

# Chapter 2

## Key issues

### Background

2.1 As discussed in Chapter 1, the *Airports Act 1996* regulates leased federal airports. As these airports are operating on Commonwealth land they are subject to Commonwealth law and are not subject to state and local government planning laws.

2.2 Concerns were raised during the National Aviation Policy White Paper (White Paper) process that communities are not always afforded the opportunity for consultation with regard to on-airport developments under the current planning framework. The White Paper also noted that there is insufficient detail provided in master plans and many developments fall outside the criteria that would initiate a major development plan. The White Paper noted calls from state, territory and local governments for better integration of the planning framework applying on leased federal airports with planning laws applying to neighbouring communities and surrounding regions.

2.3 The committee notes that the bill seeks to respond to these concerns by creating a more transparent regulatory framework that balances the interests of communities with the need for ongoing infrastructure investment on airport land.

### *Support for the bill*

2.4 Throughout the inquiry it has been evident that there is widespread support for strengthening planning arrangements for developments on airport land. As indicated in the previous chapter, issues relating to airport planning and development were canvassed extensively during the White Paper process. Submitters to the inquiry expressed general support for the outcomes of the White Paper process and appear generally supportive of the broad intent of the bill.

### *An appropriate level of regulation*

2.5 The Regulation Impact Statement (RIS) for the bill states that the objective for the airport planning framework identified as a result of the White Paper process is:

Improved planning at Australia's airports to facilitate better integration and coordination with off-airport planning and continued investment in Australia's airport infrastructure and land transport links.<sup>1</sup>

2.6 The RIS outlines four regulatory options for achieving this objective:

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1 Airports Amendment Bill 2010, *Explanatory Memorandum*, p. 7.

- Option A – the status quo
- Option B – tighter regulation of planning and development on leased federal airports to facilitate better integration of on-airport and off-airport planning;
- Option C – a balanced approach involving regulatory change to facilitate investment in aeronautical infrastructure and better integration of on-airport and off-airport planning; and
- Option D – accredit state and territory government planning laws to apply to airports but allow the Commonwealth Minister to exercise decision making power.<sup>2</sup>

2.7 The RIS notes the following feedback from key stakeholders on each of these proposals:

#### *Airports*

- dispute the need for increased involvement of state, territory and local government planning authorities in airport planning;
- dispute the need for more detailed analysis in master plans with regard to inconsistencies between on-airport and off-airport planning;
- support the concept of a consultative forum for airports and off-airport planning authorities and recognise benefit of such a forum in providing feedback to each party;
- mechanisms for expert advice should not delay approval processes;
- accept notion of requirement for regular consultation with the wider community;
- welcome mechanisms for a reduction in consultation periods for major development plans for specific aeronautical related developments.

#### *Communities*

- limited feedback suggests general support for improved integration of airport planning in the interests of reducing negative impacts on communities and suburban amenity.

#### *Business users*

- support requirements for improved ground transport planning by airports.

#### *State, territory and local governments*

- support increased regulatory oversight of airport planning, particularly in relation to non-aeronautical developments on airport land;

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2 Airports Amendment Bill 2010, *Explanatory Memorandum*, pp 8-11.

- support stricter requirements for airports to address and justify variances between airport planning strategies and planning frameworks for neighbouring communities;
- have a preference for a formal decision making role in airport planning but welcome the concept of a consultative forum and a means of better coordination of strategic planning;
- support requirement for airports to undertake regular community consultation;
- are not opposed to relaxation of regulatory requirements on aeronautical developments;
- support stricter control of developments on airport sites that are potentially incompatible with airport operations;
- state and territory governments did not lobby for accreditation of state or territory planning processes under the Airports Act;
- other governments accepted that the Commonwealth Minister would retain decision making power and would receive recommendations from Commonwealth public servants in accordance with the terms and provisions of the Airports Act.<sup>3</sup>

2.8 The RIS concludes that Option C represents the greatest net benefit. The RIS notes that both Option B and Option C would provide for better integration of on-airport and off-airport planning frameworks, with positive flow on effects for suburban amenity and the economies of surrounding regions, particularly through better planning of ground transport links.

2.9 The RIS also concludes that Option C alone will promote additional investment in airport infrastructure. Option C also offsets the introduction of new regulatory requirements in respect of master plans and some non-aeronautical developments with a relaxation of certain of the current regulatory requirements in relation to major development plans.<sup>4</sup>

2.10 The views expressed by submitters to this inquiry appear to accord with the spectrum of views summarised in the RIS and reflect a general level of acceptance of the regulatory framework proposed in the bill. The committee notes that many submitters recognise that the regime established by this bill is a compromise position between communities' need for greater transparency and consultation and the expectation of airports and their users for a regulatory environment conducive to investment and continued development.<sup>5</sup>

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3 Airports Amendment Bill 2010, *Explanatory Memorandum*, pp 14-15.

4 Airports Amendment Bill 2010, *Explanatory Memorandum*, p. 16.

5 City of Armadale, *Submission 5*, p. 1.

2.11 Notwithstanding this, the committee received a significant number of submissions raising concerns with regard to specific aspects of the proposed regulatory framework. For example, a number of local governments expressed a preference for the tighter regulatory control provided for in Option B.<sup>6</sup> In particular, these councils stressed the desirability of legislated, mandatory formal consultative mechanisms and tighter regulation of non-aeronautical developments on airport land.<sup>7</sup>

2.12 The Australian Mayoral Aviation Council (AMAC) told the committee that:

History provides clear evidence that a voluntary framework has not worked. In any case a voluntary arrangement relies on the goodwill of the parties. It is suggested that, where difficult decisions are to be made on matters with a significant positive or negative consequence for either part, goodwill will almost certainly finish second.<sup>8</sup>

2.13 The City of Belmont proposed that the regulatory framework should be reviewed after 10 years. If the approach contained in the bill is shown to be ineffective, a tighter regulatory approach should be introduced.<sup>9</sup>

2.14 Conversely, a number of airport corporations expressed concerns about the cost in terms of time and resources imposed by these regulatory changes and the potential impact this would have on the operation and the further development of airports.

2.15 Many submitters expressed some concern regarding the drafting of specific sections of the bill and proposed amendments to address the problems identified. These concerns are discussed in greater detail below.

### **Consultation on draft legislation**

2.16 A number of witnesses and submitters expressed disappointment that they had not been consulted during the drafting of the bill.<sup>10</sup> The Australian Airports Association (AAA) told the committee that it had sought an opportunity to be consulted on the drafting of the bill, but had been advised that the extensive consultation undertaken throughout the Aviation Green Paper and White paper process was considered sufficient. The AAA told the committee that in their opinion

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6 South West Group, *Submission 6*, p. 2; Australian Mayoral Aviation Council, *Submission 9*, p. 3.

