

The Senate

Standing Committee on
Rural and Regional Affairs
and Transport

Airports Amendment Bill 2006
[Provisions]

February 2007

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ABBREVIATIONS

AAA	Australian Airports Association
ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
AMAC	Australian Mayoral Aviation Council
ANEF	Australian Noise Exposure Forecast
BAC	Brisbane Airport Corporation
CIA	Canberra International Airport
EM	Explanatory Memorandum
HCC	Hobart City Council
the Act	<i>Airports Act 1996</i>
QCC	Queanbeyan City Council
RPT	regular public transport
Virgin Blue	Virgin Blue Airlines Pty Ltd

CHAPTER 1

Introduction

Background

1.1 On 7 December 2006, the Senate Selection of Bills Committee referred the *Airports Amendment Bill 2006* (the Bill) to the Senate Standing Committee on Rural and Regional Affairs and Transport (the committee) for inquiry and report by 26 February 2007.

1.2 The Selection of Bills Committee provided the following statement as the reason for referral:

Non aviation development on airport precincts has become very controversial in recent years. Large retail and manufacturing developments have been approved over the objections of State Governments, Local Councils, retailers and local residents. Reference would provide an opportunity for interested and affected parties to make submission concerning whether issues would be addressed in proposed Bill.¹

1.3 The Bill amends *The Airports Act 1996* (the Act), which is the Act that establishes the framework for the regulation of the 22 leased federal airports. The areas of regulatory control covered under the Act include leasing and management ownership and control of airport companies, land use planning and building controls, environmental management, protection of airspace, control of on-airport activities, pricing and quality of service and access and demand management.²

1.4 The purpose of the Bill is to:

- improve the land use planning system in place at leased federal airports through increasing the focus on strategic planning, simplifying planning controls and improving development assessment processes; and
- implement a number of recommendations arising from the Senate Rural and Regional Affairs and Transport References Committee *Report on the Inquiry into the Development of the Brisbane Airport Corporation Master Plan*, align the planning arrangements for Canberra Airport with those for other federal airports, and provide for greater flexibility for future updates of some day-to-day on-airport activities.³

1.5 The key areas in which the Bill amends the Act are:

1 Selection of Bills Committee, Report No. 16 of 2006, 7 December 2006.

2 Explanatory Memorandum (EM), *Airports Amendment Bill 2006*, p. 1.

3 EM, p. 1.

- to make clear the Federal Government's intention at the time of privatisation of the airports, by permitting non-aeronautical development at leased airports, provided such development is consistent with the airport lease and approved master plan;
- excluding Canberra Airport from the operation of the National Capital Plan as provided for in the *Australian Capital Territory (Planning and Land Management) Act 1988*, aligning Canberra Airport's planning obligations with the other leased federal airports which are subject only to the planning provisions of the Act;
- refining the planning and development approval regime attaching to airport master plans, major development plans and environment strategies, including streamlining public comment and assessment periods, providing purpose clauses, ensuring easier public access to a master plan, major development plans and environment strategies, and allowing the Minister to request further information during the assessment process via the 'stop the clock' provisions; and
- clarifying and refining processes associated with the current noise management arrangements applying at the leased federal airports.⁴

Proposed amendments to the Bill

1.6 Since the referral of the Bill, the Federal Government circulated amendments to the Bill in the House of Representatives on 13 February 2007 which alter the public consultation period. The purpose of these amendments 'is to ensure that the Government's benchmark for public consultation in the development of airport master plans, airport environment strategies and major development plans at leased federal airports is one of the longest when compared with other jurisdictions and ensures that members of the community have adequate time to review and provide comment on these important documents'.⁵

Conduct of the inquiry

1.7 The committee advertised the inquiry in *The Australian* newspaper on 12 December 2006, and invited submissions by 19 January 2007, although the committee continued to accept submissions after this date. Details of the inquiry, the Bill, and associated documents were placed on the committee's website. The committee also wrote to a number of organisations and individuals.

1.8 The committee received 73 submissions which are listed at Appendix 1. Submissions were placed on the committee's website for ease of access by the public.

4 EM, p. 1.

5 Supplementary EM, p. 1.

1.9 The committee held a public hearing in Canberra on 30 January 2007. A list of witnesses who appeared at the hearing is at Appendix 2 and copies of the Hansard transcript are available through the Internet at <http://aph.gov.au/hansard>.

1.10 Evidence received during the inquiry was, at times, contentious, and related directly to individual airport developments and conflicts that have arisen in different states between organisations, the community, airport developers and airport corporations. The committee also received correspondence after the public hearing from organisations seeking a right of reply to evidence recorded in Hansard and contained in submissions. This correspondence was placed on the committee's website.

Acknowledgement

1.11 The committee appreciates the time and work of all those who provided written and oral submissions to the inquiry, particularly in light of the tight timeframe imposed. Their work has assisted the committee considerably in its inquiry.

Note on references

1.12 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

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.

