

CHAPTER 2

OVERVIEW OF THE BILL

2.1 Schedule 1 of the Bill contains amendments relating to the Act and one amendment to the *Australian Capital Territory (Planning and Land Management) Act 1988*. Schedule 1 is divided into two Parts: Part 1 contains the substantive amendments; Part 2 is concerned with application, transitional and saving provisions.

2.2 Amendments to the Bill were released after the referral of the Bill to the committee and as such do not form part of the committee's consideration and report of the Bill as referred by the Senate. However, the committee has taken these amendments into account in its deliberations and recommendations contained in chapter 3.

Provisions of the Bill

2.3 The main provisions contained in Schedule 1 of the Bill, as explained in the Explanatory Memorandum (EM)¹, are set out below:

Consistent business activities and developments

2.4 Item 16 inserts new paragraphs 32(1)(d) and (2)(d) which clarify that the types of business that an airport-operator company may carry on include those activities that are consistent with the respective airport lease and final master plan, including non-aeronautical development. This would extend to approved non-aeronautical development on the airport site, where consistent with the lease and master plan, and is in line with the February 2005 Federal Court decisions *Westfield Management Ltd v Brisbane Airport Corporation Ltd* [2005] FCA 32 and *Direct Factory Outlets Pty Ltd v Westfield Management Ltd* [2005] FCA 34.

Airport ownership

2.5 Item 21 amends section 44 and provides for regulations that would permit an airline to take a stake of greater than 5% in an airport other than a core regulated airport, which may or may not be subject to particular conditions by regulation.

The purpose of a final master plan and an environment plan

2.6 Items 23 and 122 provide new subsections 70(2) and 115(2) which set out the purpose of a final master plan and a final environment strategy.

1 Most of the text in this chapter is taken directly from the EM to the Bill.

Content of draft or final master plans

2.7 Items 24, 25, 28 and 29 require the airport-lessee company to specify, in the master plan for their airport, their intentions for land use and development of the airport site.

Australian Noise Exposure Forecast (ANEF) and flight paths

2.8 In response to community concern about adequate information on flight paths and aircraft noise exposure patterns around airports, items 26 and 30 require an airport master plan, released for public comment, to specify such information including the ANEF and flight paths in accordance with requirements to be set out in regulations. Similarly, for major airport developments which could impact upon flight paths or noise exposure patterns around an airport, item 77 requires that the likely effect of the development is to form part of the draft major development plan released for public comment.

Replacement of master plan and the ANEF

2.9 Item 39 inserts new subsection 78(2A), which provides for a replacement master plan to be developed for approval should a more recent ANEF for the airport be endorsed. The replacement master plan is to be made available either within 180 days of the ANEF being endorsed or, if the Minister allows in writing, then a longer period. The EM explains that this amendment 'should assist state and territory land use planning agencies in implementing long-term planning arrangements that take account of an airport's proposed aeronautical operations'.²

Beyond the 20 year planning period

2.10 New paragraph 71(4)(c) provides that a draft or final master plan may, subject to specified conditions, relate to a period beyond the 20 year planning period set by section 72 of the Act. The EM states that 'it is envisaged this amendment will allow for a draft or final master plan to include Australian Noise Exposure Forecast information that extends beyond the 20 year planning period, enabling [s]tate and [t]erritory land use planning agencies to implement long-term planning goals that are compatible with an airport's proposed long term aeronautical operations'.³

Public comment

2.11 The Bill contains various amendments to the public comment provisions for master plans, minor variations of master plans, major development plans, minor variations of major development plans and environment strategies.

2 EM, paragraph 43, p. 6.

3 EM, paragraph 37, p. 5.

2.12 These amendments apply to all types of plans including variations and the amendments include:

- an airport-lessee company is to publish advice on its website that the plan is to be made available for comment;
- a reduction in the number of days available for public comment;
- a copy of the plan must be made available free of charge on the website throughout the public consultation period;
- an airport-lessee company must 'demonstrate' how the company has had due regard to comments provided by the public; and
- 'stop the clock' provisions where the Minister may request that the airport lessee-company provide specific information relevant to that decision-making process and the stated approval time for the Minister will cease while this information is requested.

Publish advice

2.13 These amendments⁴ require that the airport-lessee company publish advice on its website for all draft plans and draft variations. This proposed requirement is in addition to the current requirement that such advice be published in a locally circulating newspaper. The amendments⁵ also require that copies of plans be made available free of charge on the website throughout the public consultation period.

Public consultation period

2.14 These amendments⁶ reduce the period available for public consultation for draft plans from 90 calendar days to 45 business days.⁷ For draft minor variations, the public consultation period is reduced from 30 calendar days to 15 business days. The EM commented that the reduction in these consultation timeframes brings 'the public comment period more into line with [s]tate/[t]erritory planning systems'.⁸

4 These amendments relate to new paragraphs 79(1)(a), 84A(1)(a), 92(1)(a), 95A(1A)(a) and 124(1)(a).

5 These amendments relate to new paragraphs 79(1)(a)(ii), 84A(1)(a)(ii), 92(1)(a)(ii), 95A(1A)(a)(ii) and 124(1)(a)(ii).

6 These amendments relate to new paragraphs 79(1)(a)(iiia) and (iiib), 84A(1)(a)(iiia) and (iiib), 92(1)(a)(iiia) and (iiib), 95A(1A)(a)(iiia) and (iiib) and 124(1)(a)(iiia) and (iiib).