7 See for example Australian Mayoral Aviation Council, *Submission 9*, pp 3-4; Camden Council, *Submission 6*; Bankstown Council, *Submission 27*, p. 1.

8 Australian Mayoral Aviation Council, *Submission 9*, p. 3.

9 City of Belmont, *Submission 4*, p. 4.

10 Sydney Airport Corporation Limited, *Submission 13*, p. 4.

there is a significant difference between consultation on the development of a policy and consultation in the preparation of a legal document.<sup>11</sup>

2.17 Mr John Doherty, Executive Director, Aviation and Airports, Department of Infrastructure and Transport, told the committee that while there had not been an exposure draft of the bill released for consultation, the Department had received valuable input throughout the process from the AAA, individual airports and from state and territory governments and local councils. Mr Doherty told the committee:

The decision to release a bill as an exposure draft is one for government, It is not done as a matter of course; it is done where it is seen as adding a value in the particular circumstances. The judgement was made in this case that, after the extended consultation and the likelihood that the comments would pull in different directions because this is a balance, the bill was not released as an exposure draft before introduction.<sup>12</sup>

### **Requirements for greater detail in airport master plans**

2.18 The *Airports Act 1996* (the Act) provides for the development of airport master plans. As discussed in Chapter 1, the White Paper notes that as well as being an important element in an airport planning cycle, master plans provide a key opportunity for state and local governments and communities to influence airport planning. The master plan process also provides an opportunity for airports and state and territory and local governments to work through likely off airport impacts of future airport developments. The White Paper concludes that the provision of greater detail in master plans should inform and enhance this collaboration.<sup>13</sup>

2.19 Subsection 71(2) of the Act specifies the detail that must be included in a draft or final master plan. The bill proposes that this list of items be expanded to include:

- a ground transport plan on the landside of the airport;
- proposed developments for purposes not related to airport services;
- the likely effect of proposed developments in the plan on employment levels at the airport and on the local and regional economy and community; and
- an environment strategy.<sup>14</sup>

2.20 Many submitters welcomed the requirements for greater detail, particularly in relation to the coordination of on-airport and off-airport airport transport

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11 Mr John McArdle, Chairman, Australian Airports Association, *Committee Hansard*, 3 November 2010, p. 7.

12 *Committee Hansard*, 3 November 2010, p. 34.

13 Australian Government, *Flight Path to the Future, National Aviation Policy White Paper*, December 2009 p. 159.

14 Airports Amendment Bill 2010, *Explanatory Memorandum*, pp. 17 – 18.

infrastructure.<sup>15</sup> The Northern Territory Department of Lands and Planning told the committee that:

The proposed amendments relating to the information to be included in the future into the preparation of masterplans for the airports will aid this Department in its endeavours to integrate the developments at the airports in the Northern Territory with the development happening around the airports.<sup>16</sup>

2.21 Qantas told the committee that the coordination of transport on-airport and off-airport and environmental concerns are of great importance and that the master plan process will benefit from these inclusions.

2.22 The Western Australian Department of Planning expressed concern that the five year planning time frame for the matters outlined in 71(2)(h)(ga) and (gb) and 71(3) (h) (ga) and (gb) is too short. The Department of Planning told the committee that:

The road network and public transport systems outside the airport are significant infrastructure items. Longer planning time frames will be required to ensure adequate integration with the surrounding networks and the capacity of such networks are developed in a timely manner and not unduly impacted by development at airports.<sup>17</sup>

2.23 A number of other submitters raised similar concerns.<sup>18</sup> AMAC told the committee that, while it may be appropriate to provide detailed plans for ground transport and other proposed non-aviation developments with a five-year horizon, such plans should not be static. AMAC proposed that the requirement should be a five-year rolling program with adequate opportunity for appropriate consultation and input.<sup>19</sup> The City of Belmont proposed that the detailed information provided in a master plan should be reviewed each time the Master Plan is reviewed.<sup>20</sup> The Perth Airports Municipalities Group Inc (PAMG) suggested that the transport and economic impacts of a master plan should be reviewed in the same way that environmental matters are to be revisited.<sup>21</sup> The City of Belmont expressed concern that it is not clear how these revised requirements will apply to existing master plans.<sup>22</sup>

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15 See for example: City of Belmont, *Submission 4*, p. 5; Tourism and Transport Forum, *Submission 32*, p.1; Sydney Airport Corporation Limited, *Submission 13*, p. 5.

16 Northern Territory Government, Department of Lands and Planning, *Submission 22*, p. 1.

17 Western Australian Government, Department of Planning, *Submission 25*, p. 1.

18 City of Townsville, *Submission 3*, p. 1;

19 Australian Mayoral Aviation Council, *Submission 9*, p. 4.

20 City of Belmont, *Submission 4*, pp 2-3.

21 Perth Airports Municipalities Group Inc, *Submission 20*, pp 1-2.

22 City of Belmont, *Submission 4*, p. 5.

2.24 A number of submitters expressed concern that the amendments do not go far enough and expressed some doubt regarding the extent to which the amendments would foster greater integration of planning.<sup>23</sup>

2.25 Submitters also expressed concern that the requirements for consideration of the likely effects of proposed developments should extend beyond the immediate surrounding communities to include the metropolitan and regional implications.<sup>24</sup>

2.26 Airport lessees expressed concern at the lack of clarity with regard to the new requirements of a master plan.<sup>25</sup> The AAA told the committee:

... it is far from clear what degree of analysis will be required by the Minister to meet the statutory requirement for "detailed information" or exposition of "likely effect". Airports would obviously be concerned if the level of analysis demanded under these new provisions was unreasonably complex. Master Plans are intended to be long-term, predictive and strategic documents, with individual major developments forecast in them requiring separate approval under the Major Development Plan process. It is at that latter stage that more detailed examination is appropriate.<sup>26</sup>

2.27 Submitters also cautioned against a predisposition to refuse approval for any on-airport development that may have an adverse off-airport effect. The AAA told the committee:

Inefficient off-airport businesses should not be insulated from competing and more efficient businesses simply because they may be located within the boundaries of an airport. Local communities deserve access to competitive and efficient suppliers of goods and services, wherever they may be located.<sup>27</sup>

### ***Incorporation of airport environment strategy in master plans***

2.28 The bill also proposes the annexure of the airport environment strategy in the master plan. AAA told the committee that it supports this change in principle, recognising that it "offers the opportunity for more efficient and comprehensive and less expensive consultation between airports, their local communities and relevant Government authorities".<sup>28</sup>

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23 See for example: Australian Mayoral Aviation Council, *Submission 9*, Camden Council, *Submission 6*; Bankstown Council, *Submission 27*, p. 1.

