Brisbane Airport
Corporation Pty Ltd

Make the most of life.

19 January 2007

Ms Jeanette Radcliffe
Committee Secretary
Senate Rural and Regional Affairs and Transport Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms Radcliffe

Following the invitation by the Senate Rural & Regional Affairs and Transport Committee for submissions on the proposed Airports Amendment Bill ("Bill"), Brisbane Airport Corporation (BAC) is pleased to provide the attached submission for the Committee's consideration.

BAC thanks the committee for the opportunity to comment on the Bill, and would be pleased to have the further opportunity to speak more fully to this submission in the Committee's scheduled hearings.

Brisbane Airport and BAC are in many respects uniquely positioned to provide constructive input to the Committee's deliberations and BAC looks forward to sharing our experience and observations with the committee and to working with a wide range of stakeholders to ensure sustainable, practical and fair outcomes are achieved for airport operators, the community and the government.

BAC suggests that many aspects of the Act and Regulations have been tested at Brisbane Airport, and it is fact this "testing" that has largely driven the proposed amendments. BAC also reiterates that it is essential that there is no erosion of the resolve to retain Federal planning and development control over the privatised Airports in keeping with their "National significance" status.

As the submission indicates, BAC is generally supportive of the Bill in the interests of providing clarity to all stakeholders and agencies on Airport planning and development issues, and in the reductions in timelines for approval processes.

11 The Circuit, Brisbane Airport, Qld 4007 | PO Box 61, Hamilton Central, Queensland 4007 Australia | Telephone: +61 7 3406 3000 | Fax: +61 7 3406 3111
email: info@bne.com.au | www.brisbaneairport.com.au

ACN: 076 870 630 | ABN: 54 076 870 630

Brisbane Airport
Corporation Pty Ltd

Make the most of life.

BAC SUBMISSION TO SENATE COMMITTEE ON RURAL & REGIONAL AFFAIRS AND TRANSPORT – *AIRPORTS AMENDMENT BILL 2006*

INTRODUCTION

- This document is provided in response to the invitation by the Senate Rural & Regional Affairs and Transport Committee to make submissions on the proposed Airports Amendment Bill ("Bill").

- BAC is generally supportive of the Bill in the interests of providing clarity to all stakeholders and agencies on Airport planning and development issues, and in the reductions in timelines for approval processes.

- Since privatisation, Brisbane Airport and BAC has had a leading role in testing the Act and Regulations and is somewhat uniquely positioned to provide constructive input to the Committee. BAC has engaged the Department with on the amendment proposals and will continue to do so, seeking to actively participate in the development of any associated Regulations.

- This response is in 2 parts – Part 1 contains the more significant issues that BAC considers should be addressed in reviewing the Bill; Part 2 contains less significant matters, such as typographical, grammatical or interpretation issues that warrant consideration.

- In the interests of making this submission as concise as possible, BAC has not commented on all items in the Bill. Rather, the approach has been – with a few exceptions – to only highlight those issues which are of concern to BAC. Accordingly, if no comment is made on a particular item, BAC is supportive of the amendment proposed.

- BAC thanks the Committee for the opportunity to comment on the Bill, and seeks the opportunity to present in person. Any queries about this response can be directed to:

Mr Mark Willey
Executive Manager, Airport Planning
Brisbane Airport Corporation Pty Ltd
PO Box 61
HAMILTON CENTRAL QLD 4007
Ph: 07 3406 3000
Email: mark.willey@bne.com.au

DETAILED RESPONSE

Part 1 – more significant issues

Item No.	Section amended	BAC comment
7	5 (new definition of ANEF)	BAC seeks clarity on the intent of this ANEF definition – the endorsement of ANEFs has in the past been problematic with Airservices Australia undertaking that function. Problems have arisen from a timely response perspective and from a suggested "conflict of interest". BAC would seek to be actively involved in development of any Regulations associated with ANEFs and aircraft noise metrics.
16	32(1) and (2)	Generally BAC supports the proposed amendments, which are entirely consistent with the decision in *Westfield*

		Management Ltd v Brisbane Airport Corporation Ltd [2005] FCA 32. To some extent, the proposed amendment overcomes the uncertainty about whether developments such as the DFO relate to the *operation and/or development of the airport* within section 32(1) and (2). There has been uncertainty about the meaning of the terms *"operation of the airport" and "development of the airport"* and whether these terms are limited to the operation or development of the airport for use as an aviation facility, in part as a result of the different definitions of *"Airport Site"* and *"Airport" in the Act.* This uncertainty and the interpretation of the terms *"operation of the airport"* and *"development of the airport"* was an issue in the Federal Court case of *Westfield Management Limited v Brisbane Airport Corporation Ltd*[1]. BAC acknowledges that the uncertainty is overcome by the addition of the new sub-section (d) and supports the addition of this proposed subsection. BAC accepts that the uncertainty is overcome because the proposed subsection refers to activities consistent with the airport lease and the final Master Plan as a distinct head of activity not excluded by section 32. This clarifies that the substantial trading and financial activities not prohibited by section 32 extends to non aviation activities. BAC considers that the effect of the amendment is reinforced by the proposed subsection 70(2) which refers to economic development of the airport and which provides for the development of additional uses of the airport site. It refers both to airport and airport site. This distinction should be reflected in section 32. In paragraphs 54-55 of the judgment of Cooper J in *Westfield* case, His Honour found that nothing in section 32(1) denies to an airport lessee company the right to exercise its rights to use the airport site for purposes other than as an airport if this other use is permitted by the lease. However, further minor changes to the proposed amendments are recommended to ensure subsection 31(1)(a) to (c) and 32(2) (a) to (c) are not construed narrowly to extend only to aviation activities. This is achieved by adding the words *"and airport site"* after the word *"airport"* at the end of each subsection. BAC notes that the proposed subsections 32(1)(d) and 32(2)(d) refer to the *"lease of the airport"* whereas the definition of airport lease refers to the airport site. BAC recommends that in the proposed subsections 32(1)(d) and 32(2)(d) lease should refer to airport site and read