CHAPTER 3

KEY ISSUES

3.1 This chapter examines the main issues and concerns raised in the course of the committee's inquiry. The chapter starts by looking at issues in relation to specific provisions in the Bill and then moves on to cover general concerns raised in relation to the Bill and airport development.

Specific issues with the Bill

3.2 A wide range of views were expressed on the amendments contained in the Bill. General support for some aspects of the Bill was received while some proposed amendments raised overall concern and others were clearly not supported.

Airline ownership

3.3 Virgin Blue Airlines Pty Ltd (Virgin Blue) raised concerns regarding the removal of the 5% restriction on airline ownership of airport-operating companies of non-core regulated airports. Virgin Blue expressed reservations about vertical integration and stated 'We do not mind that five per cent as long as it is limited to those airports. We see those as secondary airports, not main RPT [regular public transport] operators, so we do not see that that is going to have a significant impact on the aviation market in Australia'.¹

Master plans and the Australian Noise Exposure Forecast

3.4 Some witnesses and submitters expressed concern on the use of Australian Noise Exposure Forecast (ANEF) to forecast airport noise and suggested shortcomings exist within the ANEF system. Some witnesses suggested that using an 'ultimate capacity ANEF' would be more appropriate.²

Beyond the 20 year planning period

3.5 The Queanbeyan City Council (QCC) stated that 'the Airports Act should not be amended to enable any master plan or associated ANEF to extend beyond the 20-year planning period'. Two reasons were provided which included 'the imposition of costs that may never be necessary' and the 'uncertainty of planning beyond the 20-year period for critical factors such as the future availability and costs of fossil fuels, the future of the airline industry, technological advancements'.³

1 *Committee Hansard*, 30 January 2007, p. 39.

2 For example see, Adelaide and Parafield Airports, *Submission 17*, p. 3.

3 *Committee Hansard*, p.12; see also Bankstown Airport Ltd, *Submission 47*, p. 4.

Replacement of the master plan and new ANEF

3.6 The Australian Airports Association (AAA) did not support this provision in the Bill as the ANEF for an airport could be changed by the actions of a third party, such as Airservices Australia changing a flight path, or changes to airline operating procedures. The AAA further explained:

It is not considered reasonable to require an airport to develop a whole new master plan just because a third party instigates a change to an ANEF. This proposed amendment should be either removed from the bill or amended, so that only a variation to that part of that master plan that is affected by a change to an ANEF is required, or the master planning process and the ANEF system should be separated.⁴

Public comment

General issues with the consultation process

3.7 Witnesses and submitters were broadly supportive of the Bill's requirements that airport-lessee companies publish advice on their website including the provision of copies of their proposals free of charge to interested parties throughout the consultation period.⁵ However, the main issues of concern related to:

- the ability of a newspaper and/or internet advertisement to sufficiently raise the awareness of interested stakeholders and the community;
- the airport-lessee company's control of the consultation process and reporting to the Minister; and
- impact assessments not always being undertaken and if they were undertaken, not being made available to stakeholders and the public.

3.8 Mr David Carswell, Manager of Strategic Planning at the QCC, suggested that the website advertising was not going far enough and that airport-lessee companies should be required to notify interested parties. QCC suggested:

...there should be a change to the bill requiring airports to notify in writing those persons identified under the various provisions labelled 'consultation', which list local government and state and territory governments, in relation to major development plans, master plans and environment strategies. Of course, in this day and age that can be done electronically.⁶

4 *Committee Hansard*, 30 January 2007, p. 41; see also Moorabbin Airport Corporation Pty Ltd, *Submission 13*, p. 3; Bankstown Airport Ltd, *Submission 47*, pp 3–4.

5 For example, see City of Holdfast Bay, *Submission 14*, p. 1.

6 *Committee Hansard*, 30 January 2007, p. 17.

3.9 The absence of an independent third party to manage and report the outcome of the consultation process to the Minister⁷ and the subsequent control of the process by the airport-lessee company in reporting to the Minister is a source of concern. Mr Peter Fitzgerald, Executive Director of the Australian Mayoral Aviation Council (AMAC), gave an example of the consultation process for the brickworks development in Perth:

While there was much consultation about the brickworks, the real problem was that the person who gave the consent was the person leasing land to the brickworks. There was no independent third party, and that is the real difficulty.⁸

3.10 Hobart City Council (HCC) suggested that the current system where there is no clear separation of the roles of the assessor and the proponent 'is open to perceptions of bias' and proposed that:

...all submissions received on a proposal should go directly to the responsible Australian government department for consideration in the same way that the public lodge submissions with the appropriate local government authority across Australia.⁹

3.11 The Department responded to concerns on the role of the airport-lessee company in communicating the public consultation outcomes to the Minister:

At the end of the day it comes down to our [the Department's] assessment of, firstly, whether any changes have been made to the proposal to reflect some form of change to try to do that. Have they made additional studies which may run counter to that?...they are required under the current arrangements to give us a legal statement to the effect that they have considered all the submissions...Where there is a contentious project people making a submission often copy their submission to the minister or to us to ensure that we are aware of the issues. We become aware of the issues through media comment and public comment around the project. So we often do go back and have those discussions.¹⁰

3.12 Witnesses also raised the issue of impact assessments (economic, social and environmental) of proposed developments undertaken by airport-lessee companies and the availability of these assessments.¹¹

7 For example, see Mr Gary Randall, HCC, *Committee Hansard*, 30 January 2007, pp 27–28.

8 *Committee Hansard*, 30 January 2007, p. 9.

