

DEPARTMENT OF THE SENATE
PAPER NO. 3351
DATE 3 MAY 1966
PRESENTED
<i>J.R. Odgers</i>
Clk of the Senate

1964-65-66

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

TWENTY-FIRST REPORT

from the

STANDING COMMITTEE

on

REGULATIONS AND ORDINANCES

(Being the Third Report of the 1964-65-66 Session,
and the Twenty-first Report since the formation
of the Committee.)

PERSONNEL OF COMMITTEE

Chairman:

Senator I.A.C. Wood

Members:

Senator R. Bishop
Senator S.H. Cohen, Q.C.
Senator G. S. Davidson
Senator A. G. E. Lawrie
Senator D. R. Willesee
Senator R. C. Wright

SENATE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

TWENTY-FIRST REPORT OF THE COMMITTEE

The Senate Standing Committee on Regulations and Ordinances has the honour to present its Twenty-first Report to the Senate.

Statutory Rules 1966 No. 6

Air Navigation (Buildings Control) Regulations

2. The Air Navigation Act 1920-1963 provides -

"26.-(2.) Without limiting the generality of the preceding provisions of this section, the regulations that may be under the powers conferred by those provisions include regulations for or in relation to -

.....

(g) the prohibition of the construction of buildings or other structures, the restriction of the dimensions of buildings or other structures, and the removal in whole or in part or the marking of buildings, other structures, trees or other natural obstacles, that constitute or may constitute obstructions, hazards or potential hazards to aircraft flying in the vicinity of an aerodrome, and such other measures as are necessary to ensure the safety of aircraft using an aerodrome or flying in the vicinity of an aerodrome;"

3. Regulation 3(1.) of the Air Navigation (Buildings Control) Regulations provides -

"A person shall not, except in accordance with an approval given under these Regulations, construct within an area to which this regulation applies a building or other structure.

Penalty : Five hundred pounds or imprisonment for six months."

Regulation 4(1.) provides -

"A person shall not, except in accordance with an approval given under these Regulations, construct within an area to which this regulation applies a building or other structure having a greater height above the ground than twenty-five feet.

Penalty : Five hundred pounds or imprisonment for six months."

Regulation 5(1.) provides -

"A person shall not, except in accordance with an approval given under these Regulations, construct within an area to which this Regulation applies a building or other structure having a greater height above the ground than one hundred and fifty feet.

Penalty : Five hundred pounds or imprisonment for six months."

Regulation 7 deals with the grant or refusal of an application to construct a building of other structure, the construction of which is prohibited under regulation 3, 4 or 5, and provides in sub-regulation (4.) -

"(4.) The Minister shall not -

- (a) refuse an application for approval;
- (b) grant an application for approval subject to conditions; or
- (c) impose conditions with respect to the construction of a building or other structure or with respect to the marking of a building or other structure,

unless he is satisfied that the building or other structure, if erected, or the building or other structure if erected otherwise than in accordance with the conditions, as the case may be, will or may constitute an obstruction, hazard or potential hazard to aircraft flying in the vicinity of the aerodrome situated within the area in which it is proposed to construct the building or other structure."

Regulation 11 provides that -

"11. Where, under these Regulations, a building, other structure or object has been removed from any land or has been marked, any person who suffers loss or damage, or incurs expense, in or as a direct result of the removal or marking, is entitled to a compensation from the Commonwealth."

4. The Committee, in its examination of these Regulations, is concerned -

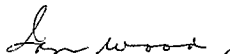
- (a) that they are in accordance with the Statute;
- (b) that they do not trespass unduly on personal rights and liberties; and
- (c) that they do not unduly make the rights and liberties of citizens dependent upon administrative and not upon judicial decisions.

For the reasons set out below, the Committee is of the opinion that these Regulations and in particular regulations 3, 7 and 11 do offend against these principles.

5. Whereas the Minister in the exercise of his powers under regulations 4 and 5 cannot, by virtue of the provisions of those regulations themselves and of regulation 7, prohibit absolutely the construction of a building or other structure, the Minister's powers under regulation 3 are limited only by the general provisions of regulation 7.