[1] [2005] FCA 32. See in particular the manner in which Cooper J stated the issue in paragraph 13 of the judgment

		*"lease of the airport **site**"* consistent with the definition of *'airport lease'* and should further read *Master Plan for the airport **and airport site**"* consistent with the proposed subsection 70(2). The changes to section 32(1) and (2) outlined above would also be consistent with the views of Cooper J at paragraphs 44, 51, 52, 58, 63 and 93 of the judgment in *BAC v Westfield*.
23	70(2)(d)	The new paragraph (2)(d) is of concern. While BAC accepts the first part of the paragraph (in terms of conflicts between uses on the airport site), BAC is concerned about one of the purposes of a master plan being "to ensure that uses of the airport site are compatible with the areas surrounding the airport." The possible breadth of interpretation of the terms "ensure" and "compatible" could be taken to mean that airport-lessees must only allow developments on the airport which a local authority would allow if it had jurisdiction over an airport site. This would be inconsistent with the current statutory scheme which recognises the *Airports Act* as the paramount planning scheme for leased Federal airports. The proposed wording may also result in misinterpretation by other planning agencies and subsequent dispute. Accordingly, the following alternative wording is suggested, which still recognises the need to take account of the uses of areas surrounding an airport site: *"(d) to reduce potential conflicts:* *(i) between uses within the airport site; and* (ii) *between uses of the airport site and uses of areas surrounding the airport."*
25	71(2)(c)	The intention of the replacement of "proposals" with "intentions" and "proposals" with "uses and developments" requires clarification. In its Master Plans, BAC proposes to develop Brisbane Airport around 7 precincts – the Master Plan identifies a land use or zoning criteria for each of those precincts and lists the type of developments within that criteria that are envisaged. Land-use can clearly be an "intention" but actual developments would be subject to industry trends, market demands and opportunities as they arise, and should therefore be categorised as "proposals" to provide an appropriate flexibility. Therefore BAC suggests the following wording: *"(c) the airport-lessee company's intentions for land use and proposals for related development of the airport site where*

		that land use and proposed developments embrace airside, landside, surface access and land planning/zoning aspects; and"
26	71(2)(d)	BAC in its Master Planning has had an "ultimate capacity" ANEF endorsed with the concurrence of the Department and acceptance by State agencies and Brisbane City Council – the off-airport planning authorities. BAC considers that this (ultimate capacity) criteria is the only appropriate horizon to ensure the future sustainability of the Airport and to ensure appropriate land-use planning allocations in the surrounding off-airport areas. The *Regulations* should provide the flexibility to present, or in fact, even specify an ultimate capacity ANEF.
26	71(2)(da)	BAC has made direct representation to the Department on this issue. From experiences gained through 2 Master Plan processes, the subsequent Senate enquiry (to the 1998 Master Plan) and the EIS/MDP for the proposed parallel runway at Brisbane Airport, BAC is somewhat uniquely positioned to provide constructive input into this amendment proposal. The development of "Flight Paths" for the EIS/MDP involved: - detailed forecasts; - fleet mix and future aircraft type analysis and forecast; - market analysis – origin/destination allocations; - forecast schedule development; - airfield modelling; - airspace architecture including SIDs, Stars, track allocation rules and their application; - meteorological analysis; and - option evaluation. The above processes involved in excess of 12 months development for the parallel runway EIS/MDP and in presenting that data, despite the depth of analysis undertaken, BAC ensure an awareness of potential for future change. These processes (Refer Attachment 1) were required as a pre-requisite to the application of the TNIP programs to generate event contour metrics for stakeholder consultation.

