

Chapter 1

Introduction

Airports Amendment Bill 2010

1.1 The Airports Amendment Bill 2010 (the bill) was introduced into the House of Representatives on 30 September 2010 and was passed by the House on 25 October 2010.

1.2 The bill was introduced into the Senate on 26 October 2010. On 30 September 2010, the bill was referred for inquiry to the Rural Affairs and Transport Legislation Committee (the committee) on the recommendation of the Senate Selection of Bills Committee.¹

Conduct of the inquiry

1.3 Notice of the inquiry was posted on the committee's website. The committee also wrote directly to a number of peak bodies seeking their comments on the provisions of the bill. The committee received 34 submissions (see Appendix 1).

1.4 The committee held a public hearing in Melbourne on 3 November 2010 and heard evidence from a number of key organisations including the Australian Airports Association, the Australian Local Government Association, Urban Taskforce Australia and a number of airport corporations. The committee also heard evidence from the Department of Infrastructure and Transport. A full 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>.

Acknowledgements

1.5 The committee appreciates the time and effort of those who provided oral and written evidence to the inquiry. Their work has assisted the committee considerably in its inquiry.

Background to the bill

1.6 The Airports Amendment Bill 2010 is underpinned by the Government's National Aviation Policy White Paper, *Flight Path to the Future* (the White Paper) which was released on 16 December 2009. The White Paper outlines the Government's policy objectives in relation to aviation and airports. It also outlines the

1 Selection of Bills Committee, Report No. 11 of 2010, 30 September 2010, Appendix 1.

steps already taken and the actions still required to be taken in order to achieve these objectives.²

1.7 The White Paper sets out the background to the governance of Australia's federal airports which were privatised between 1997 and 2003, when long-term leases over the airport sites were sold to private sector operators. Leased federal airports are regulated under the *Airports Act 1996* and, as they are sited on Commonwealth land, any planning and development issues on these sites are administered under Commonwealth law.³

1.8 As discussed in the White Paper, leased airports not being subject to state and local government planning laws has raised concerns regarding the framework governing planning and the lack of opportunities for communities to participate effectively in consultation. This lack of consultation has proved problematic and been the cause of some frustration, particularly in cases where airport developments will have a direct impact on residents' homes, workplaces and suburban amenity.⁴

1.9 The planning regulatory arrangements referred to in the bill currently apply to 19 airports: Adelaide, Alice Springs, Archerfield, Bankstown, Brisbane, Camden, Canberra, Darwin, Essendon, Gold Coast, Hobart, Jandakot, Launceston, Melbourne (Tullamarine), Moorabbin, Parafield, Perth, Sydney (Kingsford-Smith) and Townsville.

1.10 Currently, under the *Airports Act*, these airports are required to develop and seek approval for both long-term strategic master plans and major development plans for individual development proposals deemed significant enough to warrant specific assessment.⁵

Master plan

1.11 The *Airports Act* currently requires each airport operator to prepare and obtain approval from the Minister for a master plan. In addition to addressing noise, environmental and land use issues, the master plan sets out the strategic planning framework for the airport for a 20-year period. In developing a master plan, the airport is required to directly inform the relevant state/territory or local government, publish the draft plan and invite comment from the public (allowing a period of 60 business days). Information about any public comment received is required to be provided to the Minister when submitting the plan for approval.⁶

2 Airports Amendment Bill 2010, Explanatory Memorandum, p. 1.

3 Department of the Parliamentary Library, *Bills Digest No. 25*, 2010-11, p. 3.

4 Department of Infrastructure, Transport, Regional Development and Local Government, *Flight Path to the Future: National Aviation Policy White Paper*, p.156.

5 Airports Amendment Bill 2010, Explanatory Memorandum, p. 2.

6 Airports Amendment Bill 2010, Explanatory Memorandum, pp 3-5.

1.12 Airport master plans require updating every five years or earlier (if requested by the Minister) and these updates are also subject to a public consultation period of 60 business days.

Major development plan

1.13 Major development plans are a separate planning process that provide for public consultation and Ministerial assessment of specific development proposals on leased federal airport sites. The provisions of the Airports Act relating to major development plans "are intended to promote the orderly development of leased federal airports and to ensure that major airport developments are consistent with the terms of airport leases and master plans".⁷ The current framework for major development plans is also intended to take into account the operational, safety, noise, environmental and community impacts of developments and allow them to be assessed.⁸

1.14 The Explanatory Memorandum to the bill notes that the requirement for a major development plan is triggered if the development involves any of the developments listed in section 89 of the Airports Act. The list includes:

- any new runway capacity;
- specified new passenger terminal capacity;
- new taxiway, railway or road capacity, where such an upgrade significantly increases the capacity of the airport; or
- significant environmental impact.⁹