24 City of Perth, *Submission 12*, p. 1; Mr Andrew Barr, MLA, ACT Minister for Planning, *Submission 28*, p. 1.

25 Sydney Airport Corporation Limited, *Submission 13*, p.5.

26 Australian Airports Association, *Submission 15*, p. 3.

27 Australian Airports Association, *Submission 15*, p. 4.

28 Australian Airports Association, *Submission 15*, p. 3.

2.29 However, the AAA expressed concern that the inclusion of the environment strategy may lead to delays in the approval of the master plan. AAA told the committee:

In particular, we would be very concerned if the incorporation of the Environment Strategy allowed the Commonwealth Environment Minister to place any conditions or other requirements on the broader Master Plan through their involvement in the Environment Strategy, or if the Environment Department did not afford such matters the same priority as they receive from the Transport Department, thereby delaying the whole process.<sup>29</sup>

2.30 This view was shared by a number of other submitters.<sup>30</sup>

2.31 However, the committee notes that the City of Cockburn expressed concern that non-environmental priorities should not cloud judgement regarding scrutiny of the environmental acceptability of proposed developments.<sup>31</sup>

### ***Regulatory burden***

2.32 Airport lessees also expressed concern that the amendments to the master plan process would result in an increase in the regulatory burden on airports.<sup>32</sup>

2.33 Submitters observed that this appeared to be contrary to trends toward simplified regulatory structures.<sup>33</sup> The AAA submitted that the bill would make the development planning process for affected airports more intrusive, more expensive and more time consuming.<sup>34</sup> Airport lessees also expressed concern that the amendments signalled a move away from the concept of an airport master plan as a strategic document to a far more detailed and prescriptive plan.

2.34 Airport lessees also expressed concern that some of the new inclusions in a master plan may delay an already lengthy approval process. For example, while airport lessees recognise the benefit of better coordination of on-airport and landside infrastructure, many remain concerned that the reliance on third parties to meet the

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29 Australian Airports Association, *Submission 15*, p. 3; Sydney Airport Corporation Limited, *Submission 13*, p. 4.

30 Tourism and Transport Forum, *Submission 32*, p. 2.

31 City of Cockburn, *Submission 21*, p. 2.

32 See for example: Essendon Airport, *Submission 1*, pp. 1-2; Hobart Airport, *Submission 10*, p. 1, Sydney Airport Corporation Limited, *Submission 13*, p. 4; and Australian Airports Association, *Submission 15*, p. 3.

33 See for example: Sydney Airport Corporation, *Submission 13*, p. 4.

34 Australian Airports Association, *Submission 15*, p. 2.

expanded requirements of the master plan may delay or compromise approval of the plan in certain circumstances.<sup>35</sup>

2.35 The AAA noted that airports will need to obtain from state and territory governments details of how and when those governments intend to deliver the landside road and public transport infrastructure and services required to complement growth in aviation activity. The AAA expressed some concern in the event of any unwillingness on the part of a state or territory government to provide necessary landside infrastructure and services. The AAA told the committee it would be concerned if such unwillingness "was interpreted by the Australian Government in such a way as to prejudice the final approval of the Master Plan or, indeed, to invalidate transport assumptions or conclusions post approval".<sup>36</sup> These concerns were echoed by the Tourism and Transport Forum who expressed concern regarding the cancellation or deferment of major transport projects referred to in a master plan. The Tourism and Transport Forum supports the inclusion of the ground transport plan, but recommended that it be viewed as a guide to future intentions rather than as a fixed requirement.<sup>37</sup>

2.36 Sydney Metropolitan Airports (SMA), which operates the Bankstown and Camden General Aviation (GA) airports, expressed concern that the bill does not differentiate between larger and smaller airports. SMA expressed concern that the amendments proposed in the bill would increase the cost of running GA airports without increasing the revenue capability and that this would not be sustainable in the longer term. In its submission SMA said:

This approach continues a 25 year old framework of regulation established for airports managed by the Federal Airports Corporation (FAC) as far back as 1986. The one size fits all airport framework was developed at a time when the Australian Government and the FAC subsidised operations at GA airports.<sup>38</sup>

2.37 SMA illustrated its concerns with a comparison of airport activity levels for Sydney Airport and Camden Airport.<sup>39</sup> SMA recommends that GA airports should be either excluded from these amendments or measures should be introduced to support GA airports.<sup>40</sup>

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35 See for example: Sydney Airport Corporation Limited, *Submission 13*, pp. 5-6; Tourism and Transport Forum, *Submission 32*, p. 3.

36 Australian Airports Association, *Submission 15*, p. 4.

37 Tourism and Transport Forum, *Submission 32*, pp 1-2.

38 Sydney Metropolitan Airports, *Submission 11*, p. 2.

39 Sydney Metropolitan Airports, *Submission 11*, p. 3.

40 Sydney Metropolitan Airports, *Submission 11*, p. 2.

## **Expanded major development plan requirements**

2.38 During the White Paper process, concerns were raised that many developments on airport land that would have required community consultation, had they taken place outside the airport boundary, fail to trigger the requirement for a major development plan.<sup>41</sup> The White Paper notes that there is a view that this has led to excessive use of airport land for developments that are not directly related to aviation and which are not consistent with the interests of surrounding communities.

2.39 The bill introduces a series of amendments that are intended to enable public consultation for all airport developments that impact on surrounding areas.

2.40 The bill also contains provisions intended to streamline certain development applications in circumstances where there is little community impact or where a major development plan is aligned with the latest master plan and has therefore already been subject to public scrutiny.

### ***Developments with a significant community, economic or social impact***

2.41 As noted above, The White Paper identified that major development plan triggers fail to capture some non-aeronautical developments on airport sites that potentially have significant community impacts. The White Paper also noted that there is no general requirement for interested parties to be notified of airport development plans falling outside the master plan and major development plan processes.

2.42 The bill addresses these concerns through the inclusion of a provision that a development of a kind that is likely to have a significant impact on the local or regional community is a major airport development and will require a major development plan. This includes any alteration to a runway, including a runway alteration that changes flight paths. The Explanatory Memorandum to the bill states that:

As is currently the case with the existing major development plan trigger on significant environmental or ecological impact, proposed developments with significant community impact, regardless of size or cost, will be subject to the optimal level of public comment to enable members of the community and other stakeholders to have input into the proposed developments that may be contentious within the local area.<sup>42</sup>

2.43 The Explanatory Memorandum states that in determining whether a proposed development is likely to have a significant impact on the local or regional community, the following are examples of issues that may be considered:

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41 Australian Government, *Flight Path to the Future, National Aviation White Paper*, December 2009, p. 156.