9 *Committee Hansard*, 30 January 2007, p. 29.

10 *Committee Hansard*, 30 January 2007, p. 75.

11 For example see, Launceston Chamber of Commerce, *Submission* 41, p. 4; see also, HCC, *Committee Hansard*, 30 January 2007, p. 27; see also Shopping Centre Council of Australia, *Committee Hansard*, 30 January 2007, p. 35.

3.13 In response to requests for clarity regarding consultation processes as well as in response to a recommendation contained in a Senate Committee Report,¹² the Federal Government released new Airport Development Consultation Guidelines (Guidelines) in December 2006. The Hon. Mark Vaile, MP, Minister for Transport and Regional Services commented:

The Australian Government will retain control over the arrangements for airport planning, but the *Guidelines* will ensure all parties are engaged in the consultation process. They make it clear the expectation that State, Territory and local Governments in the area of development will be included in the planning process from the early stages of any project.¹³

Reduction in number of days

3.14 There was much discussion on the proposed reduction to the number of days available for public comment. The majority of witnesses, particularly state and local council authorities, objected to the reduction in the number of days.

From our perspective, we believe that shortening it makes it difficult for our councils to have adequate time to formally consider the process. Councils meet on a regular basis but to shorten the time frame to 45 days would restrict their ability to have a formal council meeting to consider proposals.¹⁴

3.15 The Planning Institute of Australia supported 'the current amendments which seek to improve the consultation regime, although we understand there were some concerns with the time frames for some local governments'.¹⁵

3.16 The Department responded to concerns and stated:

The current 90 days in this airports legislation is, in our analysis, now the longest public consultation period in Australia. Public consultation arrangements in the states and territories can generally range from 15 to 60 calendar days. The proposal to provide for 45 business days, which equates to around 63 calendar days, still places us at the top end of state and territory consultation requirements.¹⁶

3.17 The committee notes that further amendments to the Bill have been circulated since it was referred for investigation to the committee. These amendments increase the proposed 45 business day consultation period to 60 business days. The

12 Senate Rural and Regional Affairs and Transport Committee, Report on the *Inquiry into the Development of the Brisbane Airport Corporation Master Plan*, 29 June 2000.

13 The Hon. Mark Vaile, MP, Minister for Transport and Regional Services, 'New Airport Guidelines Underline Community Consultation', Media release 037MV, 12 December 2006.

14 Mr Beresford-Wylie, ALGA, *Committee Hansard*, 30 January 2007, p. 5; see also, City of Charles Sturt, *Submission* 59, p. 2; Council of Capital City Lord Mayors, *Submission* 63, p. 4.

15 *Committee Hansard*, 30 January 2007, p. 61.

16 Mr Mike Mrdak, DOTARS, *Committee Hansard*, 30 January 2007, p. 66.

consultation period for variations remains at 15 business days instead of 30 calendar days.

Demonstrate due regard

3.18 The majority of witnesses supported the intent of this amendment and discussion concentrated on what was meant by 'demonstrate due regard' and how this would work in practice.¹⁷

3.19 Mr Milton Cockburn, Executive Director of the Shopping Centre Council of Australia, commented that this provision was an improvement on the current requirements of the Act, but added:

We hope that the change in wording will mean that DOTARS will now take a much more rigorous approach to ensuring that they have in fact taken into account those sorts of submissions. In other words, questions will go back to the airport lessee about the submissions, asking them to point to areas where they have taken those submissions into account and perhaps to change their MDP as a result of those submissions. Like all these things, it will depend upon the degree of rigour of the bureaucrats in DOTARS. Nevertheless, we do see that as a welcome change.¹⁸

Stop the clock

3.20 The majority of the evidence received during the inquiry expressed support for the proposed 'stop the clock' provision in the Bill, particularly given the 'deemed approval' clause in the Act.¹⁹ However, the AAA expressed concern that the use of this provision may potentially delay or compromise developments and would need to be monitored.

The stop-the-clock provisions as proposed in the bill to allow a minister to request further information will need to be heavily regulated to prevent inappropriate use or even politically motivated misuses of those powers.²⁰

Approval by Minister

3.21 Concerns were raised regarding the 'deemed approval' of the development if the Minister has not made a decision to approve or not to approve the development

17 For example see, Mr Beresford-Wylie, ALGA, *Committee Hansard*, 30 January 2007, p. 7 and Mr McArdle, AAA, *Committee Hansard*, 30 January 2007, p. 42; see also, QANTAS Airways Ltd *Submission* 56, p. 4.

