

Chapter 5

Independence, governance and accountability

Airservices Australia's relationship with the aviation industry

5.1 In general, the committee received submissions from the aviation industry which suggested that major capital city airport operators and aviation organisations have an open and constructive working relationship with Airservices Australia.¹ The committee notes that Airservices Australia participates in a range of forums and industry groups to foster a productive, positive and cooperative relationship with the aviation industry.²

5.2 Airservices Australia commissions an annual stakeholder satisfaction survey to understand the effectiveness of its 'relationship management framework' with airlines, airports, the Department of Defence and other government departments (such as the Civil Aviation Safety Authority and the Department of Infrastructure, Transport, Regional Development and Local Government). To facilitate the sharing of information regarding its aviation agenda, Airservices Australia also publishes a quarterly report to the aviation industry.

5.3 However, the committee heard evidence and received submissions which suggested that Airservices Australia has a partnership approach with the aviation industry. The committee was told that this partnership approach has led to the prioritisation of aviation industry requirements above those of local communities and also to a loss of community confidence in the organisation's ability to perform its functions with impartiality:

... the organisation has proved itself too beholden to the industry at the expense of the public interest in minimizing aircraft noise. A separation of powers is essential. ASA's regulatory failure on Noise Management has been so complete leading to an absolute loss of faith in the organization by its public "customers".³

5.4 It was also suggested that this partnership approach has contributed to the prioritisation of aviation industry requirements above those of non-aviation business communities. In one circumstance relating to the Australian Noise Exposure Forecasts and development around airports, it was suggested that Airservices Australia had acted as an advocate for an airport operator.⁴

1 Board of Airline Representatives of Australia, *Submission 46*, p. 1. See also Sydney Airport Corporation Ltd, *Submission 77*, p. 1 and Brisbane Airport Corporation, *Submission 103*, p. 1.

2 Airservices Australia, *Submission 102*, pp. 11-12.

3 Mr Peter Stewart, *Submission 15*, p. 3.

4 The Village Building Co., *Submission 121*, p. 6.

5.5 Evidence to the committee suggested that this perceived conflict of interest arises from two key organisational features:

- Airservices Australia's current organisational funding arrangements; and
- Airservices Australia's dual responsibility for the safe management of air traffic and the protection of the environment.

Funding

5.6 Airservices Australia receives the majority of its revenue from industry fees, charges and consultancy work, with revenue principally derived from aircraft operators. During the Senate Rural and Regional Affairs and Transport Legislative Committee's supplementary estimates hearing, Mr Greg Russell, Chief Executive Officer of Airservices Australia, indicated that:

Our annual revenue at the moment is running at about \$770 million. I would have to get to you the precise number, but I could tell you that from the airlines – and other airspace users, private pilots and that sort of thing, but overwhelmingly – the number would be well over 95 per cent.⁵

5.7 The committee heard that the funding arrangement might predispose Airservices Australia to a conflict of interest. The Sydney Airport Community Forum Inc questioned Airservices Australia's ability to effectively balance the needs of the aviation industry and local communities:

... industry has a particularly intimate, ongoing relationship with Airservices Australia which the “community” does not possess. In normal circumstances this would be natural, given the regulatory nature of Airservices responsibilities, but when the communities interests may differ from those of industry, it can put the community at a disadvantage, if the needs of a “noise sharing” implementation conflict with the requirements of the airlines.⁶

5.8 The committee observed that this perceived lack of organisational independence had led to a loss of confidence in Airservices Australia's ability to effectively engage with local communities. Curfew4Canberra, a community based organisation, suggested that the partnership approach has affected Airservices Australia's ability to perform its duties in an open and transparent manner:

... a commercial service provider to the aviation industry, it has a profound conflict of interest in that its revenue driven relationship with the industry results in a partnership which precludes scrutiny and thus transparency, to the detriment of its broader responsibilities to the community.⁷

5 Senate Rural and Regional Affairs and Transport Legislation Committee, *Estimates Hansard*, 20 October 2009, p. 177. See also *Airservices Australia Annual Report 2008-09*, p. 33.