42 Airports Amendment Bill 2010, *Explanatory Memorandum*, p. 26.

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- Will the proposed development impact on the amenity of the local or regional community?
  - Will the proposed development increase traffic in the immediate surrounds of the airport?
  - Will the proposed development likely create increased noise in the area?
  - Will the proposed development create areas of risk for individuals within, or adjacent to, the airport?
  - Will the proposed development likely cause significant concern by the local or regional community?<sup>43</sup>

2.44 The Explanatory Memorandum also states that administrative guidelines on what may constitute 'significant impact on the local or regional community' will be provided to relevant industry stakeholders.<sup>44</sup>

2.45 The committee received numerous submissions seeking clarification of the scope of these provisions.<sup>45</sup> For example, the City of Belmont applauds the intent of these provisions, but notes that there needs to be clear guidelines produced to define what a significant community impact is and how it is triggered. The council considers that the questions set out in the discussion paper are "too vague and open" to aid interpretation and expresses concern that unless the criteria are clarified, substantial problems will be encountered by both airport lessees and the general public in trying to apply this requirement.<sup>46</sup>

2.46 Qantas notes that major development plans are very costly and time consuming and that it is imperative that there is clarity around whether or not a major development plan is required. Qantas and Australian Pacific Airports Corporation both told the committee that there is a need for further consultation in relation to these provisions and in the formulation of guidelines regarding their application.<sup>47</sup>

### ***Requirement for major development plans for alterations to an airport runway***

2.47 The amendments to the requirements for major development plans in relation to alterations to runways were a source of some concern to a number of airport lessees. The committee notes that these concerns appear to stem from uncertainty regarding routine maintenance of runways. Airport lessees stressed the need for

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43 Airports Amendment Bill 2010, *Explanatory Memorandum*, p. 26.

44 Airports Amendment Bill 2010, *Explanatory Memorandum*, p. 26.

45 See for example: City of Perth, *Submission 12*, p. 1; Perth Airports Municipalities Group, *Submission 20*, p. 2. Qantas, *Submission 33*, p. 2; Australian Pacific Airports Corporation, *Committee Hansard*, p. 10; Sydney Airport Corporation Limited, *Submission 13*, p. 11.

46 City of Belmont, *Submission 4*, p. 8.

47 Qantas, *Submission 33*, p. 2; Mr Chris Woodruff, Chief Executive Officer, Australian Pacific Airports Corporation, *Committee Hansard*, p. 10.

clarification of the types of runway development activities that would require a major development plans.<sup>48</sup>

2.48 The Department told the committee that it was not the government's policy intention that routine runway maintenance would trigger the requirement for a MDP.<sup>49</sup> Mr Doherty told the committee:

We would certainly never envisage routine maintenance as triggering this. I do not see that as an alteration of a runway. The point that has been raised is that it is not in the longer term an alteration of runway, but maybe for the period that you are doing the work it may alter operations.<sup>50</sup>

2.49 The Department told the committee that the Explanatory Memorandum to the bill has been amended to clarify this point. The committee heard that the Explanatory Memorandum now reads:

The reference to altering a runway, including altering a runway in any way that changes flight paths ... is not intended to capture routine maintenance works, for example patch, repair of runways, taxiways, aprons, crack sealing, runway resurfacing, line marking ...<sup>51</sup>

2.50 The Department undertook to re-examine the provisions in the bill to determine if further clarification of the provisions themselves is necessary. Mr Doherty told the committee that:

... the explanatory memorandum, of course, cannot override the words of the bill itself, so we do still need to make sure that that provision is consistent.<sup>52</sup>

2.51 In subsequent correspondence to the committee, the Department has clarified that it has not been the government's intention to capture "routine maintenance works such as patch repair of runways, taxiways and aprons, crack sealing, runway resurfacing, line marking, jet blast protection and the repair, maintenance and upgrade of aviation navigation aids". As the committee notes earlier in this report, the

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48 See for example: Hobart International Airport, *Submission 10*, p. 2; Mr Chris Woodruff, Chief Executive Officer, Australian Pacific Airports Corporation, *Committee Hansard*, 3 November 2010, p. 17; Sydney Airport Corporation Limited, *Submission 13*, p. 12.

49 Mr John Doherty, Executive Director, Aviation and Airports, Department of Infrastructure and Transport, *Committee Hansard*, 3 November 2010, p. 35.

50 Mr John Doherty, Executive Director, Aviation and Airports, Department of Infrastructure and Transport, *Committee Hansard*, 3 November 2010, pp 35-36.

51 Ms Marlene Tucker, Director, Legislative Reforms Section, Airports Branch, Department of Infrastructure and Transport, *Committee Hansard*, 3 November 2010, p. 36.

52 Mr John Doherty, Executive Director, Aviation and Airports, Department of Infrastructure and Transport, *Committee Hansard*, 3 November 2010, p. 39.

Explanatory Memorandum has been amended to clarify this. However, the Department has advised that the intention is now to make this clear in the bill.<sup>53</sup>

2.52 The Department has also advised that consideration is also being given to the introduction of a materiality test to provide that only a runway that significantly changes flight paths or the patterns of levels of aircraft noise will require a major development plan. The Department states that this will ensure that essential runway maintenance works which may result in temporary closure of part of a runway are not captured. The Department states that such an approach would align with existing provisions in section 89 of the *Airports Act 1996*.<sup>54</sup>

2.53 The Department confirmed that the Minister, the Hon. Anthony Albanese MP, has given in-principle agreement to these proposed amendments.<sup>55</sup>

### ***Incompatible developments***

2.54 The bill inserts a new subdivision into the Act to deal with what are considered to be incompatible developments.

2.55 In 2009, the Airports Regulations 1997 were amended to provide that certain types of developments, which the government considers would normally be incompatible with the operation of an airport as an airport, would constitute 'major airport developments'. Such developments could only be carried out where they have been subject to a public consultation process and a major development plan is approved by the Minister under the Act.<sup>56</sup>

2.56 In the White Paper, the government indicated it would "reinforce this action by introducing legislation to set up a prima facie prohibition of such developments on federal airport sites".<sup>57</sup> Under subsection 71A (1) of the bill, an airport lessee company must identify any proposed incompatible development in the master plan. Subdivision B provides that an incompatible development is prohibited on leased federal airports, except in exceptional circumstances. If an airport-lessee company wants to prepare a draft major development plan in relation to an incompatible development, the company must first obtain the approval of the Minister.<sup>58</sup>

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53 Department of Infrastructure and Transport, Answer to question on notice, 15 November 2010, p. 1. (received 15 November 2010).

54 Department of Infrastructure and Transport, Answer to question on notice, 15 November 2010, p. 1. (received 15 November 2010).

55 Department of Infrastructure and Transport, Answer to question on notice, 15 November 2010, p. 1. (received 15 November 2010).