18 *Committee Hansard*, 30 January 2007, p. 32.

19 For example see, Department of Transport, Energy and Infrastructure, Government of SA, *Submission* 61, p. 2.

20 *Committee Hansard*, 30 January 2007, p. 41; see also Bankstown Airport Ltd, *Submission* 47, p. 5.

within the legislated time-frame. This power resides in the Act and is not contained within the Bill.²¹

3.22 Mr Simon Corbell, MLA, Minister for Planning, Australian Capital Territory (ACT) expressed concern on the absence of safeguards in the approval process and commented:

In the instance that is proposed in the amendments, it is a deemed approval, which is highly unusual and is particularly concerning in the context where there is no opportunity to independently review such a decision...For example, in the ACT there are set time limits for consideration of development applications. If the planning authority refuses or does not make a decision within those set time limits, it is a deemed refusal and the proponent, the applicant, has the opportunity to seek a review of that refusal in the Administrative Appeals Tribunal. So there are mechanisms to safeguard the authority simply sitting on an application and not making a decision one way or the other.²²

3.23 The Department explained that the 'deemed approval' provision within the Act has been in place since 1996 and 'we have never had an issue of a minister not making a decision'. This provision was specifically placed into the Act to 'provide some surety for development on airports'.²³

3.24 Concern was also raised on the overall approval statistics of development plans on airports land by the Minister.

There are 22 leased airports around Australia, all of which I think have now lodged their master plans and had them approved and many of which have lodged major development plans and had them approved. We are talking about 30-odd master plans or major development plans. We are not aware of one single instance where the minister has rejected a master plan or an MDP. That is the sort of strike rate that a private commercial developer could only dream about.²⁴

3.25 The Department, in response to questions placed on notice during the public hearing, provided a table which details a number of master plans, major development plans and environment strategies which were initially rejected.²⁵ In all of these instances, bar one, the respective plans were revised and subsequently approved.

21 Sections 81(5), 94(6) and 126(5) provide for 'deemed approval'.

22 *Committee Hansard*, 30 January 2007, p. 62.

23 *Committee Hansard*, 30 January 2007, pp 69–70.

24 Mr Milton Cockburn, *Committee Hansard*, 30 January 2007, p. 33.

25 DOTARS, answer to question on notice, 7 February 2007 (received 21 February 2007).

Meaning of major airport development

Threshold increase

3.26 The Southern Sydney Regional Organisation of Councils commented that the 'proposed increase of this threshold...may result in less opportunity for community involvement rather than more'.²⁶

3.27 The AAA supported the proposed increase to the monetary threshold trigger and stated:

The proposal to increase the amount to \$20 million reflects commercial reality and the increases in construction costs over a 10-year period. In addition, the act now requires airport lessee companies to include site work costs and site preparation costs in their total project assessment, which was not included in the original \$10 million. Hence, if these two factors are considered, the increase from \$10 million to \$20 million is fair and will only remain fair as long as a recognised inflator is included in regulation to adjust the figure regularly going forward and not to have a 10-year review period as has happened since 1996.²⁷

3.28 The Department outlined that the increase to the monetary threshold amount is 'consistent with the current changes being made to the Public Works Committee Amendment Act 2006' and added:

In New South Wales's state significant projects, the thresholds for those types of developments are \$30 million for most developments. In the case of major commercial and retail, the threshold is \$50 million.²⁸

Consecutive projects

3.29 The extension of the Minister's power to aggregate developments and determine that individual building developments or proposals constitute a major airport development was supported by the majority of witnesses and submitters.

Under the bill, if you seek to break up what is otherwise a unitary development into little bits that are each less than \$20 million the minister will have a capacity to say, 'No, that is all going to be aggregated into one and you require a major development plan.' That is certainly a strengthening of the minister's hand.²⁹

26 *Submission 50*, p. 4; see also Adelaide City Council, *Submission 55*, p. 6.

27 Mr John McArdle, AAA, *Committee Hansard*, 30 January 2007, p. 40.

28 *Committee Hansard*, 30 January 2007, p. 67 and p. 69.

29 Mr Stephen Skehill, AAA, *Committee Hansard*, 30 January 2007, p. 45.

Exclusion of National Capital Plan

3.30 Canberra International Airport (CIA) stated that they are 'the only airport that is subject to two sets of planning authorities' which means they have to 'pay two sets of application fees and get two sets of approvals'. CIA further commented:

What is particularly peculiar in a red-tape sense is not just the stupidity of having to do everything twice and pay twice, but that there are two Commonwealth agencies. The taxpayers are funding two sets of Commonwealth planners to give us the work-over...The improvement in this legislation should mean that we have to deal with only one set of planners.³⁰

3.31 The Minister for Planning ACT, Mr Simon Corbell MLA, responded to comments that the removal of the National Capital Plan would represent a windfall gain for the Canberra International Airport operator in terms of value not paid for. Mr Corbell commented:

There is no doubt in my mind that that is the case. The purchasers of the Canberra International Airport were aware of what regulatory scheme applied when they purchased the site, and they knew that the National Capital Plan applied as well as the requirements of the department of transport under the Airports Act. The fact that they are now lobbying for the removal of that level of regulatory control means that they achieve a level of windfall gain in terms of ease of development, which they have not previously had to the same level, and that has to improve the value of the site. That is not a value that has been captured for the taxpayer in any way. Indeed, when the airport was sold, the Commonwealth itself said that it was sold knowing that there was an additional layer of regulatory control in place because it was the airport of the national capital.³¹

ACCC monitoring

3.32 Virgin Blue expressed concern over the proposed change to section 155 (items 152 and 153) and stated:

The existing provisions of the act require the ACCC to subject core regulated airports to regulator monitoring, evaluation and reporting of quality of airport services and facilities. However, Virgin Blue contends that the provisions contained within item 152 of this bill may be used to exclude some or all core regulated airports from future ACCC monitoring and reporting. Virgin Blue strongly believes that the current quality-monitoring regime for core regulated airports should continue and that no attempt should be made to change the existing arrangements.³²

30 *Committee Hansard*, 30 January 2007, p. 56.

31 *Committee Hansard*, 30 January 2007, p. 62.

32 *Committee Hansard*, 30 January 2007, p. 36; see also Randwick City Council, *Submission 22*, pp 2–3.

3.33 The Department responded to these concerns and stated 'it is certainly not an attempt to exclude airports from ACCC monitoring' and this amendment 'simply gives us flexibility...it does not remove the ACCC price monitoring or the normal provisions of the Trade Practices Act'.³³

Extension to a broad range of service providers

3.34 The committee questioned the intent of the amendments contained in items 161 to 164. These amendments have two purposes. Firstly, to permit a greater range of service providers to provide air traffic services and rescue and fire fighting services and secondly, to clarify the requirement for CASA approval. The Department provided the following explanation of the intent of the amendments to section 216 of the Bill:

The change has been that Airservices is required to be licensed and its activities as an air traffic service provider and an AFTS provider is regulated by CASA. This makes it clear that the air service at these airports is subject to that – so it cleans that up- and at the same time it provides some flexibility.

It [also] provides the flexibility for that if the government in the future was to decide to provide contestability for the provision of rescue and fire fighting services and air traffic services at those airports. That has not been decided at this time.³⁴

3.35 The committee upon receiving evidence from the Department expressed concern that the flexibility portion of the amendment to section 216 appears speculative and is based on prospective change rather than a policy decision.³⁵ However, the committee notes that on 4 November 1999, the then Minister for Transport and Regional Services, The Hon. John Anderson, MP, issued a Media Release detailing the Federal Government's new policy statement on aviation safety reform which stated:

'The new regulatory framework will make it possible for new operators to provide control tower and rescue and fire fighting services in competition with Airservices Australia. We will phase in competition for these services, to make absolutely certain the new operators carry out their functions to the same high standards. Airservices will continue to provide tower services at Sydney Airport for years to come'.³⁶

33 *Committee Hansard*, 30 January 2007, p. 78.

34 *Committee Hansard*, 30 January 2007, pp 79–80.

35 Senator O'Brien, *Committee Hansard*, 30 January 2007, p. 80.

36 The Hon. John Anderson, MP, Minister for Transport and Regional Services, 'A Measured Approach to Aviation Safety Reform', Media release A164/99, 4 November 1999.

General Issues

3.36 Evidence received continued to highlight conflicts resulting from:

- the lack of coordination and integration between Commonwealth and state and local planning regimes;
- the non-aeronautical commercial use of airport lands; and
- the authority of the Federal Government in non-aviation development.

Lack of coordination and integration between planning regimes

3.37 A number of witnesses and submissions expressed concern about difficulties potentially resulting from developments on airport land not being subject to the same planning and approval regimes as similar developments on non-airport land.³⁷ The Australian Local Government Association (ALGA) noted that:

Generally, as part of a development approval, councils and states take into account the impact of a new development on existing residents and businesses. Our concern is that developments on airports are not subject to such a process.³⁸

3.38 This may be problematic where developments on airport land have a direct impact on infrastructure in the surrounding area, but developers are not required to contribute to the costs of maintaining and renewing that infrastructure. Witnesses from the City of West Torrens in South Australia explained that:

The six million people who go through Adelaide Airport each year travel through the city of West Torrens – they do not have any other choice – and the infrastructure and roads system is grinding to a halt...Access for the building of the airport terminal took place via Richmond Road, a council road. That road was cut to ribbons by the heavy vehicles using that. The council will pick up the tab for that - \$1 to \$2 million.³⁹

3.39 However, in that context, the Department stated that approval of plans for a development on airport land does involve an assessment of consistency between the proposed development and state planning regimes, and that '[a] great deal of effort is being made to connect airport developments with off-airport infrastructure requirements'.⁴⁰

3.40 Evidence provided some examples of situations where airport corporations or developers using airport land make contributions to building and maintaining

37 For example see, Local Government Association of NSW and Shires Association of NSW, *Submission 33*, pp 3–4.

38 *Committee Hansard*, 30 January 2007, p. 3; see also Camden Council, *Submission 11*, pp 1–2; City of Salisbury, *Submission 5*, p. 2.