		BAC notes that the proposed amendment states that this requirement could be clarified via a Regulation. BAC is unsure what the amendment is trying to achieve. Presumably, the need to show flight paths is linked to an intention to show the community where aircraft noise may occur. One of the roles of a Master Plan is to demonstrate future land uses on-airport. The Australian Noise Exposure Forecasts (ANEF) was developed to specifically identify those areas where aircraft noise could cause social nuisance for land uses such as residential, aged care or child care centres. ANEF contours are required to be shown in an Airport Master Plan. The term "flight paths" is not defined and BAC seeks clarification if it refers to: (i) Standard Instrument Departures (SIDs) and Standard Terminal Arrival Routes (STARs); (ii) the corridors that aircraft actually fly when using a SID or STAR; or (iii) all flight paths that aircraft currently use when Air Traffic Control permits a pilot not to follow a SID or STAR. In the former, this could be misleading as the community may assume that if they do not live under a SID or STAR, they will not be subjected to aircraft noise. In the later, this would show potentially hundreds of flight tracks (Refer Attachment 2 as an example of existing flight paths around the approved STAR for arrivals over Brisbane City) that would unnecessarily cause alarm in the community. Also, in the case of the new runway proposal at Brisbane Airport, is BAC required to show all intended flight paths for the new runway? Until the proposed flight paths are approved (this would occur just before the runway's opening scheduled for 2015) these could change as a result of the Government's regulatory assessment process. In this case, BAC could be unfairly accused of misleading the community. BAC strongly believes this amendment will raise an expectation in the community that flight paths could be up open to debate as part of the public comment period for the Master Plan. This will only lead to more unnecessary disputes and possible litigation. If it is believed that the current ANEF system is not adequate to demonstrate to the community those areas where aircraft noise could cause nuisance, then the Department should consult with airport operators, airlines and other relevant groups to determine if the current approach could be improved and new standards promulgated. BAC recognises that the ANEF system falls short in presenting meaningful aircraft noise impact data, however as a land-use planning metric, it is the standard adopted in Australia and referenced in Queensland State Planning Policy. It is the appropriate metric to present in a strategic document such as the Master Plan, with the more comprehensive aircraft noise and flight path evaluation appropriate at the MDP, or "approval" phase of runway development.

39	78(2)	The proposed amendment requires an airport lessee company to develop a new Master Plan if the endorsed ANEF for the Airport is amended. Short-term influences and industry trends are unlikely to impact an ultimate capacity or 20 year horizon ANEF. Considering the costs and process required to present a revised Master Plan, an airport lessee company would be actively discouraged to announce a change to the ANEF outside of the 5 yearly Master Plan review cycle. In the unlikely event that such a change to an ANEF was to present, then an airport lessee company should not be forced to present a new Master Plan but should be required to undertake an appropriately structured ANEF consultation and endorsement process.
47	79(2)(c)	BAC is concerned about the way the Minister would require an airport lessee company to "demonstrate" that it has had due regard to public comments. BAC's practice with master plans, airport environment strategies and MDPs has been to set out in its supplementary report BAC's response to the issues raised (if any) during public comment periods. In some cases, the public comments are not considered to warrant any change to the plan/strategy itself. If this is the intent, then BAC suggests the following alternative words for paragraph 79(2)(c): *"explaining the way in which the company has had due regard to those comments in preparing the draft plan; and"*
48	80A	BAC raises the following concerns with this proposed new section: (a) the 'stop clock' provision applies to the master plan decision period where further information is requested. In other words, the days up to and including the day on which the Minster receives the requested information are not counted. However, it would be preferable to require that the Minister notify the airport-lessee company once that information has been received. This will assist in determining – as a matter of fact – when the time period for approval of the master plan will expire. The following is suggested: *"(3) The Minister must notify the airport-lessee company of the day on which the Minister has received the last of the information requested under subsection 80A(2)."* (b) the proposed amendment does not specify the number of requests that the Minister may make for information – presumably numerous requests would be permitted. If that is the case, we acknowledge that it would not be desirable to restrict the Minister's ability to make such requests. However, by the same token it is also not appropriate that the Minister issue a series of requests in an un-coordinated manner which

		unnecessarily prolongs the decision period (because of the operation of the 'stop clock' mechanism for each request). In other words, requests should be made in the most efficient and time-effective manner. BAC notes that the 'stop clock' provision applies to the master plan decision period where further information is requested. In other words, the days up to and including the day on which the Minster receives the requested information are not counted. *"(3) The Minister must notify the airport-lessee company of the day on which the Minister has received the last of the information requested under subsection 80A(2)."*
50	81(3)(aa)	Refer to comments above about new paragraph 70(2)(d).
63	84A(2)(c)	Refer to comments above about amended paragraph 79(2)(c).
73	89(2A)	BAC is concerned at the breadth of the words "carrying out <u>all associated</u> building activities". To take an example, if a building was to be constructed, and before that building could be occupied a new access road had to be constructed (which road did not of itself trigger a requirement for an MDP), that access road should not automatically be included in the scope of the activities the subject of the MDP. This is particularly the case where that road was intended to ultimately service a number of buildings to be built along that road in the future. If the road was to be included as part of the "major airport development", then airport lessee companies would need to: (a) include the cost of construction of the road in the project value to decide whether an MDP is actually required (e.g. there may be an $18 million building with a $3 million road); and (b) increase the scope of a major development plan for a building to include all of the issues associated with the construction of something which – if it was, say, built *before* the building – would not require an MDP. The road should not be taken to be an "associated building activity" as this is an unreasonable outcome in the context of the intention of Part 5 Division 4 of the *Airports Act*. In paragraph 117 of the Westfield Trial Judgment, Cooper J found that constructing a new building does not include site works unless there is a necessary association of immediacy between the site works and the subsequent construction of the new building for the site works. This finding is negated by the proposed definition of *"constructing"* in proposed subsection 892A. BAC considers that the amendments should have the effect that the cost of earthworks, provision of roadworks, services or other building activities be excluded from the costs of construction of a building if there is no immediate relationship between such works and the commencement of the erection of a specific new building, or unless the building activities are specifically connected to and directly for the purpose of its erection.