56 Australian Government, *Flight Path to the Future, National Aviation White Paper*, December 2009, p. 163.

57 Australian Government, *Flight Path to the Future, National Aviation White Paper*, December 2009, p. 163.

58 Airports Amendment Bill 2010, *Explanatory Memorandum*, p. 28.

2.57 A number of submitters expressed the view that there should be a prohibition on certain categories of non-aviation developments on airport land. In its submission the AMAC said:

Incompatible developments should be exactly that. Incompatible in this sense means that there is a conflict between the development activity and airport operations or that either or both will need to modify their behaviour to accommodate the other, often to the detriment of one or both parties.<sup>59</sup>

2.58 Other submitters told the committee that where there are exemptions from this prohibition, local council should be given an opportunity to comment on the developments.<sup>60</sup>

2.59 The committee notes that while there appears to be a general acknowledgment of the need for certain developments to be subject to greater scrutiny through a public consultation process and approval by the Minister, there is significant concern regarding the use of the term "incompatible" to describe such developments.

2.60 The committee heard that there is nothing inherently incompatible about any of the developments listed in sub section 71A (2) of the bill. The committee heard that the current drafting of the proposed amendments may deny airports the opportunity to have development proposals dealt with on their merits.<sup>61</sup>

2.61 Mr Skehill, Legal Adviser, AAA, told the committee:

We certainly accept that the Commonwealth has a very legitimate interest in ensuring that airport land can continue to operate into the future as an airport. Building warehouses all over airport land will at a point render the land unusable as an airport. The existing law deals with that by requiring that certain developments be subject to ministerial approval, and the minister can stop that happening. Equally, you could put aviation infrastructure in inappropriate places on airport land and be inconsistent. There is no reason why you would, but conceivably you could. There are clearly some things that would be incompatible with the operation of an airport, but they are not these things that are listed here in the definition of incompatible development. They might be things that for policy reasons a minister thinks would be best located off airport. We might disagree with that view but let that question be judged on its merits and not by tagging it with this inappropriate, misleading term 'incompatible'.<sup>62</sup>

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59 Australian Mayoral Aviation Council, *Submission 9*, p. 4.

60 Camden Council, *Submission 17*, p. 1; Australian Local Government Association, *Submission 18*, p. 3.

61 Australian Airports Association, *Submission 15*, p. 5.

62 Mr Stephen Skehill, Legal Adviser, Australian Airports Association, *Committee Hansard*, 3 November 2010, p. 6.

2.62 Mr John Doherty told the committee that the Minister is keen to send a clear message that the airports sites are primarily for aviation uses. He said:

There is certainly a range of uses which support aviation and are to be encouraged but there are a range of developments which would not normally be compatible with an airport site because of the attraction of traffic, of exposure of people to noise or of limiting the possible flexible use of the site into the future to maximise aviation operations.<sup>63</sup>

2.63 Mr Doherty explained that the provisions as currently drafted do not preclude the developments listed in proposed new section 71A of the bill. Mr Doherty said the bill sets a range of special procedures and clearly sets the expectation that the exceptional circumstances relating to each development proposal will need to be carefully justified.<sup>64</sup>

2.64 The committee also heard concerns about the impact of these provisions on currently approved proposals, including tertiary institutions on airport land. Queensland Airports Limited told the committee of its concerns regarding the impact of these provisions on current tertiary educational developments on airport land at Gold Coast Airport by Southern Cross University. The committee heard that Building A was completed and opened in early 2010 and that approval for Building B had been received in October 2009. Both developments are located at some distance from aviation related facilities and received approval after extensive community and industry consultation and the submission of major development plans to the Minister.<sup>65</sup>

2.65 Ms Elissa Keenan, General Manager Corporate Affairs, Queensland Airports Limited, told the committee that the White Paper had not referred to tertiary institutions but that the airport had since been advised that the term "incompatible development" would include a primary, secondary, tertiary or other such educational institution. Ms Keenan said:

... for us, the retrospective changes to the definition of what constitutes incompatible development are of concern, particularly when the Southern Cross University had planned to continue its expansion on our airport land.<sup>66</sup>

2.66 Other submitters also expressed concern regarding the lack of clarity regarding the types of developments which might be considered "incompatible". Mr Mark Willey, Executive Manager, Brisbane Airport Corporation (BAC) told the committee that BAC had recently been "subjected to an MDP process for a relatively

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63 *Committee Hansard*, 3 November 2010, p. 33.

64 *Committee Hansard*, 3 November 2010, p. 35.

65 Queensland Airports Limited, *Submission 16*, p. 2.

66 Ms Elissa Keenan, General Manager Corporate Affairs, Queensland Airports Limited, *Committee Hansard*, p.14.

minor fit-out works to develop a maritime simulator training facility in an existing building" within a precinct of Brisbane Airport specifically established for that type of use. He said:

BAC support the intent of the white paper policy to not place sensitive receptors such as primary or secondary schools in high-noise or high-risk zones adjacent runway-ins [sic] but contend that this training facility example was not a target of the policy intent.<sup>67</sup>

2.67 In correspondence to the committee, the Department clarified that an amendment to address concerns over the scope of what constitutes 'other educational institution' in proposed section 71A is under active consideration. The Department advised the committee that:

Whilst clause 41 of the EM seeks to clarify that the intention is not to capture facilities for the purpose of providing training to staff members employed by organisations on the airport, an amendment is being developed to make this clear in the Bill.<sup>68</sup>

2.68 The Department advised that the Minister has given his in-principle agreement to such an amendment.<sup>69</sup>

2.69 Mr Willey suggested to the committee that consideration should be given to the use of the terminology "assessable development" to convey that such activities will be subjected to further assessment, such as a major development plan.<sup>70</sup> The committee notes that there appears to be some support for this proposal.<sup>71</sup> The City of Belmont told the committee that the use of the term "incompatible" is questionable and that the current provisions only serve to increase the administrative burden for airports and exacerbate the belief in the wider community that airports and communities are incompatible. Canberra Airport also submitted that the scope of the term "incompatible developments" risks inviting much greater stakeholder opposition to such developments.<sup>72</sup> The City of Belmont suggested that the blanket prohibition on such developments should be removed and replaced with a requirement for a major development plan.<sup>73</sup>

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67 *Committee Hansard*, 3 November 2010, p. 12.

68 Department of Infrastructure and Transport, Answer to question on notice, 15 November 2010, p. 1. (received 15 November 2010).

69 Department of Infrastructure and Transport, Answer to question on notice, 15 November 2010, p. 1. (received 15 November 2010).

70 *Committee Hansard*, 3 November 2010, p. 12.

71 Tourism and Transport Forum, *Submission 32*, p. 1.

72 Canberra Airport, *Submission 8*.

73 City of Belmont, *Submission 4*, p. 4. See also Perth Airports Municipalities Group, *Submission 20*, p. 2.

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***Relaxation of major development plan requirements in certain circumstances***

2.70 As noted in Chapter 1, subsection 89(5) of the bill is intended to enable an airport-lessee company to request the Minister to waive the requirement for a major development plan where the Minister is satisfied that the development will not:

- Increase the operating capacity of the airport; or
- Change the flight paths; or
- Change the patterns or levels of aircraft noise; or
- Unduly increase the noise heard by, or unduly cause a nuisance to, the community adjacent to the airport.