However, the limitation on the Minister's powers provided by regulation 7 is one that itself ultimately depends upon the Minister's own discretion. Therefore the Committee considers that regulation 7 provides insufficient safeguards to persons to whom regulation 3 applies, that is to say, persons who are not permitted to construct a building at all except with approval.

6. (a) The prohibition in the area referred to in regulation 3 affects buildings irrespective of height.
- (b) The prohibition in the area referred to in regulation 3 is not related to obstructions, hazards or potential hazards as stipulated by the Act.
- (c) The official approval is an administrative decision on each individual application and not governed by a rule of law.
- (d) No compensation is provided for the owner who is prevented from building or altering his building. Compensation is provided only for the owner whose building is ordered to be removed or marked.
7. The Committee recommends that the Regulations be re-framed in accordance with the above principles.



IAN WOOD
Chairman

Regulations and Ordinances Committee Room,
Tuesday, 3rd May, 1966.

REGULATIONS AND ORDINANCES COMMITTEE.

MINUTES OF EVIDENCE.

(Taken at Canberra.)

THURSDAY, 28th APRIL, 1966.

Present:

Senator Wood (Chairman)

Senator Bishop.	Senator Lawrie.
Senator Cohen.	Senator Willesee.
Senator Davidson.	Senator Wright.

MR. BYRON LEWIS, First Assistant Director General, Management Services, Department of Civil Aviation,
MR. NOEL WINSTON HAMILTON HILL, Chief Airport Engineer, Planning and Investigation, Department of Civil Aviation,
FREDERICK FRENCH WALSH, Business Representative, Property Branch, Department of Civil Aviation,
MR. NOEL THOMAS SEXTON, Senior Assistant Parliamentary Draftsman, and
MR. W.R. EDWARDS, Assistant Crown Solicitor (Civil Aviation), were called and examined.

Chairman.- Gentlemen, I welcome you to the deliberations of this Committee. I point out that the Committee is investigating Statutory Rules 1966 No. 6 being regulations under the "Air Navigation Act 1920-1963". These regulations deal with the control of the height of buildings near Commonwealth aerodromes. The committee has given consideration to this regulation. At our previous meeting, Mr. Lewis, Mr. Hill and Mr. Walsh from the Department of Civil Aviation appeared before us. After an investigation at that inquiry, it was felt that it might be advisable for these gentlemen to have legal advisers with them. So, we now have two representatives from the Attorney-General's Department, Mr. Sexton and Mr. Edwards, who along with the representatives from the Department of Civil Aviation, will answer our inquiries. Questions have already been asked of the representatives of the Civil Aviation Department. Our investigation has reached the stage now where we feel some further knowledge might be required from the legal point of view. The Committee is concerned with the rights and privileges of citizens. In this regard, our attention has been drawn to the possibility that a person might buy land and have no notification at all that the land he is buying is land to which these restrictions apply. If the Commonwealth wishes to have provisions

of this sort, it should provide for a notation of restrictions such as those contained in sections 3, 4 and 5 of the Air Navigation (Buildings Control) Regulations. This notation should be annexed to every certificate of title in the plans. This has been suggested. It is felt that these regulations could be a trap for people spending money on the purchase of land which will be useless to that person because of the provisions of section 3 of the regulations. I do not know where we will start our inquiry today. Mr. Lewis was handling the matter for the Department of Civil Aviation. At our last meeting, various questions were asked as to the rights of individuals and as to what way the Department will advise people that they are not able to build on certain land because of these restrictions. Apparently, the Department is relying on people having knowledge of these restrictions. The Department hopes it will be able to work through local government in this way, by advising local government of these restrictions. But some of the members of this Committee feel that there is an undue restriction and also sufficient safeguards are not provided for citizens who may be led into the purchase of land to which these restrictions apply. With those remarks, I throw the matter open for questioning.

Senator Davidson.

Mr. Lewis, you said at our last meeting that all interested parties would be circulated? --- (Mr. Lewis) Yes.