		Without an amendment that achieves a similar purpose it will remain very difficult for the airport lessee company to make an assessment about whether a development will exceed the $20 million threshold because of the uncertainty as to what to take into account as a costs of constructing the building. This is because what falls within *"cost of construction"* in sub-section 89(e)(ii) depends on the meaning of *"constructing a new building"*. For example, if there is uncertainty about whether bulk earthworks falls within the meaning of *"constructing a new building"* there will be uncertainty as to whether it is a cost of construction for the purpose of section 89(e)(ii). BAC understands that the purpose of proposed subsections 89(2) and (4) are to prevent what has been described as the "piecemeal approach" to development in order to avoid exceeding the $10,000,000 (proposed $20,000,000) threshold. While BAC accepts the need to prevent developments being cynically staged only to avoid exceeding the threshold, it requests that the Minister give consideration to the fact that often developments need to be staged as a function of efficient master planning and commercial reality. On one view the proposed definition of *"constructing"* resolves the uncertainty about costs of construction for the purpose of subsection 89(1)(e)(ii) by including *"all associated building activities"* in the definition of *"constructing"*. *"Building Activities"* is defined in section 98 and includes earthworks, electrical works, hydraulic works and (due to a proposed amendment to section 98(1)) undertaking land clearing. The costs of these activities will therefore become part of the costs of constructing a new building under subsection 89(1)(e) which negates the utility of increasing the threshold from $10,000,000 to $20,000,000. The definition of "Building Activities" is further expanded by subsections 98(2) and 98(3). Earthworks and engineering works are taken to include carparks, retaining walls, roads, pipelines. By extension "costs of construction" of a new building would include the costs of these activities. The definition of constructing a thing is also unsatisfactory because *"thing"* is not specified. By implication it would seem to extend to all types of developments specified in subsection 89(1). BAC recommends a revision of the proposed section 89(2A) as follows: ***"For the purposes of this Act, constructing a thing referred to in subsection (1) means carrying out building activities directly for the purpose of constructing the thing."***

74	89(4)	While BAC notes the comments in the Explanatory Memorandum, BAC has a number of reservations with this proposed amendment: (a) this subsection gives the Minister a discretion to make a determination in relation to a series of developments. By what criteria will the Minister make such a determination? (b) currently, if, for example, an existing building is to be extended, BAC will proceed with the design/engineering of the extension, and then submit an application to the airport building controller (ABC) for a building approval to be able to proceed with the extension. This generally happens without any reference to the Minister (or his Department), as there is no requirement (or need) for that to happen. The same applies to new developments which may well be happening at the same time in the same part of the airport ie. no engagement with the Department is required (or considered necessary). How is it expected that the Minister will become aware of the existence of "consecutive or concurrent projects" or "extensions to existing buildings" in order for the Minister to decide whether to make a determination? (c) further, from a commercial perspective, before extending a building or undertaking projects (which may well be "consecutive or concurrent"), BAC would generally first have undertaken a negotiation with the tenant/prospective tenant of that building about such things as the extent of the works, the mechanism for recovery of costs, and the time by which the works will be delivered. These are fundamental commercial terms. It would not be acceptable for BAC to be placed in a position where a commercial deal is struck, and at some point between the time the negotiation is concluded and the time a building approval is issued, the Minister determines that an MDP is required (approval of which could take more than 6 months). This could cause BAC to be in breach of its commercial agreement with a tenant/prospective tenant, and could also jeopardise the procurement of contractors to undertake the construction. (d) In any event, it seems incongruous that the ability to require an MDP for a building extension could apply to a $5 million extension to a building, and yet the *Airports Act* would not, for example, prevent an airport lessee proceeding with a 9% extension to the gross floor area of a terminal building without needing to have an approved MDP in place first. (e) The effect of: – the aggregation of individual building projects including extensions under proposed subsection 89(4);