2.71 The Explanatory Memorandum clarifies that this exemption can be sought for the following developments specified in subsection 89(5):

- Constructing a new building wholly or principally for use as a passenger terminal where the building's gross floor space is greater than 500 square metres;
- Extending a building that is wholly or principally for use as a passenger terminal where the extension increases the building's gross floor space by more than 10%;
- Constructing a new taxiway, where: (i) the construction significantly increases the capacity of the airport to handle movements of passengers, freight or aircraft; and (ii) the cost of construction exceeds \$20 million or such higher amount as is prescribed;
- Extending a taxiway, where: (i) the extension significantly increases the capacity of the airport to handle movements of passengers, freight or aircraft; and (ii) the cost of construction exceeds \$20 million or such higher amount as is prescribed.

2.72 A number of submitters told the committee that, while they supported the proposal to reduce the circumstances in which a master development plan would be required, in reality, many of the triggers would continue to result in simple, routine developments being categorised as major developments.<sup>74</sup>

2.73 In correspondence to the committee, the Department advised that it has given consideration to the comments made by representatives of the airports that the inclusion of a requirement that a proposed development would not "increase the operating capacity of the airport" makes provision 89(5) unworkable. The Department told the committee that:

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74 Tourism and Transport Forum, *Submission 32*, p. 3.

The Minister has agreed in-principle to an amendment to the Bill removing this requirement to ensure the practical operation of this provision.<sup>75</sup>

### **Non-legislative changes**

2.74 In his second reading speech, the Minister stated that the changes to the Act proposed in this bill are supported by other non-legislative reforms contained in the government's White Paper.<sup>76</sup>

2.75 These include the requirement for all leased federal airports to establish and lead Community Aviation Consultation Groups, to give local residents and businesses an opportunity to provide input to airport planning and operations, and Planning Coordination Forums, to improve planning coordination between major airports and all levels of government.

#### ***Community Aviation Consultation Groups***

2.76 Community Aviation Consultation Groups are consultative only and are not decision making bodies. The primary purpose of the groups is to ensure that community views are effectively heard and to give members the opportunity to obtain information. The White Paper states that:

The work of an ongoing group of community representatives is likely to support an informed dialogue, which is not always possible in one off open forums.<sup>77</sup>

2.77 The White Paper states that, in recognition of the variety of community and operational contexts that different airports operate within, each lessee company will have the flexibility to define the scope and membership of the Community Aviation Consultation Groups as long as certain core prescribed conditions are met:

- The chair is independent;
- A record of the outcomes of key discussions is published;
- A report on the group's work is to be reviewed as part of the annual lease review; and
- The activity is to be funded by airports.

2.78 The Western Australian Department of Local Government considers that the bill does provide for increased consultation and joint planning on issues potentially affecting local government areas adjacent to airports. In its submission to the Green

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75 Department of Infrastructure and Transport, Answer to question on notice, 15 November 2010, p. 2. (received 15 November 2010).

76 The Hon Mr Anthony Albanese MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 30 September 2010, pp 262–263.

77 Australian Government, *Flight Path to the Future, National Aviation White Paper*, December 2009, p. 163.

Paper, the Western Australian Government had proposed that a written bilateral agreement be developed regarding how consultation and joint planning activity would be progressed. In its submission to this inquiry, the Department of Local Government stated that the measures in the bill will allow local governments and communities to make comment on and influence significant future developments.<sup>78</sup>

2.79 In its submission, AMAC emphasised that effective, meaningful and respectful consultation involving all tiers of government and effected communities remains essential.<sup>79</sup> AMAC told the committee that the "structure, composition, agenda and reporting requirements of the proposed consultative and coordinating committees will be critical in their success as will the mechanisms ensuring their ongoing relevance".<sup>80</sup> AMAC considers that the scope of these mechanisms should be spelt out either in legislation or regulations.<sup>81</sup> The committee notes that this position is supported by a number of submitters.<sup>82</sup> The committee also notes that other submitters support legislation as a long term option in the event that the non-legislative approach fails.<sup>83</sup>

2.80 Mr John Doherty told the committee that if necessary, legislation could be introduced. He told the committee:

... we see this as being for the airport to work out what is going to work best with its community, building on the consultation arrangements that most airports already have. As I mentioned earlier on, there is the possibility of backing that with legislation, should it prove necessary. But we would rather provide the possibility at this stage for airports to adopt what works best.<sup>84</sup>

2.81 Mr Doherty advised the committee that the Department is proposing to recommend that the Minister issue guidelines relating to the establishment of the consultation groups. Mr Doherty told the committee that the guidelines would set some parameters, including the importance of having an independent chair.<sup>85</sup>

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78 Government of Western Australia, Department of Local Government, *Submission 26*, p. 2.

79 *Submission 9*, p. 3.

80 Mr John Patterson, Project Manager, Australian Mayoral Aviation Council, *Committee Hansard*, p. 22.

81 Australian Mayoral Aviation Council, *Submission 9*, p. 3.

82 See for example South West Group, *Submission 6*, p. 2; Camden Council, *Submission 17*, p. 1.

83 City of Belmont, *Submission 4*, p. 2.

84 Mr John Doherty, Executive Director, Aviation and Airports, Department of Infrastructure and Transport, *Committee Hansard*, 3 November 2010, p. 32.

85 Mr John Doherty, Executive Director, Aviation and Airports, Department of Infrastructure and Transport, *Committee Hansard*, 3 November 2010, p. 38.

### ***Planning Coordination Forums***

2.82 The White Paper recognises the importance of ongoing strategic engagement between airports, the Commonwealth, and states and territories. The White Paper highlighted the desirability of regular engagement continuing beyond the development of an airport's master plan to enable an ongoing dialogue and working relationship to develop.<sup>86</sup>

2.83 The White Paper states that each main capital city passenger airport will be required to establish a Planning Coordination Forum. The White Paper states that the Forums will build on existing mechanisms and are intended to:

... act as a vehicle to lead constructive ongoing dialogue on matters such as Master Plans, the airport's program for proposed on-airport developments, regional planning initiatives, off-airport development approvals, and significant ground transport developments that could affect the airport and its connections.

2.84 The White Paper also states that, as is the case with the Community Aviation Consultation Groups, there is currently no intention to set prescriptive requirements for the Forums as the preference is to allow flexibility for arrangements to be tailored to the particular circumstances of the parties involved.<sup>87</sup>

2.85 However, the committee notes that some submitters appear sceptical regarding the likelihood of an ongoing dialogue or working relationship developing without some form of legislative requirement. Bankstown City Council told the committee:

While the provision in [71(2)(ga) ] for a ground transport plan is supported, mere requirements in 71(2)(h)(iv) for detailing "arrangements for working with the State or local authorities ..." is likely to achieve very little or nothing, without any formal mechanism in place to ensure that this will occur, once the master plan is approved and implemented.<sup>88</sup>

2.86 Bankstown City Council favours a mandatory requirement for airport lessees to "meaningfully and effectively" use the input received as a result of working with state or local authorities and for the outcome of such consultation to be included in the master plan.<sup>89</sup>

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86 Australian Government, *Flight Path to the Future, National Aviation Policy White Paper, December 2009*, p. 158.