Can you take that a bit further? How will all interested parties be circulated? Is this a process that is going on all the time or is it something that is just beginning? --- No. I think that it is fair to say that this is going on all the time. I think we can extend it a good deal further. By that I mean that we rely pretty heavily on the councils which adjoin our airports. They know of our requirements under old regulation 92. I should like to mention also at this stage that I do not know of any person who has really in any way been defrauded or been trapped. I think that was a word used earlier today. I do not

know of any such case. We have given this a good deal of consideration with relation to the old regulation. With respect to circulation under the new regulation, we will circulate the registrars of titles in the various states and also bring this to the attention of town planning authorities, councils and the like. We think that, in point of fact, these Statutory Rules and the schedules attached to them are much more clear than the old regulation 92 was. It is almost impossible for the average layman to understand old regulation 92, whereas under this new regulation a person knows precisely whether he is affected by reference to readily recognisable natural features. But we have taken the Committee's point on this matter. Of our own volition, we were going further. I think we can go further under the new regulation. We will circulate the registrars of titles in the various states which, to my knowledge, we have not done previously. We will do this under the new Statutory Rules.

Senator Wright.

What do you say is the radius of the area from Sydney (Kingsford-Smith) Airport to which section 3 of those regulations applies in respect of plan No.1? --- I think it would go approximately 25,000 feet.

That is 5 miles? --- Yes.

I ask you then: What is the justification for your view that under section 11 the compensation payable for buildings removed remains but no provision is made for compensation for the prohibition of the erection of buildings?--- We are continuing in the same way as previously. We believe that if a person is out to this area - I take it, Senator, that this is related to the five mile radius?

You have just told me that under section 3 of these Regulations you prohibit buildings within a five mile radius of Sydney Airport? --- That is not so. I think that we are getting confused on the distance. We are not out five miles on that airport.

I asked you what was the area to which section 3 of the Regulations was applicable under plan 1 as shown in the Fourth Schedule? --- I think that we are out to 1,500 feet for section 3.

That is approximately a third to a quarter of a mile? --- Yes. We are looking at page 8 of the schedule?

Yes. That is an area of some importance? --- That is right.

You prohibit a building there entirely even if it is a dog kennel? --- No, only subject to the approval.

Quite. But a man has to apply to you to get approval for a structure of any description in that area? --- That is right.

Surely t'at power is too wide. It should be limited to a structure that is above a certain height, should it not? --- Well, the problem is that once you get onto heights, you become involved in the contours of the area to the north of that airport. You get a difficult exercise in granting approvals. We felt that it was far more exact to have those applications coming in so that we could precisely control this matter in the interests of safety, I might add.

The mere existence of section 3 alongside section 4 of these Regulations means that you will prohibit buildings having a greater height above the ground than 25 feet? --- It could do.

That is the purpose of it? --- Might I take your point? Do you mean to absolutely prohibit or to possibly prohibit?

Not absolutely, but conditionally, in accordance with approval? --- That is right, yes.

Senator Cohen.

What Senator Wright means is that you could prohibit the erection of a structure 3 feet high or 5 feet high? -----

Senator Bishop.

A poultry shed? --- In theory we could.

Senator Cohen.

The provision is there to do that? --- Whether we would do it is another question.

Senator Wright.

Our province is to find out whether or not these Regulations unduly interfere with private rights. Now, your public purpose would be well protected if this restriction was limited to some height? --- This is a technical question. My own private personal opinion is yes. I think it would be something greater than nothing and less than 25 feet. (Mr. Hill) The general requirement for this type of restriction is to provide for an incline plan, which is inclined upwards from the boundary of the airport. Within this area delineated by cross hatching in relation to Sydney Airport, in general terms nothing can be built immediately adjacent to the boundary and in direct proportion heights would rise to 25 feet from the boundary to the outside section of that area? -

You have not made your provision in those terms? --- It is very difficult to put it into the Regulations.

As to height? --- Yes. You cannot define the areas in a plan of this nature.

Could you not say that in this area no building shall be erected above a height that will exceed a line drawn from ground level to 25 feet on the boundary of this area? --- This is oversimplifying the situation, I believe. In addition to this incline plan, we have what we call the transition surfaces which go out from this plan at right angles to it. It is quite a complicated issue. If I might, I will show you a typical drawing of this sort of thing. We feel that the simplification as you suggest would restrict development in fact beyond a point where we need to. I refer your attention to the area shown on this document which is cross hatched. In this area on the plan you could provide for a height of 10 feet. A little further over, because of the transitional surface, you could have buildings of 25 feet to 30 feet.

Senator Willesee.