39 *Committee Hansard*, 30 January 2007, pp 20 and 22.

40 *Committee Hansard*, 30 January 2007, p. 68.

infrastructure impacted by their developments, although these are not mandatory⁴¹ and appeared to be inconsistent between different developments. The Brisbane Airport Corporation (BAC) expressed a position shared by several witnesses in explaining that:

In fact, BAC does make payments to the local authority in lieu of rates. This is a negotiated agreement. BAC has a formal agreement with the Brisbane City Council to limit the delivery of certain commercial facilities at No. 1 Airport Drive, staging them in harmony with regional infrastructure systems.⁴²

Commercial use of airport lands

3.41 The majority of witnesses raised the issue of unfair commercial advantage⁴³ where developments on airport land are not subject to the same financial and regulatory regimes as similar developments not on airport land. Discussion also considered that the commercial use of airport lands may influence the valuation of airport lands overall.

3.42 In particular, the committee heard that some airlines including both Qantas and Virgin Blue are concerned that increases in airport land valuation resulting from commercial activity may lead to higher overall aviation costs:

If we start looking at commercial precincts going in and all of a sudden the price of land generally around that precinct and within the airport itself goes up, or is seen to go up, then that could have an impact on our aviation charges. If aviation charges were to go up, then that could have a direct impact on the aviation market and would be a deadweight loss to society.⁴⁴

3.43 In contrast, however, the AAA noted that fluctuations in aviation-generated revenues, related to, for example, terrorist events or changes in oil prices, may mean financiers will be reluctant to provide funds for investment in aviation infrastructure, so airport operators need other forms of revenue, such as non-aviation investment, to keep the aviation infrastructure growing and maintained.⁴⁵

41 Mr S. Corbell, Minister for Planning, Australian Capital Territory Government, noted, for instance, that the owners of Canberra International Airport are not required to make any contribution to infrastructure costs associated with the airport, and any contributions are purely voluntary. *Committee Hansard* 30 January 2007, p. 59. See also Shopping Centre Council of Australia, answer to question on notice, 7 February 2007 (received 12 February 2007).

42 *Committee Hansard*, 30 January 2007, p. 51.

43 For example see, Shopping Centre Council of Australia, *Committee Hansard*, 30 January 2007, p. 32; see also ACT Government, *Submission 66*, pp 9–10.

44 Mr D. Hanlon, Manager, Commercial and Infrastructure, Virgin Blue, *Committee Hansard*, 30 January 2007, p. 38.

45 *Committee Hansard*, 30 January 2007, p. 48.

3.44 However, it was also noted that there could be a danger in commercial use of airport land constraining future aeronautical development where there is a finite amount of land available.⁴⁶

3.45 The committee noted that the Productivity Commission is currently conducting an inquiry into the basis for valuation of airport land. A draft report has been issued and the committee awaits the finalisation of the report on this matter.

Authority of the Federal Government in non-aviation development

3.46 Some witnesses suggested that there may be legal constraints on the scope of the Federal Government to make determinations relating to non-aviation developments, even where these are on airport land. ALGA stated that:

We accept that the aviation elements of airports are key parts of the nation's infrastructure and that planning is a matter for the Australian Government. The extensive non-aviation commercial developments of recent years, however, do not, in ALGA's view, constitute key national infrastructure.⁴⁷

3.47 The City of Sydney, who had sought the advice of an expert in constitutional law, further commented:

Our legal opinion, I should add, is that this is an unconstitutional process...Does the Constitution allow the Commonwealth government to become involved in developments which are not essentially of an aviation nature? There is no doubt that, if the aviation context is correct, then yes the Commonwealth has a role. But if it is outside that role, then it is our opinion—which we obtained not that long ago, I might add—that this is a questionable constitutional process.⁴⁸

Committee view

3.48 The committee welcomes the evidence and debate, which occurred on airport developments throughout Australia, during the inquiry for this Bill. The committee acknowledges that major issues persist, between airport developers, state and local planning and council organisations and members of the public, which continue to result in much conflict.

3.49 The committee notes that developments on airport land may have significant impacts on surrounding infrastructure, and further noted that while some developers recognise this and make rates-equivalent payments to local authorities in line with Federal Government policy,⁴⁹ this practice appears not to apply consistently. The

46 For example see, Mr D. Hanlon, *Committee Hansard*, 30 January 2007, p. 36.

47 *Committee Hansard*, 30 January 2007, p. 2; See also The Hon Mr J. P. Trainer, Mayor, City of West Torrens, *Committee Hansard*, 30 January 2007, p. 19.