		– the inclusion in the new definition of "constructing a thing" the element of "all associated business activities" in proposed subsection 89(2); – the broad definition of building activities in section 98; may make it very difficult to ever remain below the $20 million threshold and cause the MDPs to be continually varied in the course of commercial negotiations. (f) Although the purpose of proposed subsection 89(4) may achieve the desired outcome of preventing piecemeal development it is likely to be at the expense of efficient, costs effective and economical staged developments of commercial precincts identified in BAC's Master Plan. Therefore, because it is so broad, proposed section 89(4) may make it difficult for the airport to achieve the purpose of the master plan outline in the proposed subsection 70(2)(b) of the Act. The significance of these issues requires a re-consideration of this proposed amendment.
77	91(1)(ea)	Refer to comments above about the inclusion of flight paths in master plans under paragraph 71(2)(da).
85	92(2)(c)	Refer to comments above about amended paragraph 79(2)(c).
86	93A	Refer to comment above about new section 80A.
90	94(7A) & (7B)	BAC is currently undertaking the public comment phase of the EIS/MDP for the proposed parallel runway system at Brisbane Airport. The EIS/MDP has involved very significant investment and resourcing commitment. Following an approval of the EIS/MDP, BAC will initiate the implementation phase for the new runway system in consultation with the industry. The earliest achievable delivery of the runway system is 2015 – 8 years subsequent to expected approval. BAC suggests that major aviation facilities such as runways, terminals and major surface transport systems be excluded from this proposed amendment.
106	95A(2)(c)	Refer to comments above about amended paragraph 79(2)(c).
115	98(1)	This new definition of "building activities" is open to possible misinterpretation. The inclusion of "land clearing" as a building activity, and therefore requiring an application to the Airport Building Controller for an approval, would have unreasonable consequences for an airport lessee. The term has not been defined and could therefore be interpreted to include normal airport maintenance activities. Normal Brisbane Airport maintenance activities that could be affected by this proposed amendment include: • Clearing of undergrowth in Casuarina areas either to control weeds, feral animals or as a fire prevention caution;

		• Clearing of fire ant trails which have been required by the Queensland Department of Primary Industries to assess the efficacy of the State Government's fire ant management strategy; • Undertaking maintenance to the many kilometres of on-airport drains. The Amendment Bill and its accompanying explanatory material has not outlined why this amendment has been included. BAC considers that it merely introduces another regulatory layer to normal airport operational activities. Where the intention of the amendment is to protect areas on airport that have a high biodiversity value, then the existing Master Plan and Airport Environment Strategy processes enable the Department to exclude those areas from development by reserving them as "Environmentally Sensitive Areas". This is the approach that BAC has undertaken in its two previous Master Plans (2003 & 1998) and its associated Airport Environment Strategies (2004 & 1999). BAC considers the amendment unreasonable, too vague and adds another regulatory layer to what is already a highly regulated regime. There is no context or materiality in the proposed words. Apart from defining "land clearing", there should be some exclusion for "insignificant" land clearing in addition to activities such as maintenance.
122	115(2)	BAC is concerned with paragraph (a) of the proposed new subsection 115(2). The use of the word "ensure" is inappropriate as it conveys a sense of certainty that the airport environment strategy is a document that will make sure environmental legislation and standards are met. This is inconsistent with s130 of the *Airports Act*, as that section: • only obliges airport lessee companies and others who carry out activities at an airport to take "all reasonable steps" to comply with the AES; and • expressly provides (in s130(2)) that it is not an offence to contravene this requirement. In addition, BAC notes the wording of proposed new paragraph 126(3)(aa) (as set out in item 135 of the Bill). This requires the Minister to decide whether to approve an AES having regard to the extent to which the strategy "achieves the purposes" set out in s115(2). BAC queries the utility of the Minister having to consider the extent to which the strategy ensures regulatory compliance where s130 only requires airport lessee companies and other users of an airport to take "all reasonable steps" to comply with that strategy. Accordingly, BAC suggests that paragraph (a) be reworded as follows: *"(a) to establish a framework to assist:* *(i) an airport lessee company; and* *(ii) persons other an airport lessee company who carry on activities at the airport,* *to carry out activities in accordance with relevant environmental legislation and standards;"*

132	124(2)(c)	Refer to comments above about amended paragraph 79(2)(c).
135	126(3)(aa)	Refer to comments above about new subsection 115(2).
150-154	155(1) to 155(3) in particular	***Quality of Service Monitoring*** BAC has in the past, and will continue to support into the future, the maintenance of appropriate service quality standards to its direct and indirect customers and other relevant airport users. This is the case irrespective of any legislative or regulatory obligation and is consistent with BAC's vision for the airport and the Company's values. Testimony to this is that BAC has consistently maintained high standards of quality of service since privatisation, generally in excess of all the other quality monitored airports on each quality criterion. The majority of Quality of Service Monitoring (QSM) areas with which BAC has had issue and concern in the past have related to those where BAC has no or little control or influence over the service delivery, for example waiting times at check-in or the immigration inwards/outwards control points. BAC may provide the physical facilities, but the service quality is largely a factor of issues such as security requirements, manning levels, and processing procedures – none of which are under the control of (or even particularly under any influence of) BAC. Whilst BAC is encouraged by, and supports, more flexibility rather than prescription in the Airports Act (the 'Act') QSM regime as it seems is intended by the Bill, we offer the following comments and suggestions –
	155(1)	We suggest that the Department would be well served by not restricting itself to only the ACCC for the monitoring and evaluation of the quality of services and facilities in the Act. Rather, even if it is the Department's desire that the prime choice be ACCC, the Act should stipulate that it may be the ACCC or some other organisation as determined by the department after consultation with relevant stakeholders such as the airports.
	155(2)	It is BAC's belief that the Department should determine the criteria for the monitoring and evaluation of service quality and not ACCC. This provides the Department with flexibility to seek a range of inputs and to draw upon its own aviation and airport management expertise beyond just the ability garnered through the ACCC's obligation to consult with the department.
	155(3)	Section 155 (3) – Whatever entity determines the criteria (be it the ACCC or the Department) consultation should be broader than just with the Department and the department administered by the Treasurer. Consultation should also include those parties affected such as the airport lessee companies and airport management companies. In addition, similar to the obligations imposed on airport lessee companies in relation to demonstrating consultation under master plans and major development plans, the ACCC should demonstrate that it has taken into account the comments from the relevant stakeholders in addition to just reporting upon them.