1.15 Airports preparing a major development plan are subject to the same process as those developing a master plan. There is a requirement to inform the relevant state/territory or local government and to allow 60 days for public comment following the publication of the draft plan. There is also a requirement to provide details of any public comment to the Minister when submitting the plan for approval.¹⁰

Current airport planning framework – issues of concern

1.16 A number of issues of concern in relation to the current airport planning framework were outlined in the White Paper. The issues raised and arguments put forward include:

- Airports have become large, complex operations that support a wide range of aeronautical and non-aeronautical activities which can have significant impacts on communities. There has been an increased incidence of investment

7 Airports Amendment Bill 2010, Explanatory Memorandum, p. 4.

8 Airports Amendment Bill 2010, Explanatory Memorandum, p. 4.

9 Airports Amendment Bill 2010, Explanatory Memorandum, pp 4-5.

10 Airports Amendment Bill 2010, Explanatory Memorandum, pp 3-5.

and development on airport sites generating controversy – particularly when people feel that their interests have not been adequately considered.

- Airports are responsible for generating a significant number of vehicle movements. Airports developments that result in a significant increase in the number of airport users can have a substantial impact on connecting transport infrastructure and lead to increased urban congestion and vehicle emissions and a reduction in the efficiency of the surrounding transport network.
- The Airport planning system is currently not being properly integrated with the off-airport transport planning system. This lack of integration is contributing to an uncoordinated transport system, which in turn is having an impact on cities' broader productive capacity and imposing unnecessary social and economic costs.
- Under current arrangements, some developments on airport sites are not canvassed in detail in master plans and fall outside the trigger criteria for major development plans. This has resulted in these developments not being open to community consultation – as may have been the case if they had occurred outside the airport boundary.
- There is currently no general requirement for airports to consult regularly with communities and state/territory planning authorities. There is a view that this has led to excessive use of land on airport sites not directly related to aviation operations and not consistent with the interests of surrounding communities.
- The planning framework that applies to leased federal airports is not sufficiently integrated with the planning laws applying to neighbouring communities and surrounding regions. This has, at times, resulted in disjointed development outcomes and negative community impacts, with both economic and social costs.¹¹

Infrastructure investment issues

1.17 During the Government's consultations with airports, the importance of continued investment in federal airports was raised. A number of problems relating to the impact the current regulatory framework has on facilitating investment were outlined in the White Paper, including:

- Major development plans as currently framed may impact on some aeronautical developments that will have little community impact. There is no mechanism which allows an airport-lessee company to seek an exemption from the major development plan process for these types of developments.
- Major development plan requirements sometimes result in an unnecessary duplication of consultation processes where effective consultation could have occurred had there been sufficient detail in the airport master plan.

11 Airports Amendment Bill 2010, Explanatory Memorandum, pp 5-6.

- Airport environment strategies are currently developed, consulted upon, and approved in a process entirely separate from master plans, creating unnecessary complexity and duplication of effort for airports, communities and state and local governments.¹²

Incompatible developments

1.18 Prior to the release of the White Paper, a Government Green Paper expressed a view that there are a range of activities that are likely to be incompatible with the long-term operation of an airport as an airport. The types of activities identified included long-term residential development, residential aged or community care facilities, nursing homes, hospitals and schools.¹³

1.19 The Airports Legislation Amendment Regulations 2009, No. 231 were made in 2009 and provided that any developments considered incompatible with the operation of the airport as an airport would constitute 'major airport developments'.¹⁴

1.20 In the current bill, the provisions relating to incompatible developments have been transferred to the principal Act and have been strengthened. An 'incompatible development' is defined to be a development of any of the following facilities:

- a residential dwelling (except accommodation for students studying at an aviation education facility at the airport);
- a community care facility;
- a pre-school;
- a primary, secondary, tertiary or other educational institution (except an aviation educational facility); and
- a hospital (except a facility with the primary purpose of providing emergency medical treatment to persons at the airport and which does not have in-patient facilities).¹⁵

1.21 Further, section 89A of the bill provides that:

... a person is prohibited from carrying out any incompatible development relating to an airport, unless the Minister gives approval for the preparation of a draft major development plan for the incompatible development. If a person contravenes the requirements of proposed subsection 89A(1), they commit an offence that carries a penalty of 400 penalty units or \$44,000. If

12 Airports Amendment Bill 2010, Explanatory Memorandum, pp 6-7.

13 Department of Infrastructure, Transport, Regional Development and Local Government, *Flight Path to the Future: National Aviation Policy Green Paper*, December 2008.

14 Department of the Parliamentary Library, *Bills Digest No. 25*, 2010-11, p. 5.

15 Airports Amendment Bill 2010, Explanatory Memorandum, p. 22.

an airport-lessee company is convicted of the offence, a court may impose a fine of not more than 5 times the penalty.¹⁶

Purpose of the bill

1.22 The bill amends the *Airports Act 1996* (the Act) and brings into effect the legislative reforms announced in the White Paper, in particular to improve the regulatory framework in relation to planning.