48 *Committee Hansard*, 30 January 2007, p. 14.

49 Rockdale City Council and Marrickville City Council, *Submission 72*, p. 5.

committee also notes that local government authorities may consequently experience financial pressure in some cases as a result of non-aeronautical development on airports land.

3.50 The committee acknowledges concerns that the proposed decrease in the length of time for public consultation may constrain certain stakeholders' ability to contribute to the planning process, and welcomes the amendments circulated which increase these time frames. The committee notes that the proposed time period remains longer than that in many other jurisdictional planning regimes, and considers it to be sufficient. However, the committee agrees that the consultation process will be most effective where stakeholders are properly informed and equipped to contribute their views, and makes specific recommendations to this effect below.

3.51 The committee welcomes the release of the Airport Development Consultation Guidelines and appreciates their intent but remains concerned that these Guidelines are non-binding on airport lessee companies and can not be enforced.

3.52 The committee considers that, in view of the concerns that airport-lessee companies control and communicate the outcomes of public consultation processes to the Minister, airport-lessee companies, in excess of their current reporting requirements, should provide the Minister with full copies of submissions received to provide a transparent account of public comment before the Minister makes the decision.

3.53 In relation to ministerial approval, the committee notes concerns expressed in submissions and during the hearings about the 'deemed approval' provisions of the Act. It is the view of the committee that this practice has been in place for more than a decade and while it is not congruent with typical practice in other planning regimes, it does not appear to constitute a problem. The committee is also satisfied that the proposed stop the clock provisions allow the Minister to request more information if required before making a decision.

Recommendation 1

3.54 The committee recommends that the Bill be amended to add the requirement that airport-lessee companies advise state/territory and local government organisations of the commencement of public consultation processes so that they have full awareness and the opportunity to comment and be engaged early in the process.

Recommendation 2

3.55 The committee also recommends that the Bill be amended to provide for all public consultation submissions received by the airport-lessee company to be forwarded to the Minister as the decision maker, together with the written statement already required.

Recommendation 3

3.56 Subject to the preceding recommendations, the committee recommends that the Senate pass the Bill.

**Senator the Hon. Bill Heffernan
Chair**

Additional Comments from the Australian Labor Party and the Australian Greens

Approval by Minister

We remain concerned that the 'deemed approval' provisions within the Act are potentially open to manipulation. The reason given that in the beginning, airport development companies required surety of their investment is no longer relevant, especially since in the decade since the Act was established, this 'deemed approval' has never been used.

We remain concerned that these provisions may, in the future, have the potential to be manipulated, and are satisfied that in the past decade there has been no use of these provisions, therefore the 'deemed approval' provision is no longer required in the Act.

We recommend that the following be added:

The non-government Senators are not satisfied that the 'deemed approval' provisions provided for under sections 81(5), 94(6) and 126(5) are necessary and recommend that these sections be amended to result in a 'refusal' rather than an 'approval' at the end of the period of days available for consideration.

Consecutive projects

We believe that the amendments outlined in Item 74, to aggregate developments, are a positive step in improving airport development planning processes. However we would rather the provision *require* that the Minister determine that specified developments constitute a major airport development, rather than indicating that the Minister *may* determine.

The non-government Senators believe that the extension of the Minister's power to aggregate developments under section 89 should be set out as a requirement in the Act rather than allow the Minister the discretion to aggregate developments.

Committee view

The non-government Senators consider that the public consultation process will be much improved if airport-lessee companies, as part of the public comment process, make available to the general public copies of assessments undertaken to assess the social, environment and economic impacts of the development.

We recommend that the following be added:

Environmental, social and economic impact assessment should be conducted and should be made available to stakeholders and the public before conclusion of public consultation.

Senator Kerry O'Brien
Senator for Tasmania

Senator Glenn Sterle
Senator for Western Australia

Senator Anne McEwen
Senator for South Australia

Senator Christine Milne
Senator for Tasmania

Senator Rachel Siewert
Senator for Western Australia

APPENDIX 1

List of Submissions

1. Hobart City Council (TAS)
- 1A Hobart City Council (TAS)
2. Planning Institute of Australia (ACT)
3. Drake Foodmarkets (SA)
4. Dr Michael Mathew (SA)
5. City of Salisbury (SA)
6. Local Government Association of the Northern Territory (NT)
7. Launceston City Council (TAS)
8. Alice Springs Town Council (NT)
9. Mr Ian Bannon (SA)
10. Mr Frederick Craven (SA)
11. Camden Council (NSW)
12. Australian Retailers Association (NSW)
13. Moorabbin Airport Corporation Pty Ltd (VIC)
14. City of Holdfast Bay (SA)
15. Mr Rob Greenwood (WA)
16. Australian Mayoral Aviation Council (NSW)
17. Adelaide Airport Ltd (SA)
18. Marrickville Council (NSW)
19. Mr Gianni Daniel (SA)
20. Mrs Amy McDowall (SA)
21. Mr Sidney Yates (SA)
22. Randwick City Council (NSW)
23. Cr Jim Fitzpatrick, Henley Ward, (SA)

