendments in this Bill proceeding and would welcome the opportunity to continue working with Government to identify further opportunities for regulatory reform to ensure airports can continue being significant drivers of economic growth and social connectivity.