That marked area is a valley? --- Yes.

Senator Bishop.

What actually do you call a transition surface?---

Perhaps I could illustrate this by showing you the drawing.

It sets out undulating areas and that sort of thing? --- Yes, that is the sort of thing we are trying to bring out to you.

Senator Wright.

That is the difference in height above sea level. Would the regulation if it was in that form give you the necessary protection? --- Yes, it would. But I believe that it would be so complicated in wording that no-one would ever understand it.

Surely, to provide for that, you would say that buildings should not exceed in height a line commencing at ground level on the perimeter of the aerodrome, and to a point 25 feet above ground level on the external boundary without approval? --- But this does not apply to the whole of the cross hachuring in the area in those terms. Part of this area is in the transition surface definition and we would finish up with odd shaped areas as cross hachured areas which were not related to natural boundaries. They would have to be on the metes and bounds system. A person owning land in an area so defined would not be able to determine whether he was involved with the restrictions or not.

But he would come to you. You would explain it. The Department would give approval in all those cases. Now you prohibit everything except with approval? --- That is correct.

I do not want to stay on that point. The other question I want to ask is this: Why have you recognised the right for compensation for the removal of a building in that area or in any other area when you do not recognise the right to give compensation to a man who is prevented from the use of his land by your restrictions? --- (Mr. Lewis) Obviously, Senator, we are coming to a different question. As we see that point, the man is already there. We would be pulling down something he has had. In the other case, the person owning the land ^{has} ~~is~~ not ^{a house} there. We are not changing his enjoyment of the land he has.

Senator Bishop.

Yes, you are. He cannot build on that land? --- First, he has had the land. He has enjoyed that land.

I am interested in the case of, shall we say, a young fellow who buys a block of land in the area around Adelaide Airport. I know this area pretty well. There are homes in the area. I have had experience of cases similar to the one I shall put forward in relation to council changes due to development. This young fellow holds a title to the land near the Adelaide Airport. His title has not been marked. The local council has not told him that the land is subject to these restrictions. He wishes to build a double-storeyed building, shall we say, just outside the boundary of the etched area on plan No.7. You say he is not entitled or has no right to compensation at all. You say you cannot do it? --- What I was saying is that I know of no person who has bought to build in those areas whom we have stopped from building. That is what I am saying.

That does not say that there are none? -----

Senator Lawrie.

That does not say that you will not stop them or cannot stop them? -----

Senator Willesee.

Your answer does not say that there are no such cases either? --- With respect, I would point out to you that we have had buildings around aerodromes for a long while. People building around airports is not new.

Senator Bishop.

Let us take another question. Near the Adelaide Airport housing trust homes have been built. When your plan was prepared did you take the situation as it was and allow for it? Did you accept the situation and say: "this is 'it. The housing trust homes are here. We will accept that situation."? You see, there are homes along Burbridge Road, for example. Do you adopt a pattern that is uniform? Do you accept the status quo and say: "There are homes there and that is that."? Looking at plan No.7, I see that you have cross hatched areas there in which any building at all would be prohibited? --- Again I say that it is not necessarily prohibited. Approval has to be given.

I am taking Adelaide Airport because this is the one I am particularly interested in. Other members of the Committee will be interested in the areas in their states. When you draw up these areas do you take into consideration the structures that are there? Do you accept the degree of building in those areas as representing a situation that you cannot disturb?-- Fundamentally, we are interested in the approaches to our own airport. This is what we are protecting. This is where our plans take us. I do not know that we specifically take into consideration all the people around an airport as such in this zoning arrangement. (Mr. Hill) As a generalisation, we adopt the principle that we have certain standards and clearance requirements to achieve. We draw these plans in accordance with those standards. But in areas in which we know buildings are already constructed - in other words, built-up areas - obviously we relax these standards.

Senator Lawrie.

I show you this area I have drawn on some paper. You will see that I have drawn a thin triangle. Obviously, if we take the base of the triangle as the area farthest from the aerodrome, buildings over 25 feet in height can be constructed. But what about the chap who has land at the apex of the triangle, the closest point to the aerodrome? He cannot build on his land at all according to what you have said. Is he to receive any compensation for not being able to use his land at all? --(Mr. Lewis) assuming that land is there right beside the airport, so to speak, he is using his land in precisely the same way as he has always used it. Most of that land would have been used for grazing purposes, or pursuits like that. We are not interfering with that.