6 Sydney Airport Community Forum Inc., *Submission 129*, p. 16.

7 Curfew4Canberra, *Submission 56*, p. 3.

5.9 Dr Murray May suggested that the funding arrangement had adversely affected Airservices Australia's ability to respond to community concerns:

A problem lies in a conflict of interest within the core roles of Airservices Australia. As the name Airservices Australia suggests, an alliance exists between the agency and the aviation industry, including a close relationship with respect to funding, with ASA's funding going up or down depending on how the aviation industry is performing. It is common for regulators to identify closely with the groups they regulate and to come to see the issues and solutions similarly. Because of conflicting roles, Airservices Australia is unable to address negative feedback from the community constructively, as it is committed to and constrained by the growth paradigm subscribed to by various spheres of government and the airline industry.⁸

Organisation responsibility

5.10 As outlined in Chapter 2, Airservices Australia has dual responsibility for the provision of safe air traffic management services and, as far as practicable, for ensuring the environment is protected from the effects associated with the operation and use of aircraft (including noise impacts). The committee received evidence that these two organisational priorities are conflicting and competing, and have led to a conflict of interest:

There is an inherent conflict of interest between the need of Airservices to achieve improved flight paths and that of residents who are impacted by those changes.⁹

5.11 The City of Canning suggested that the task of protecting the environment from the effects of aircraft operations is given less priority within the organisation, leading to sub-optimal outcomes for the community:

Whilst there is no argument that the safety of aircraft operations is paramount in managing the aviation industry it is believed that the current structure does not present suitable opportunity for options to be explored which may provide improved environmental outcomes (including attention to aircraft noise) whilst maintaining appropriate attention to safety.¹⁰

5.12 One submitter described Airservices Australia as having 'embarked on a systematic policy of partnership with industry'¹¹ and suggested that Airservices Australia had demonstrated failures of its obligation to the public at the following three primary elements of regulatory capture:

8 Mr Murray May, *Submission 76*, p. 2. See also, Mr Gary and Ms Kerry Rowles, *Submission 62*, p. 4 and Mr Alexander Haidoussis, *Submission 167*, pp. 14-15.

9 Mr Mike Health, *Submission 146*, p. 2.

10 City of Canning, *Submission 48*, p. 1.

11 Mr Peter Stewart, *Submission 15*, p. 2.

Regulatory capture is the term used to refer to situations in which a government regulatory agency, created to act in the public interest, instead acts in favour of the commercial or special interests that dominate the industry it is charged with regulating.

At a first level of capture, the regulator allows the regulated to breach the law, ethic, good practice rule, moral principle or public interest duty that the regulator is responsible for upholding. At a second level, the regulator assists the regulated to avoid the regulatory consequences after the fact.

At the deepest level of development, the 'capture' is so complete that the regulator may assist the regulated to defeat the regulatory regime before the fact.¹²

5.13 The committee also received evidence recommending urgent reform to separate Airservices Australia's responsibility for setting routes and handling complaints from their commercial interests.¹³ Other submitters further suggested that a new, independent statutory authority is required, which would have the powers to enforce its findings and deliberations in relation to aircraft noise affects.¹⁴

5.14 However, Canberra Airport noted that as the two functions are intrinsically linked it would be very difficult to separate the safe and efficient management of airspace from the management of aircraft noise. Canberra Airport suggested that:

For instance, when assessing the desirability of flight paths or procedures it is in the interests of all parties that the relevant body take into account safety, efficiency for the airlines and airports, and amenity for the community. The process would become incredibly inefficient if two separate bodies were tasked with making different assessments (one about safety and regularity and the other about amenity) about proposed flight paths or procedures. Apart from the inevitable delays that would occur through the introduction of another organisation, there would also be questions as to what the position would be if the different bodies came to different conclusions – would this become the basis for challenging a flight path or procedure? How would this dispute be resolved? Would this just create more uncertainty for airlines and the community?¹⁵

Airservices Australia's response

5.15 In a supplementary submission to the inquiry, Airservices Australia responded to the suggestions of 'regulatory capture' by noting that the organisation does not regulate the aviation industry:

A large number of submissions contain the view that Airservices is a regulator. In some submissions there is a belief that if Airservices is the

12 Mr Peter Stewart, *Submission 15*, p. 2.

13 Mr Ian Davies, *Submission 128*, p. 1.

14 Curfew4Canberra, *Submission 56*, p. 4.

15 Canberra Airport, *Submission 90*, p. 4.

aviation industry regulatory a conflict of interest situation arises. This belief is simply not correct. While Airservices provide air traffic management and related services, it is not Australia's aviation or airspace regulator.