		Whilst the flexibility with the new QSM regime is supported, this needs to be balanced with some protection for uncertainty. For example, it would be counter productive for changes to be made to quality indicators too frequently and therefore not allow valid comparison across periods, between airports, or sufficient time to build up some history of a service trend where a single year or combination of years may be misleading due to construction activity, nearing the capacity of the facility before an expansion is undertaken, and the like. In each QSM report delivered to ACCC from BAC, we have mentioned that the domestic airlines at the Brisbane Airport Domestic Terminal Building under the long-term lease arrangements (that is Qantas and Virgin) should also be subject to the QSM regime under the Act. Combined, these airlines represent over seventy percent of the total passengers through Brisbane Airport and consequently contribute in large measure to quality of service delivery and passenger/user perceptions.
159	173(2)	***Gambling and Gaming Activities*** BAC is a socially responsible corporate citizen and endorses the socially responsible undertaking of activities such as gambling and the consumption of liquor. Both of the aforementioned activities, in various forms, are however elements of modern society, albeit highly regulated. We note that Section 173(1) remains unchanged in that the regulations may make provision for and in relation to prohibiting gambling activities at a specified airport. Part 5 of the *Airports (control of on-airport activities) Regulations 1997* regulates gambling at airports. Currently, Regulation 137 under Division 2 states that a person must not engage in a gambling activity on a regulated airport. This prohibition is an artefact of extreme conservatism at the time of privatisation that loosely coincided with a major government review of the social impacts of gaming and gambling in Australia. Airports and their tenants are at a significant commercial and customer service disadvantage to off airport businesses where this prohibition does not exist. For example, the airport newsagent cannot sell any lottery products, casket, scratch-it tickets or the like. This is a product and a service expected of a newsagent in any location and part of a complete product mix that should be available to airport users, visitors and staff. Therefore, BAC recommends that as soon as practicable the Department repeal the prohibition and replace it with the ability for airports to undertake what the Department has often characterised as 'soft' gambling, that is the lottery and casket type activities typical of a newsagency or casket agency. We also suggest that the Department consider allowing gambling that might not necessarily be classified as 'soft' but also is not of the 'harder' variety such as casinos. In Queensland, the types of gambling that fall within this category are on-line keno and pub-tab and perhaps poker/slot machines. These activities are common in bars and clubs which form a feature of the airport terminals and some non-terminal property development activities on Brisbane airport and no doubt other major airports. They represent part of a complete product range and service delivery that is expected by users, customers