But he might have purchased the land as an investment so that he could build on it at a later date. His investment is completely nullified by these regulations? --- With respect, Senator, that is theoretical. Some of these people say that they have purchased for investment. They win and they lose on that. Very seldom is a man so close in. I know of no small individual who has

bought a block of land -----

Senator Wright.

It is not a case of a small individual. We do not discriminate between the large and the small individual? --- I appreciate that. But I know of no small individual who has bought a block of land. An odd man has been trapped. The man who has land like this we usually find is partly ⁱⁿ and partly out so that he can develop some of the land but not the other. So, he does not get such an attractive investment if it has been an investment for saving as he does with land put to one side.

Very well, let me put this to you: A man in 1930 buys a ten acre paddock of land. In 1970, it may be a residential subdivision. It may be an ideal site for a new factory? --- Yes.

The fact that in 1970 you can prohibit the use of that land is surely a restriction on the use, is it not? --- Yes.

The restrictions apply for your requirements? --- Yes.

The land owner would automatically be entitled to use his land in the progress of development but for the public interest you require the restrictions?--- Yes.

If you restrict it in the public interest, is it not the accepted principle that the public pays for that restriction and compensates the individual? --- I do not know whether it is, Senator. With respect, they had the land in any case.

Why do you say that that is not so? I do not wish to be argumentative. Why do you express doubt as to that principle? What have you in mind? --- I can think of many examples. Leaving airports to one side, I know that there are some instances at least where people cannot use their property in the way that they thought they might have been able to use it.

Senator Bishop.

Take this area in Adelaide again. I refer to the ordinary suburban building area around Streeter's Road. The case I shall instance has actually happened, not in this area but in

another area. A man buys a block of land. He does not build on it immediately but saves for ten years until he has enough money to build on it. Then he is told that he cannot build there. Surely there is a principle involved here. This person holds title to the land. He was not told by the agent in Adelaide that he would be restricted in relation to building. He may be told that he cannot build a two-storeyed house. Obviously this is a case for compensation? --- I am not quite sure that I heard your first point.

Let us take Streeter's Road in this area where a person cannot build? --- The person cannot build without approval. That is the important point. Perhaps I might assist you there. I shall show the Committee why I am emphasising this point. I have here a plan of Moorabbin Airport. This plan shows what will happen.

Senator Wright.

From our point of view, we take this provision as expressed. You may die tomorrow and so might I. It will be for our successors objectively under the law as expressed to work out their policy from these Regulations? --- With respect, we will still have these plans. What I had in mind was to show to the Committee ~~its application~~ ^{its application} in relation to Moorabbin. If the members of the Committee look at page 12 of the Statutory Rules they will see that to the north, north-east and, to some extent to the north-west, of the airport there is a very large cross hatching area where any person who wishes to build anything at all must seek the approval of the Department of Civil Aviation. In actual fact - this is making a rough estimate - I would say that 75 per cent of the people that want to build in that area will be allowed to build. It is set out on this plan I have in my hand. I refer particularly to the red areas.

That only accentuates the right to compensation of the other 25 per cent? --- The people who are there are using that land at the present time for agricultural purposes.

Even if there is one person there, he is refused the right to build a two-storeyed house on land which he purchased

thinking he could do so. Even if there is only one person, why should not he receive compensation? Why should not the law provide for him the right of compensation? --- Well, Senator, with the odd blocks that people have bought, a lot of them have bought them pretty cheaply.

Senator Lawrie.

That does not matter. It has nothing to do with it at all? -----

Senator Wright.

Who said that? --- In some cases, land is cheap around an airport.

Senator Willesee.