Airservices does not control the scheduling and frequency of aircraft movements and our services are provided on a fee for service basis with oversight by the Australia Competition and Consumer Commission regardless of the volume of services.¹⁶

5.16 Airservices Australia also strongly denied suggestions that its funding arrangement influences the organisation's activities, processes or engagement with local communities:

Like any government any government agency, we deliver our services without prejudice, according to regulation and with the safety of the travelling public at the forefront. In designing flight paths, Airservices makes all decisions based on the complexities of ensuring that aviation safety is paramount; that the national airways system is efficient; and, the potential environmental impact on communities is minimised. Any potential impact on future income streams is not a consideration.¹⁷

5.17 Mr Greg Russell, the Chief Executive Officer of Airservices Australia, suggested that a strong governance model ensured the organisation's independence. Mr Russell described a system of checks and balances overseen by a board overwhelmingly comprised of external appointees.¹⁸

Committee view

5.18 The committee considers that the community perception that Airservices Australia lacks independence and has a partnership approach with the aviation industry underscores the need for enhanced organisational transparency, openness and accountability. Airservices Australia must focus its efforts on re-building community confidence in their ability to effectively balance the management of aircraft noise with the safe and efficient management of airspace. Airservices Australia must also focus on strengthening its relationship with local communities so that the management of aircraft noise is perceived to be fair and equitable, but is proved to be so. The committee is of the view that oversight by the Aircraft Noise Ombudsman (described below) will assist Airservices Australia to build this community confidence, as will a renewed focus on effective engagement with communities and organisational transparency as described in Chapter 3.

16 Airservices Australia, *Supplementary Submission 102*, p. 2.

17 Airservices Australia, *Supplementary Submission 102*, p. 2.

18 Mr Greg Russell, Airservices Australia *Committee Hansard*, 28 April 2010, p. 97.

Governance and Accountability

Current arrangements

5.19 Airservices Australia is governed by a board of 18 directors appointed by the Minister of Infrastructure, Transport, Regional Development and Local Government. The board is responsible for ensuring that Airservices Australia performs its role in a proper, efficient and effective manner.¹⁹ The board meets eight times annually and reports to the minister on a quarterly basis. The board is supported by three sub-committees which meet between four and six times annually to oversee three areas in detail: audit, safety and the environment.

5.20 Airservices Australia also reports annually to parliament regarding their compliance with their legislative requirement to manage aircraft noise and consult the community.

Aircraft Noise Ombudsman

5.21 The newly established Aircraft Noise Ombudsman position, announced as part of the Commonwealth Government's 2009 National Aviation Policy Statement, will seek to improve Airservices Australia's consultation arrangements and distribution of noise-related information to the general public. The Aircraft Noise Ombudsman will oversee the handling of aircraft noise complaints, independently review noise complaint handling procedures and make recommendations for improvements where necessary.

5.22 The committee heard that the Aircraft Noise Ombudsman will be established within Airservices Australia and will report directly to the Airservices Australia board. Mr Greg Russell, the Chief Executive Officer of Airservices Australia, suggested that Airservices Australia has appropriate governance arrangements to ensure the independence of an Ombudsman operating within the organisation.²⁰ The intention is that the Aircraft Noise Ombudsman will operate in a similar manner to the Independent Safety Adviser. Mr Russell suggested that the Independent Safety Adviser's open access to the organisation and direct engagement with, and reporting to the board, have proved effective.

5.23 To ensure transparency, Mr Russell further indicated that the Aircraft Noise Ombudsman would be able to initiate inquiries at their own discretion and without referral to the board.²¹ The Aircraft Noise Ombudsman would then be free to make recommendations to the board about noise management, including where there are

19 *Air Services Act 1995*, s.21.

20 Senate Rural and Regional Affairs and Transport Legislation Committee, *Estimates Hansard*, 27 May 2010, p. 69.

21 Senate Rural and Regional Affairs and Transport Legislation Committee, *Estimates Hansard*, 27 May 2010, p. 71.

problems and where there are opportunities for improvement. The Aircraft Noise Ombudsman's recommendations and reports would be made public.

5.24 Mr Mike Mrdak, Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government, described the rationale for positioning the Aircraft Noise Ombudsman within Airservices Australia rather than establishing it as an independent body:

In the end the government has gone down this path because I think it is important that this role be very closely tied to the provider of air traffic control services and the government agency that has responsibility for managing the off-airport environmental issues associated with aircraft operations, to make sure that we have that linkage. At the end of the day this is about how we improve the performance of the industry, and we felt that that was best done by having a person, an office, closely aligned with the agencies rather than sitting outside it.²²

5.25 The establishment of the Aircraft Noise Ombudsman was broadly welcomed by submitters to the inquiry.²³ It was considered that the Aircraft Noise Ombudsman would provide a mechanism for individuals and organisations who feel they are not getting resolution through the extant consultation processes to have their concerns considered and assessed. However, a number of concerns were raised regarding the independence of an Aircraft Noise Ombudsman established within Airservices Australia.