7 Please note that subsequent amendments have increased the period to 60 business days instead of 45 business days.

8 EM, paragraphs 46 and 64.

Demonstrate due regard

2.15 These amendments⁹ require that an airport-lessee company must 'demonstrate' how the company has had due regard to comments provided by the public in preparing their draft plans and draft variations. Currently, the airport-lessee is required to state that it has had due regard to those comments, not to demonstrate how they have had due regard.

'Stop the Clock' provisions

2.16 The airport lessee company as part of the consultation process for master plans, major development plans and environment strategies must submit, to the Minister, a written statement listing the names of the persons consulted and summarising the views expressed by the persons consulted.

2.17 The proposed 'stop the clock' provisions under new sections 80A, 93A and 125A provide that if the Minister believes that a draft master plan, draft major development plan, environment strategy, or variation to either plan given for approval does not include enough information for a decision to be made, then the Minister may request that the airport-lessee company provide specific information relevant to that decision-making process. While the Minister requests this information, the number of days allowed for Ministerial approval of such plans ceases to count down.

Approval by Minister

2.18 New subsections 81(5), 84(3), 94(6), 95(3) and 126(5) provide that the Minister will have 50 business days, instead of 90 calendar days, to approve or not approve a draft master plan, variation of final master plan, major development plan, variation of major development plan and draft environment strategy.

2.19 Sections 86, 96 and 131 of the Act require an airport-lessee company to advertise that their draft plans and any variations of these draft plans, have been approved and are available for public inspection and purchase.

2.20 Amendments under paragraphs 86(2)(a), 96(2)(a) and 131(2)(a), provide that an airport-lessee company is to publish advice on its website that a final plan or a variation of any plan, has been approved. Publishing on the website is in addition to publishing that advice in a locally circulating newspaper. These amendments also require that an airport-lessee company must state in their website advice that copies of the approved plan will be made available free of charge and the airport's website address must be included in the advertisement. The proposed amendments also provide that copies of the plans and variations of the plans will be made available for 50 business days, instead of 90 calendar days after receiving approval by the Minister.

9 These amendments relate to new paragraphs 79(2)(c), 84A(2)(c), 92(2)(c), 95A(2)(c) and 124(2)(c).

Meaning of a major airport development

Threshold increase

2.21 Item 72 provides for an increase in the dollar threshold for construction costs from \$10 million to \$20 million. This threshold is one of the triggers determining when a major development plan needs to be submitted.

Associated building costs

2.22 New subsection 89(2A) provides for the inclusion of associated building activities costs in the cost of construction, which is the figure used in assessing a project against the dollar threshold.

Consecutive projects or developments

2.23 New subsection 89(4) provides that the combination of individual building projects or developments which singly do not exceed the dollar threshold, but which are consecutive or concurrent projects or extensions to existing buildings may be determined to be a major airport development. The EM states that the intention of this new subsection is 'to avoid a situation where the need for a major development approval can be avoided by dividing a major project into parts which each come under the threshold, even though the total value exceeds the threshold'.¹⁰

Consistency of the major development plan

2.24 New subsection 91(1A) includes provision to clarify that a major development plan must be consistent with the provisions of the airport lease and master plan.¹¹

Completion timeframe

2.25 New subsection 94(7A) provides that unless otherwise stated, any approval under subsection 94(7) of the Act requires the proposed major development to be substantially completed within 5 years of the approval. This is consistent with the validity period for a master plan and an airport environment strategy. New subsection 94(7B) provides that an extension of up to two years may be granted.

Minor variation subject to public comment

2.26 New paragraph 95(2)(c) provides that it is a matter for the Minister to determine whether it is in the public interest for a minor variation to a major development plan to be subject to public comment. Currently all minor variations are subject to a 30 calendar day public consultation period. The EM comments that this proposed amendment 'ensures that the public, through the Minister, will be afforded

10 EM, paragraph 86, pp 10–11.

11 EM, paragraph 88, p. 11.

the opportunity to comment on those variations which may impact upon the community while not overburdening the airport-lessee company where the variation is of a very minor nature'.¹²

Definition of building activities

2.27 New paragraph 98(1)(f) amends the definition of building activities to include 'undertaking land clearing'.

Exclusion of National Capital Plan

2.28 New section 112A excludes Canberra Airport from the planning and development controls under the National Capital Plan, administered by the National Capital Authority under the *Australian Capital Territory (Planning and Land Management) Act 1988*.

ACCC monitoring

2.29 Item 153 provides for aspects of airport services and facilities (for example passenger processing through terminals and baggage processing), monitored by the ACCC, to be specified in the regulations. This item also provides for monitoring and evaluation to be against set criteria determined by the ACCC following consultation with the Department of Transport and Regional Services and Treasury. Consequential to item 153, current sections 153 and 154, which provided for the regulations to clarify those performance indicators that could be used in monitoring quality of service and facilities, are to be repealed.

Extension to a broad range of service providers

2.30 Section 216 of the Act currently provides that Airservices Australia will normally provide or oversee the provision of air traffic services and rescue and fire fighting services at leased airports.

2.31 Item 162 substitutes new paragraphs 216(1)(c) and (d) which provide for new provisions that would allow regulations to be made to allow additional service providers, but specifies that apart from the Department of Defence, any provider of an air traffic service or a rescue and fire fighting service at a leased airport would need to be appropriately approved or licensed by the Civil Aviation Safety Authority. This amendment would in the future permit a broader range of service providers.

12 EM, paragraph 111, p. 13.