The whole problem between this Committee and the Department is that ^{you}~~we~~ are looking at it from the practical side and ~~we~~^{we} are looking at it from the legal side. I appreciate your point. We always find great difficulty in getting on to the same level. If I understand Senator Wright correctly, the point he is making is that you say - and emphasise this point - that at Moorrabin we do not need to worry very much because 75 per cent of these people will be O.K. You are not going to dream of it. Nevertheless, these people will have to come to you for authority. Let us say that two different men come to you. I come along and I have my double-storeyed building erected on this land. The next day, somebody comes along and says that he would like to build on his land. You say: "I am sorry, old fellow, but that just cannot be done." It could be an ordinary home; it could be a fowl house. It does not matter. Then you turn around and say to me that you are going to pull down my house. You say: "I am going to compensate you." But to the fellow who came along the next day - it could even be three months later - you say that he has no right of compensation with respect to his land. Both of us are a little bit upset. We never had any idea that this would apply to our land. But the natural reaction of the other fellow to me is: "What are you grizzling about? You have been paid compensation

for your house. But this is the point. I am receiving compensation, so why should not the other fellow be paid with respect to his land. We both paid the same for our land. I go away chuckling because I have been paid a good price for my house? --- (Mr. Edwards) Both of you would be in the same position. You put up the house and received compensation for it. You would be no better off.

I do not think so? --- Do you believe ----

There would be the appreciation of the land for one thing. I would make a profit on the building over that period of time and I have enjoyed the benefit of it. How do you arrive at a situation where you treat people differently. You can introduce regulations. I notice that you are regulated all along the line. But suddenly you come to a clerk who is not in a senior position but who exercises authority in this regard. I know that civil servants say: "We never do that", but as an ex civil servant I have seen it done. Probably I had powers myself that I was not competent to use. But you finish up with a man being able to say to different people: "Yes, you can build. No, you cannot build. You cannot build a fowl house. You cannot build an hotel. You cannot build an apartment house"? --- That is not quite the position because under the regulations there is no power for the Minister to delegate authority to ~~grant~~^{refuse} permission. Only the Minister can refuse permission. Other persons authorised by him can grant approval in ordinary cases but there is not specifically any power of delegation by the Minister to ~~grant~~^{refuse} any application for permission to build or to impose conditions on building. There is no question of that authority being allocated to a comparatively junior public servant to deny that right. This has been specifically guarded against.

Senator Cohen.

Any person authorised in writing by the Minister may grant consent? --- Yes.

But cannot refuse consent? --- Yes, that is the point.

Senator Lawrie.

What happens when the Department comes to some new area. Let us take the new airport to service Melbourne. Let us assume that

the Department has resumed absolutely a certain area and compensated persons living there. There is going to be a marginal area around there which will depreciate in value because of the aerodrome being established there. What rights have those people to compensation? --- (Mr. Lewis) I do not know that their land has depreciated in value. Now, I live at Essendon. Again, I am trying to speak with frankness and experience on this point. I would say that around Essendon and around the new Tullamarine Airport the value of the land has gone up. As far as houses are concerned, we have a respectable amount of land ~~around~~^{at} Tullamarine ~~for~~^{to allow} the average dwelling I would think. People further out might have some sort of restrictions placed on them at some future time. The people immediately around that airport have certainly suffered no loss, in my opinion.

Senator Bishop.

Let us take again the case of a man who has built a two-storyed house in Streeter's Road, Adelaide. You come along and say that you have to pull that house down. You say that you will compensate this man for his building. The fellow next door has a block of land on which he has not built. He is saving money to build on the land eventually. There is no encumbrance on his title. When he comes to you seeking appermit, he is told that he is not entitled to build on the land. Surely that is not just? --- The man has already built there. If we pull his house down we put him back to precisely the same position as he was in. The man who has not built, assuming he is there - and again I have contested this as you know - is in about the same position.

No, he is not, because he has bought the block of land? --- But he still has the block of land.

What is the use of it to him? What can he do with it? --- Presumably if he did not overpay for it, he will have the same block of land. There would be prospects -----

Senator Wright.

The value of his land depends upon the use to which he

can put it. A refrigerator in Sydney is worth something. At the South Pole, that same refrigerator is worth nothing? --- I doubt whether that man exists at the present time.

Senator Cohen.

Might there not be just one such case? There could be a very small number of cases in which the community conscience would say that it was manifestly unfair or hard on these people not to be allowed to go ahead with what they had in mind? --- If this case did exist - we have thought about this - it would be a rare case. Taking your point and assuming that we have just one case -----

As long as you have one case, you have to start conceding the principle? --- I do not know about answering that point.