5.26 The committee heard that establishing the position within Airservices Australia could give rise to the perception that the Aircraft Noise Ombudsman is lacking in independence, accountability and transparency. Submissions to the inquiry suggested that if established within Airservices Australia as currently proposed, the Aircraft Noise Ombudsman's ability to act with impartiality would be constrained,²⁴ and there may be a tendency to feel pressure to favour the aviation industry's and Airservices Australia's position over the general public.²⁵

5.27 The committee noted submissions to the inquiry which emphasised the importance for independence – both in reality and as perceived by local communities:

The holder of such an office must not only be able to operate truly independently but must be seen to be doing so.²⁶

22 Senate Rural and Regional Affairs and Transport Legislation Committee, *Estimates Hansard*, 27 May 2010, p. 71.

23 Dingley Village Community Association, *Submission 74*, p. 1. See also, Southern Sydney Regional Organisation of Councils, *Submission 89*, p. 2, Australian Mayoral Aviation Council, *Submission 92*, p. 7, Aircraft Owners and Pilots Association of Australia, *Submission 108*, p. 3 and Sydney Airport Community Forum, *Submission 151*, p. 4.

24 Southern Sydney Regional Organisation of Councils, *Submission 89*, p. 2.

25 Mr Alexander Haidoussis, *Submission 167*, p. 13.

26 Australian Mayoral Aviation Council, *Submission 92*, p. 7.

5.28 In order to effectively assess noise complaints, it was suggested that there was a need for clear performance measures, including measures to assess the performance of Airservices Australia and airline operators' use of specified flight tracks.²⁷ It was also suggested that the Aircraft Noise Ombudsman should have extended powers and a stronger regulatory framework to enable it to recommend penalties and sanctions where warranted:

It is Australian Mayoral Aviation Council's view that the Ombudsman must be independently positioned and resourced with the capacity to, not only review incident reports and the way they are managed but also allocate responsibility and, where warranted, recommend penalties. The Ombudsman must also be able to monitor the veracity of information supplied and the genuine and transparent nature of the consultation process.²⁸

5.29 To ensure the independence and transparency of the Aircraft Noise Ombudsman, the committee heard that the position should be established independently from Airservices Australia,²⁹ and not under the structure currently proposed by Airservices Australia.³⁰

Committee View

5.30 The committee views the establishment of the Aircraft Noise Ombudsman as a positive step. The position will provide a right of review and appeal mechanism which has been lacking in the existing community consultation and complaint resolution approach to date. It will provide the community with an opportunity to have claims and complaints regarding aircraft noise considered by a third party. It may also provide an avenue for the consideration of matters raised by non-aviation businesses and organisations.

5.31 However, the committee has concerns regarding the potential effectiveness of the Aircraft Noise Ombudsman if the position is established as currently proposed. The committee notes the significant challenge the Aircraft Noise Ombudsman will face if the position is established within the organisation it is tasked to review, particularly in circumstances where the Ombudsman is especially critical of the performance of Airservices Australia.

5.32 The committee shares the view that the Aircraft Noise Ombudsman must not only be able to act independently, but must also be perceived to do so by the Australian community. The significant public concern regarding the possible establishment of the Aircraft Noise Ombudsman within Airservices Australia clearly indicates that the position must be independent from Airservices Australia.

27 Adelaide Airport Limited, *Submission 132*, p. 3.

28 Australian Mayoral Aviation Council, *Submission 92*, p. 7.

29 Councillor John Daw, *Submission 78*, p. 4. See also Mr Peter Bourne, *Submission 31*, p. 8.

30 Mr Barry Cotter, Sydney Airport Community Forum, *Committee Hansard*, 28 May 2010, p. 74.

5.33 The committee is of the view that the Aircraft Noise Ombudsman should be established independently from Airservices Australia and should report publicly and directly to the Minister for Infrastructure, Transport, Regional Development, and Local Government, and the Australian Parliament. The Aircraft Noise Ombudsman should provide an annual report of their operations and this should include a description of the actions Airservices Australia has undertaken to implement recommendations and, where appropriate, a description of those instances where appropriate action has not been taken.