87 Australian Government, *Flight Path to the Future, National Aviation Policy White Paper, December 2009*, p. 158.

88 Bankstown City Council, *Submission 27*, p. 2.

89 Bankstown City Council, *Submission 27*, p. 2.

2.87 Submissions from other local governments indicated that local governments would like formal provision to be made for local governments to comment on any proposed development within airport land.<sup>90</sup>

## Other issues

### *Airport contributions to infrastructure costs*

2.88 A significant issue for many submitters is the extent to which airports contribute to the cost of infrastructure, particularly infrastructure for which the airport is a key beneficiary.

2.89 The Australian Local Government Association (ALGA) told the committee that while it is common practice for councils to seek developer contributions toward the upgrading of infrastructure associated with major facilities, there is no requirement for developers on airport land to make such contributions.<sup>91</sup> Mr Adrian Beresford-Wylie, Chief Executive, ALGA, told the committee that this anomaly should be addressed through consideration of the scope for charging commercial developers of airport land developer contributions.<sup>92</sup> He told the committee:

It seems reasonable to us that there ought to be a mechanism in place to ensure that some of the burdens that are placed on surrounding communities to support aviation developments that occur on those pieces of land, that are to the benefit of the airport owners but in a sense have also been realised as a benefit to the Commonwealth as a result of the lease payments it has received for those airports, are borne by those who are enjoying those benefits. Whether that is the airport owner or indeed the Commonwealth which in some way provides for the gap that has developed between the demands on communities to provide for infrastructure and their ability to recoup the cost of the infrastructure is certainly a point for debate.<sup>93</sup>

2.90 This sentiment was echoed by a number of submitters. Both the Western Australian Department of Planning and the Western Australian Department of Local Government expressed the view that airport lessee companies should contribute to related off-airport developments of which they are key benefactors.<sup>94</sup> The Western Australian Department of Planning submitted that:

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90 See for example: City of Townsville, *Submission 3*, p. 1; South West Group, *Submission 6*, p. 2.

91 Australian Local Government Association, *Submission 18*, p. 3.

92 Mr Adrian Beresford-Wylie, Chief Executive, Australian Local Government Association, *Committee Hansard*, 3 November 2010, p. 19.

93 Mr Adrian Beresford-Wylie, Chief Executive, Australian Local Government Association, *Committee Hansard*, 3 November 2010, p. 20.

94 Government of Western Australia, Department of Planning, *Submission 25*, Government of Western Australia, Department of Local Government, *Submission 26*.

... airport lessee companies and/or the Federal Government should take responsibility for capital and re-current funding agreements for private passenger, public transport and the freight demands they generate.<sup>95</sup>

2.91 Mr John Doherty, Executive Director, Aviation and Airports, Department of Infrastructure and Transport, confirmed that "it is a standard provision in airport leases to require rates equivalent payments and that there have been agreements reached with councils". Mr Doherty told the committee that while there had been some longstanding disputes he was not aware of any remaining disputes of this nature.<sup>96</sup>

2.92 Mr Chris Woodruff, Chief Executive, Australian Pacific Airports Corporation, expressed the view that as the benefits of aviation and tourism are widely shared, he did not believe that airport lessees should take the place of the state in providing access to and from an airport.<sup>97</sup>

### ***Review of the ANEF process***

2.93 The committee received evidence regarding the recommendation of the former Rural and Regional Affairs and Transport References Committee in its inquiry into the effectiveness of Airservices Australia's management of aircraft noise that:

... the government revise the current process through which ANEFs are developed to establish an independent body charged with the coordination of the process and the review of the accuracy and reasonableness of the data upon which the forecasts are made.<sup>98</sup>

2.94 Urban Taskforce Australia expressed concern that amendments to address this recommendation have not been included in this bill. Mr Aaron Gadiel, Chief Executive Officer, Urban Task Force Australia, expressed support for the former committee's proposal that an independent authority be appointed to test the underlying assumptions that are made by an airport in preparing the ANEF contours. He said:

I am all for the airport operator preparing the ANEF contours initially and explaining their assumptions. I am certainly supportive of the idea that they need to be technically checked off in the way that Airservices Australia do. But there is this gap that is unfilled and the legislation needs to fill it because, through litigation by participants in our industry, we have discovered that Airservices Australia are under no obligation whatsoever to consider these commercial assumptions or accord any procedural fairness

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95 Government of Western Australia, Department of Planning, *Submission 25*, p. 1.

96 Mr John Doherty, Department of Infrastructure and Transport, *Committee Hansard*, 3 November 2010, p. 34.

97 *Committee Hansard*, 3 November 2010, p. 3.

98 Rural and Regional Affairs and Transport References Committee, *The effectiveness of Airservices Australia's management of aircraft noise, Inquiry Report*, July 2010, p. viii.

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for any member of the community who takes issue with the commercial assumptions.<sup>99</sup>

2.95 Mr Gadiel told the committee that Urban Taskforce Australia considers that the legislative reforms announced in the White Paper and given effect in this bill "dovetail very neatly" with the recommendations of the former committee. He drew the committee's attention to statements in the White Paper that government will "improve the technical processes and independence associated with assessment and scrutiny of ANEFs" and that there would be better planning integration which "will be further supported through strengthening the Minister's access to expert ... advice in the assessment of ... Master Plans ...". Mr Gadiel noted that despite these statements:

The bill does not introduce a mechanism for the establishment of a new independent body to ensure that more robust process for the endorsement of ANEF contours, and it should do so.<sup>100</sup>

2.96 Mr Doherty told the committee that the Department is very conscious of the committee recommendation regarding the ANEF process. He advised the committee that a working group of Commonwealth and state officials is considering a range of safeguarding issues around trying to better integrate the planning for areas surrounding airports. He said:

One of the issues we are looking at in that group is the suite of noise metrics and I thought that in the evidence this morning it was quite well stated that the ANEF is an imperfect tool.

...

So we are looking at the possibility of additional metrics or improving the system and we would then look at the processes relating to putting those in place.

2.97 AMAC is supportive of the ANEF metric being partnered with other metrics to provide a clearer understanding of the impacts of aircraft noise for the purposes of development on and adjacent to airports. Mr John Patterson, Project Manager, AMAC, told the committee that AMAC has been a long-term critic of ANEF as a standalone metric in assessing noise impacts. He also agreed that by simply validating the data provided in ANEF forecasts, Airservices Australia is left open to criticism that there is no independent review of the process.<sup>101</sup> Mr Patterson expressed the view that as the Minister for Infrastructure and Transport is responsible for approving the master plan, there should be resources to verify the assumptions in the plan within the Minister's department.<sup>102</sup>

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99 Rural Affairs and Transport Legislation Committee, *Committee Hansard*, pp. 2-3.