1.23 The key areas in which the bill amends the Airport Act are as follows:

- strengthening the requirements for airport master plans and major development plans to support more effective airport planning and better alignment with state, territory and local planning;
- in relation to the first five years of a master plan, requiring additional information such as a ground transport plan and detailed information on proposed developments to be used for purposes not related to airport services (eg. commercial, community, office or retail purposes);
- restructuring the triggers for major development plans including capturing proposed developments with a significant community impact;
- prohibiting specified types of development which are incompatible with the operation of an airport site as an airport. However, an airport-lessee company will have the opportunity to demonstrate to the Minister that such a development could proceed through a major development process because of exceptional circumstances;
- integrating the airport environment strategy into the master plan requiring only one public comment period for the combined document recognising that an airport environment strategy is better articulated in the context of the airport's master plan. Transitional provisions are included to address how the expiry dates of environment strategies will be aligned with the expiry dates of master plans; and
- clarifying ambiguous provisions and making housekeeping amendments to update certain provisions of the Airports Act.¹⁷

16 Proposed subsection 89A(2), Airports Amendment Bill 2010, p. 16, quoted in Department of the Parliamentary Library, *Bills Digest No. 25*, 2010-11, p. 5.

17 Airports Amendment Bill 2010, Explanatory Memorandum, pp 1-2.

Key provisions of the bill¹⁸

Schedule 1 – Amendment of the Airports Act 1996

Part 1 – Master plan amendments

1.24 Schedule 1 contains the new provisions to Section 71 of the *Airports Act 1996* which specifies the matters to be set out in draft or final master plans.

1.25 Proposed paragraph 71(2)(ga) requires that, for the first five years of operation of the master plan, it incorporates a ground transport system plan, including the following:

- road network plan;
- facilities for moving people and freight around the airport;
- links between the road network and public transport system in and outside the airport;
- arrangements with state or local authorities in relation to these networks;
- capacity of the ground transport system to support the operations and activities of the airport; and
- effect of proposed developments on the transport system and traffic flows.

1.26 Proposed paragraph 71(2)(gb) requires information in the master plan just for a five year period, on proposed developments for purposes not related to airport services such as commercial, community, office or retail purposes.

1.27 Proposed paragraph 71(2)(gc) requires information in the master plan just for a five year period, on the effect proposed developments will have on employment levels and the local and regional community and its economy and how it fits in with planning schemes for commercial and retail development near the airport.

1.28 Repealed paragraph 71(2)(h) only required the date of approval of a draft environment strategy. Proposed paragraph 71(2)(h) provides for the details required in an environment strategy to now part of a master plan for an airport. Details to be included in the environment strategy are taken from existing section 116. They include the following:

- airport-lessee company's objectives for the environmental management of the airport;

18 Information presented in this section is based on information contained in Department of the Parliamentary Library, *Bills Digest No. 25*, 2010-11, pp 6-11.

- areas identified by the airport-lessee company within the airport site, in consultation with state and federal bodies as being environmentally significant;
- sources of environmental impact associated with airport operations;
- the studies, reviews and monitoring carried out by the airport-lessee company of environmental impact associated with airport operations;
- timeframes for completion of studies etc or reporting on monitoring;
- specific measures carried out by airport-lessee company to prevent, control or reduce environmental impact;
- timeframe for completion of specific measures;
- details of consultations and their outcomes to prepare the strategy; and
- any other matters prescribed in the regulations.

1.29 Item 61 repeals Division 2 of Part 6 of the *Airports Act 1996*. Existing Division 2 of Part 6 of the Act dealt with environmental strategies. They are now proposed to be part of the master plan. Sections 114 to 131 are repealed as a result of the repeal of Division 2.

1.30 Subsection 71(3) relates to the content of a draft and final master plan for joint-user airports. Joint-user airports are defined in section 7B of the Act.

1.31 Item 4 repeals paragraph 71(3)(h) and substitutes proposed paragraphs 71(3)(ga)-(h) which provide for identical provisions for joint user airports as for proposed paragraphs 71(2)(ga)-(h).

1.32 Item 5 repeals subsection 71(6) and substitutes subsection 71(6) which includes an additional paragraph and provides that if a draft or final master plan is not consistent with state or territory planning schemes, the inconsistencies are required to be justified.

Other amendments

1.33 Item 16 amends section 5 to insert a definition of state to include the Australian Capital Territory and the Northern Territory.

1.34 Section 70 deals with the purposes of a final master plan. Proposed paragraphs 70(2)(3)-(g) contain provisions from repealed subsection 115(2) which relate to the intended purposes of final environment strategies. They have been included in section 70 together with the purposes of final master plans.