24. Queanbeyan City Council (NSW)
- 24A. Queanbeyan City Council (NSW)
25. National Retail Association (QLD)
26. City of Kingston (VIC)
27. Mrs Antolella Salapatas (SA)
28. Ashfield Municipal Council (NSW)
29. Mr Arthur Tsakonas (SA)
30. Darling Range
Local Branch of the Australian Labor Party (WA)
31. Office for State/Local Government Relations (SA)
32. Aircraft Owners & Pilots Association of Australia (NSW)
33. Local Government Association of NSW and Shires Association of NSW (NSW)
34. The Local Government Association of South Australia (SA)
35. City of West Torrens (SA)
36. Mr Steve Georganas MP Federal Member for Hindmarsh (SA)
37. North Canberra Community Council (ACT)
38. Western Sydney Alliance (NSW)
39. Brisbane City Council (QLD)
40. Shopping Centre Council of Australia (NSW)
41. Launceston Chamber of Commerce (TAS)
42. Perth Airport (WA)
43. Mr Philip Lingard (NSW)
44. Alliance for a Clean Environment Inc.(WA)
45. Australian Local Government Association (ACT)
46. Mrs Heidi Palmer (SA)
47. Bankstown Airport Limited (NSW)
48. Brisbane Airport Corporation Pty Ltd (QLD)
49. Canberra International Airport (ACT)

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50. Southern Sydney Regional Organisation of Councils (NSW)
 51. Queensland Department of Local Government, Planning, Sport and Recreation (QLD)
 52. City of Townsville
Planning and Development Services (QLD)
 53. Barry & Christine Lockett (SA)
 54. Virgin Blue Airlines (QLD)
 55. Adelaide City Council (SA)
 56. Qantas Airways Limited (NSW)
 57. Australian Airports Association (VIC)
 58. New South Wales Government (NSW)
 59. City of Charles Sturt (SA)
 60. Department of Local Government and Regional Development
Government of Western Australia (WA)
 61. Government of South Australia (SA)
Office of Major Projects and Infrastructure
 62. City of Belmont (SA)
 63. Council of Capital City Lord Mayors (ACT)
 64. Sydney Airport Corporation Limited (NSW)
 65. Ms Jean Duruz (SA)
 66. ACT Government (ACT)
 67. City of Sydney (NSW)
 68. The Village Building Co. Limited (ACT)
 - 68A The Village Building Co. Limited (ACT)
 69. Gold Coast City Council (QLD)
 70. Mr Arthur Mangos (SA)
 71. Amber Chapman & Michael Nelson (SA)
 72. Rockdale City Council and Marrickville Council (NSW)
 73. TTF Australia Ltd (NSW)

APPENDIX 2

Witnesses who appeared before the Committee at Public Hearing

Tuesday, 30 January 2007

Parliament House

CANBERRA

Australian Local Government Association

Mr Adrian Beresford-Wylie, Chief Executive

Mr Andrew Hrast, Director, Transport Policy

Australian Mayoral Aviation Council

Mr Greg Harragon, Project Manager

Mr Peter Fitzgerald, Executive Director

Queanbeyan City Council

Councillor Thomas Mavec, Deputy Mayor

Mr David Carswell, Manager, Strategic Planning

City of Sydney

Councillor John McInerney

City of West Torrens

The Hon. John Trainer, Mayor

Mr Trevor Starr, Chief Executive Officer

City of Hobart

Mr Gary Randall, Acting Director, Executive Management

Mr Tim Short, Economic Development Officer

Shopping Centre Council of Australia

Mr Milton Cockburn, Executive Director

Virgin Blue Airlines Pty Ltd

Mr David Hanlon, Manager, Commercial and Infrastructure

Mr Michael Thomas, Government Relations Adviser

Airports Association of Australia

Mr Kenneth Keech, Chief Executive Officer

Mr John McArdle, National Chairman

Mr Stephen Skehill, External Legal Adviser

Dr Russell Synnot, Adviser

Brisbane Airport Corporation

Mr Mark Willey, Executive Manager Airport Planning

Canberra International Airport

Mr Stephen Byron, Managing Director

Mr Noel McCann, Director Planning

Mr Alexander Ananian-Cooper, Manager Aviation Planning and Operations

Australian Capital Territory Government

Mr Simon Corbell, Minister for Planning

Mr Neil Savery, Chief Planning Executive, ACT Planning and Land Authority

Planning Institute of Australia

Ms Dianne Jay, Chief Executive Officer

Ms Liz de Chastel, National Policy Coordinator

Department of Transport and Regional Services

Mr Michael Mrdak, Deputy Secretary

Mr Neil Williams, General Manager, Airports Branch

Mr David Southgate, Acting General Manager, Aviation Services

Mr Terry Conway, Director, Policy and Coordination, Airports