100 Mr Aaron Gadiel, Chief Executive, Urban Taskforce Australia, *Committee Hansard*, pp. 1-2.

101 Rural Affairs and Transport Committee, *Committee Hansard*, p. 24.

102 Rural Affairs and Transport Committee, *Committee Hansard*, p. 25.

2.98 Mr Doherty told the committee that this is a contested issue as there is a significant amount of pressure around the country in continuing to develop in areas which have a degree of aircraft noise. He said that while the Working Group is trying to move its work forward, they have not yet reached a point where amendments to legislation could be drafted.<sup>103</sup>

## **Conclusion**

2.99 The committee recognises that the planning regime for developments on airport land has been in need of significant reform for some time. The public has a right to better information and consultation with regard to airport development, particularly the impact of such developments on neighbouring communities. This has been sadly lacking in the past and, as a result, developments on and around airport land have frequently been the focus of significant contention and acrimony.

2.100 At the same time airports are essential community infrastructure and contribute significantly to the economies of their surrounding local community, state and to the nation. It is essential that planning in and around airports is a cooperative exercise between all tiers of government so as not to compromise that contribution in the long term.

2.101 The committee notes that there is a broad level of support for many of the changes to be implemented by this bill. At the same time, the committee also notes the concerns regarding, on the one hand the potential regulatory burden imposed by these amendments and on the other hand concerns that the bill affords too much flexibility and discretion. The committee recognises the intent of the bill is to balance the needs of all parties to ensure effective community consultation, the integration of airport planning with local, state and territory planning regimes and ongoing investment in aviation infrastructure. The committee considers that the bill appears to achieve this balance.

## ***Consultative mechanisms***

2.102 The committee welcomes the provision for greater information regarding airport planning and developments and the establishment of Community Aviation Consultation Groups and Planning Coordination Forums. The committee observed during its previous inquiry into management of aircraft noise the benefits to all parties when changes on airport land are adequately communicated to the communities who will be impacted by them.

2.103 The committee notes the concerns raised during this inquiry regarding the need for consultative mechanisms to be mandated in the legislation. The committee also notes that, in the event that the government's expectations regarding consultation are not met, it could move to prescribe consultation measures in the future.

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103 Rural Affairs and Transport Committee, *Committee Hansard*, p. 37.

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### *Expanded master plan requirements*

2.104 The committee notes the broad support for the requirements for greater detail and analysis in airport master plans, particularly the requirements for the inclusion of a ground transport plan, the identification of proposed non-aeronautical developments and the need to align developments on airport land with state, territory and local government planning laws. However, the committee notes from the evidence received that there is a need for clarification of the level of detail and analysis required.

2.105 The committee considers that clear guidelines are needed to enunciate the expectations placed on airport lessees and to safeguard the interests of all parties to the airport planning process. The committee believes that such clarity is essential to ensure that the cost burden of the expanded requirements is realistic.

### **Recommendation 1**

**2.106 The committee recommends that the Department of Infrastructure and Transport develop guidelines in consultation with key stakeholders to clarify the level of detail and analysis to be included in airport master plans in order to satisfy the requirements set out in paragraph 71(2)(h) and 71(3)(h) of the Airports Amendment Bill 2010.**

### *Incompatible developments*

2.107 The committee concurs that given that the primary purpose of an airport is the provision of aeronautical services, there are a range of activities that may potentially be at odds with the long-term operation of an airport. The committee supports the intention of the bill that such developments should only be permitted in exceptional circumstances and should be subject to a greater level of scrutiny if they are to proceed.

2.108 However, the committee acknowledges the concerns raised by individual airport operators and by the AAA with regard to these provisions as currently drafted. The committee accepts the argument that proposals for the kinds of projects identified in section 71A should be considered on their individual merit and that this may be compromised by the use of the term "incompatible". The committee notes that there is nothing inherently incompatible about the developments listed and considers that it is really a question of considering the particular circumstances of each such proposal on a case by case basis. In this context the committee is mindful of the concerns raised regarding the Southern Cross University development at the Gold Coast Airport.

2.109 The committee is also persuaded that greater clarity is required regarding the range of developments caught by these amendments. The committee also considers that the introduction of a prima facie prohibition on such projects, coupled with a mechanism for waiving the prohibition, does appear to send a confused message to the community. As a number of submitters have observed, the provisions as currently drafted risk placing consultation around such developments on an unnecessarily adversarial footing.

2.110 The committee welcomes the Minister's in-principle agreement to an amendment to clarify the scope of what constitutes 'other educational institution' in proposed section 71A of the bill.

### ***Changes to major development plan requirements***

2.111 The committee recognises the government's intention to balance the expanded requirements of the master plan process with amendments to streamline development applications in certain circumstances. While the committee notes there is support for the intent of these amendments, further consideration needs to be given to their practical implementation. The committee acknowledges that uncertainty around the interpretation of the provisions as currently drafted has the potential to flow-on to investment confidence. This, together with the costs associated with undertaking major development plans in circumstances where they are not warranted, will inevitably have some impact on the regulatory costs faced by airport lessees.

2.112 The committee therefore welcomes the Minister's in-principle agreement to amend Item 40 of the bill in relation to the requirement for alterations to a runway to undergo a major development plan to clarify that routine maintenance works are not captured by this provision. The committee also welcomes the Department's advice that consideration is being given to the introduction of a materiality test to provide that only a runway alteration that significantly changes flight paths or the patterns or levels of aircraft noise will require a major development plan.

2.113 The committee is also pleased to note the Minister's in-principle agreement to an amendment to the bill removing the requirement in new section 89(5) that a proposed development would not 'increase the operating capacity of the airport'.

### ***Consultation on draft bill***

2.114 The committee recognises that the policy positions which underpin these legislative amendments were developed after lengthy consultation during the National Aviation Policy Green and White Paper process. The committee therefore understands the view that further consultation on an exposure draft was not warranted. However, the committee also agrees that many of the concerns raised during this inquiry in relation to the need for clarification and finetuning of the bill may have been avoided had there been consultation on an exposure draft. The committee welcomes the Minister's in-principle agreement to the drafting of a small number of amendments to the bill to clarify its operation and to avoid unintended consequences. However, the committee considers that the preferable situation would have been for these drafting inconsistencies to have been identified and clarified in consultation with key stakeholders prior to the bill's introduction into the parliament.

### **Recommendation 2**

**2.115 The committee recommends that, subject to the amendments foreshadowed by the Department of Infrastructure and Transport in correspondence to the committee dated 15 November 2010, the bill be passed.**

**Senator Glenn Sterle**  
**Chair**