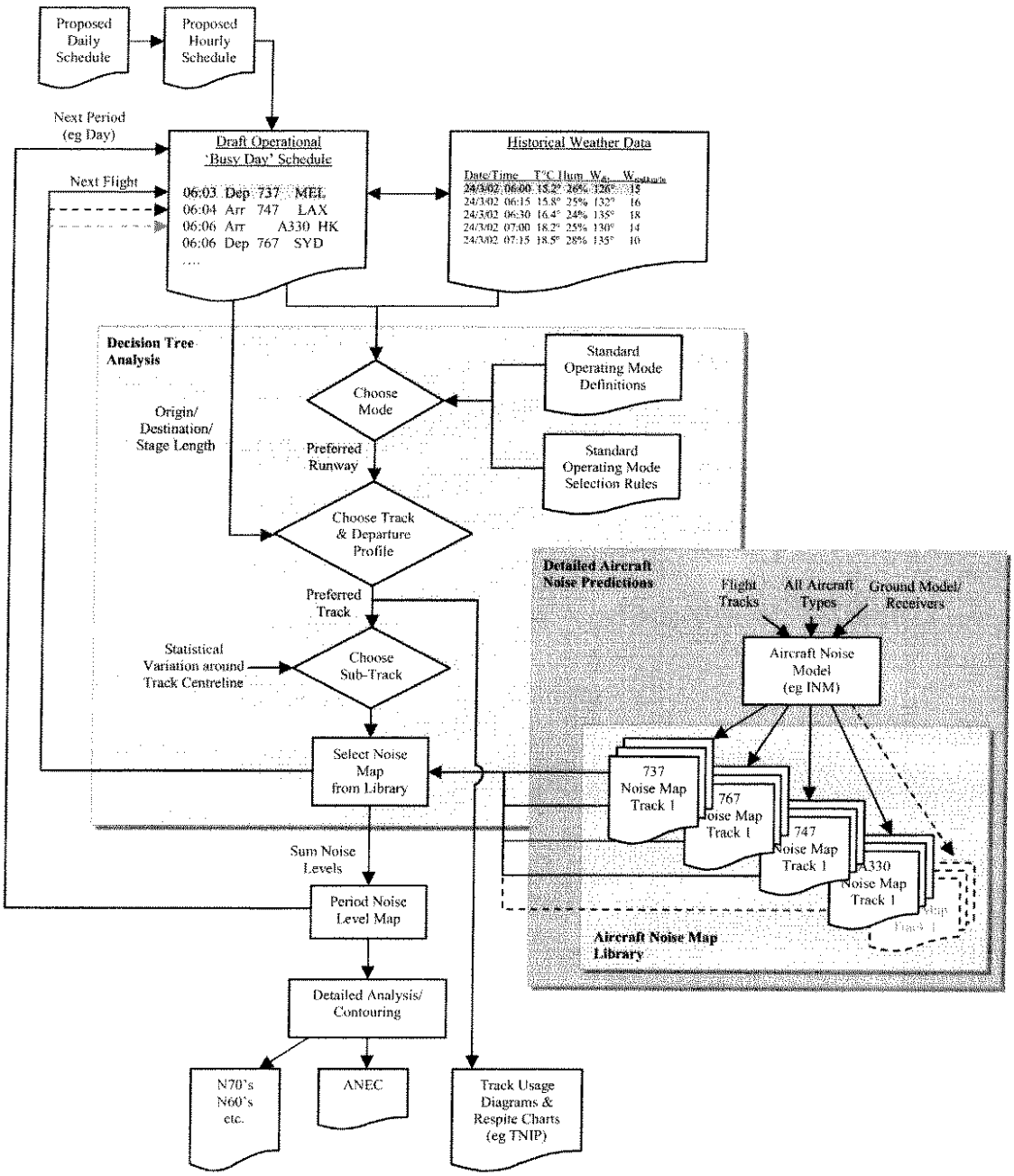
		and staff. We further suggest that the control of gambling activities at Brisbane Airport be governed by the Queensland State jurisdiction for such matters. Finally, although BAC has no current plans for the introduction of casino activities, world best airport practice (Schiphol Airport in Amsterdam) suggests that this usage is not necessarily incompatible with an airport and indeed can add value and enhance the customer/passenger experience. This may also be applicable to other major international and domestic airport gateways. Therefore, the department may wish to give serious consideration as to how this usage may be allowed and regulated at airports so as to enable an efficient introduction with the legislative framework in place well beforehand.

Part 2 – less significant issues

Item No.	Section amended	BAC comment
9	5	Paragraph (c) of the new definition of "business day" makes reference to "the place concerned". In terms of, say, a public comment period for a master plan, we assume the "place concerned" would be the location of the airport. However, where, for example, the Minister has a period of time to make a decision, is the "place concerned" intended to be Canberra?
33	71(4)	BAC notes the possibility of regulations requiring matters dealt with in a master plan to take account of a longer period that 20 years. The Explanatory Memorandum makes reference to the need for ANEFs for a period beyond 20 years. BAC supports the criteria of an ultimate capacity ANEF (refer comments on Section 71 (2)(d) in Part 1 above) and would expect to be consulted at the time of the making of any such regulations, because the veracity of such information (and possibly its usefulness in a public document such as a master plan) diminishes the longer the forecast period.
34	71(8)	The relevant standard should be the standard that applies at the time the plans are developed, as the standards may have changed by the time the Minister is considering whether to approve a master plan. For clarity, BAC suggests that the additional words be: *"as in force or existing at the time the plans are developed by the airport-lessee company".*
75	91(1A)	Paragraphs (a) and (b) should be expressed in the singular form rather than the plural form.
78	91(6)	Refer to comments above about amended paragraph 71(8).
133	125A	Refer to comments above about new section 80A.

Attachment 1

Figure 2: Detailed Noise Prediction Methodology.



Process for developing ANECs, N70s etc for NPR Noise Modelling

The process to develop a range of noise metrics including ANECs, N70 diagrams and Flight Path Movement Charts for the NPR EIS/MDP noise assessment involved the following:

1. Complex forecasting of future airline schedules which included predictions of:
    - Growth on existing routes and potential new routes (accounting for domestic and international economic factors)
    - Timing of growth - annual growth and growth in peak/trough periods of a day
    - Aircraft types to be used on each route (eg. larger aircraft substitution or increased frequency)
    - An assessment of government policy wrt aviation industry ownership, mergers, possible new airlines, 'open skies' policy development etc.

    This work was undertaken by Tourism Futures International

2. Airspace design including flight paths and operating procedures.

    This work was undertaken by Airservices Australia

3. Development of the range of airport operating modes to facilitate airspace design changes.

    This work was undertaken by BAC in consultation with Airservices Australia

4. An analysis of the airport's capacity to handle the growth in demand which in turn affects the modes which can be used at particular times of the day.

    This work was undertaken by Airservices Australia using the TAAM modelling package.