1.35 Item 27 inserts proposed section 71A after section 71. Proposed 71A(1) provides that a draft or final master plan must identify proposed incompatible developments. Proposed subsection 71A(2) defines 'incompatible developments'. It relates to the development or re-development of facilities such as residential

dwelling, community care facilities, pre-schools, primary, secondary, tertiary or other education institutions and hospitals.

1.36 Proposed subsection 71A(3) defines 'aviation educational facility' and 'community care facility'.

1.37 Section 81 relates to the approval of a draft master plan by the Minister. Item 33 repeals existing subsection 81(5) and substitutes proposed subsection 81(5). An additional period of up to ten business days is added to the existing 50 business day time limit that the Minister specifies in a written notice to the airport-lessee company. After the expiration of this time, the Minister is taken to have approved the draft master plan if he or she has neither approved or refused to approve the draft master plan. Proposed subsection 81(10) provides that if the Minister approves a draft master plan that contains an incompatible development this does not prevent the Minister from refusing to approve a major development plan for the incompatible development under Division 4 (major development plans).

1.38 Item 35 inserts proposed section 83A which provides for compliance with the environment strategy in the final master plan. Proposed 83A(2) provides that the airport-lessee company must take all reasonable steps to comply with the environment strategy in the master plan. Any other person who carries on activities at the airport must likewise take all reasonable steps to comply with the environment strategy as well (proposed 83A(3)). A contravention, although not an offence under proposed subsection 83A(4) is a ground for an injunction under proposed 83A(5) under Part 15.

1.39 Section 89 defines a major airport development. Item 45 repeals existing subsection 89(5) and substitutes proposed subsections 89(5) and (6). Proposed subsection 89(5) provides that the Minister may determine in writing that specified developments such as:

- constructing a new passenger terminal;
- extending a passenger terminal;
- constructing a new taxiway that increases the capacity of the airport to handle movements of passengers, freight or aircraft and the cost exceeds \$20 million or a prescribed higher amount; or
- extending a taxiway that likewise increases the capacity of the airport

do not constitute a major airport development. The airport-lessee company may apply to the Minister to consider whether the development constitutes a major development and if the Minister is satisfied on reasonable grounds that the development will not increase the operating capacity of the airport, change flight paths, change patterns or levels of aircraft noise or unduly increase noise or cause nuisance to the adjacent airport community then a major development plan is not necessary.

Incompatible developments

1.40 Item 46 inserts subdivision B – incompatible developments. Proposed section 89A prohibits a person to carry out or cause or permit an incompatible development, to be carried out unless the Minister approves the preparation of a draft major development plan for the incompatible development. An offence is committed by a person who contravenes proposed subsection 89A(1), the penalty being 400 penalty units (\$44,000). Proposed 89A(3) provides that this is a strict liability offence which means that the defence of reasonable mistake is available.

1.41 Proposed subsection 89A(4) provides that an airport-lessee company must apply in writing to the Minister if it wants to prepare a draft major development plan for an incompatible development before it advises the state or territory authorities under subsection 92(1A).

1.42 Proposed subsection 89A(5) provides that the application must set out the exceptional circumstances claimed by the airport-lessee company to support the preparation of a draft major development plan for the incompatible development.

1.43 Proposed subsection 89A(6) provides that the Minister must be satisfied that exceptional circumstances exist. The Minister must provide the airport-lessee company with written notice of the decision and reasons for the decision (proposed subsection 89A(7)). Proposed subsection 89A(8) provides that even if the Minister approves the preparation of a draft major development plan, it does not prevent the Minister from refusing to approve a major development plan for the incompatible development.

1.44 Item 47 inserts subdivision C – approval process. Section 91 is concerned with the content of a major development plan. Proposed paragraph 91(1)(ga) requires details relating to the likely effect of proposed developments on traffic flows in the airport and around the airport, employment levels and the local and regional economy and community as well as an analysis of how the developments fit within local planning schemes for commercial and retail development in the adjacent area.

1.45 Item 48 repeals existing paragraph 91(1)(k) and substitutes proposed paragraph 91(1)(k) which requires the airport-lessee company to set out the exceptional circumstances that justifies the incompatible development.

1.46 Item 49 repeals subsection 91(4) and substitutes proposed subsection 91(4) which in addition to maintaining existing provisions requires that if the major development plan is inconsistent with planning schemes under state law, the justification for the inconsistencies be stated.

1.47 In section 94, the Minister, when approving a major development plan, must have regard to the matters listed. Item 54 proposed paragraph 94(3)(f) inserts provisions relating to an incompatible development:

- whether the exceptional circumstances justify the development;

- the likely effective of the development on the future use of the airport site for aviation purposes; and
- the likely effect on the ground transport system at and adjacent to the airport.

Schedule 2 – Technical amendment of the *Airports Act 1996*

1.48 Items 1 to 25 are technical and consequential amendments.