5. An analysis of historical weather patterns to predict future weather patterns.

Data was sourced from both Airservices Australia (CATIS) and the Bureau of Meteorology and analysed by the noise consultant

6. An analysis of the distribution of individual flight tracks operating on the range of flight paths particularly in visual conditions where there is a propensity for the aircraft to be widely spread spatially as they track to final approach for landing.

This work was undertaken by the Noise Consultant Wilkinson Murray and verified against the Noise and Flight Path Monitoring System (NFPMS)

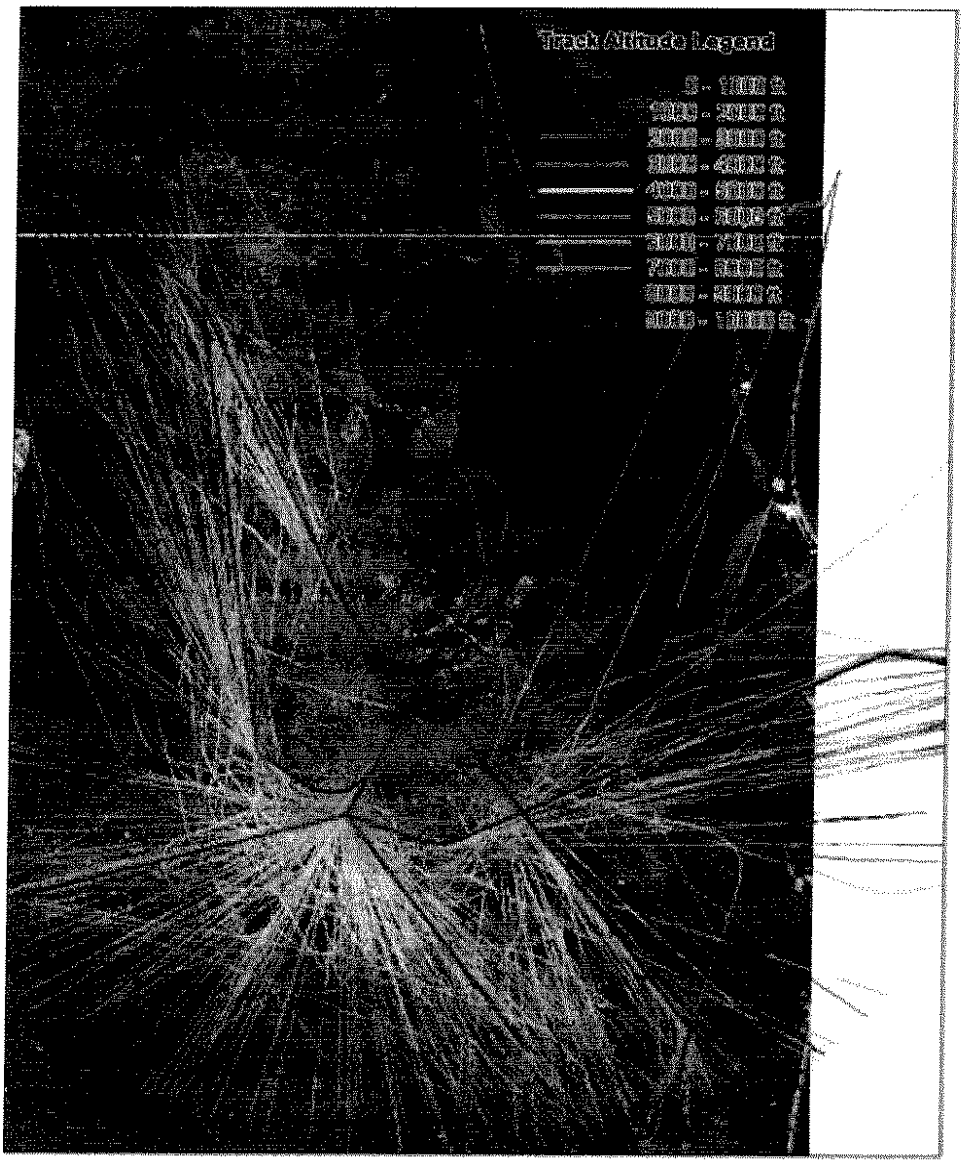
7. The noise produced by the range of aircraft performing either standard arrival or departure operations on the range of possible arrival or departure flight paths and their range of subtrack variants (eg. a noise library was developed which consisted of 15 different aircraft categories x total of 571 tracks x 2 types of operation (departure and arrival) = 17,130 individual noise profiles were drawn from to depict the existing situation (2005) for Brisbane Airport)

This work was undertaken by the Noise Consultant Wilkinson Murray and verified against the Noise and Flight Path Monitoring System (NFPMS)

These factors are then inputs to a complex noise modelling exercise which can provide a range of noise descriptors like ANECs, N70 diagrams or Flight Path Movement Charts. Please refer to the attached Figure 1. for a representation of how the inputs interact with each other to provide the noise modelling outputs.

This work was undertaken by the Noise Consultant Wilkinson Murray

Attachment 2



Flight paths flown by aircraft in January 2005 approaching over the city when landing at Brisbane Airport's main runway.