When you have one case you have to turn your mind to the question? --- Yes. What I would do to my mind would be to find out how we could do justice to that case.

You could not in this case? -----

Senator Wright.

You are not the arbiters of justice? -----

Senator Cohen.

You could not give justice in this case? --- With respect, might I continue? What we feel we would do in that case is that we would ask for an act of grace payment. In other words, if this situation arose, we feel that the Treasury should compensate that man under an act of grace.

Senator Wright.

I would ask you to read one or two of the reports of this Committee where you will see that acts of grace are the very antithesis of the things that we protect which are the rights of law? --- Senator, I was answering Senator Cohen on how we would get out of such a case. But I do not believe that we will come up against that sort of case. That is my own view. I may be proved wrong. It is true that we do not know everything about

airports. We know a fair bit about them. If it does get by and if there is a miscarriage under the regulation, then we think that man ~~should~~ ^{could} get some redress.

Senator Cohen.

If that is so, what would be your objection to making some provision for compensation in appropriate cases. You reach the position where you think in a particular case something ought to be done. There is injustice unless in that case some act of grace payment is made. You approach that more generally. What would be the objection to making a provision that the Minister might grant compensation? --- I think there is some good legal objection to your suggestion to which Mr. Edwards might wish to address himself. (Mr. Edwards) First, I think there is nothing ^{in the regulations, as framed,} ~~that prevents the Minister from doing that.~~ regulation being so framed so that nothing prevents the Minister from doing that. That being so, it is probably unnecessary from a legal point of view to make provision for this possibility.

Senator Wright.

You are speaking as an officer of the Attorney-General's Department? --- Yes.

Senator Cohen.

You see nothing to prevent an act of grace payment? --- The regulations do not prohibit it. The regulations are silent on that point.

Senator Wright.

Is it suggested then that this is a right? --- Not a legal right.

What is a right that is not a legal right? --- Well, you have a moral right.

Chairman.

The basic point is this: A person buys a piece of land and because he has not built a house on that land he is not entitled to any compensation at all. I think you took the case of a man who, through business acumen, purchased a piece of land. Now, I am thinking

of people who are engaged in sugar farming in and around Mackay. There are sugar farms right up to the boundaries of the aerodrome. A man might engage in this industry. He might have in mind after purchasing land that he will be able to use it in years to come for sub-division purposes. That may be one of the reasons for purchasing it. He holds on to that land without utilising the sugar that is grown and, in any event, sugar is controlled by assignments. Over this period of years he has to pay rates, the land valuation increases, and so on. I think he is entitled to some recognition of his foresight in buying this land which would be available to him if the Department of Civil Aviation did not have its aerodrome there. Indeed, for the life of me, I cannot see why, whether a person has built or not built on his land, he cannot receive compensation with respect to his land. I have had wide experience in the field of local government. In local government we would never think of resuming land without paying fair and just compensation to the land owner or owners? --- This is not a matter of resumption. It is a matter of imposing restrictions such as are imposed in a town planning scheme. Those things are rather more analogous to the present matter.

Mackay was the first city to work under a town plan. There is another point involved. You say that people would automatically know about these restrictions on what can be done. Unless you were working under a town plan for a city, it would be very difficult to know this. How would people find this out? ---
(Mr. Lewis) At the present time, we have been engaged largely around city airports. I would be most surprised if any people dealing with any councils connected with city airports were not made aware of our restrictions.

Senator Bishop.

I wish to come back to Adelaide and deal with the matter that concerns Senator Davidson and me. Dealing with the area around the Adelaide airport, you do not consult the West Torrens Council, the Land Planning Authority, the State Government or the three or four other councils concerned in the area?--- No, we do not

specifically consult them.

You do not consult the people who sell the land to see whether these areas are noted?--- Of course, a lot of the area around the Adelaide Airport is already built in.

You do not know. It is possible, as Senator Cohen says, that there are people holding land there. We know that this happens in other areas. I know personally that there are people holding land whose alignments have been changed. Their right of way has been changed. They claim compensation. The point we are putting to you is: Why should not the same principle be applied in the regulations to the people concerned here? --- I think the same principle is there. To come back to the people you mentioned, these people are there at the present time. They have been there all the time. This question was asked of me last time.

You are overlooking the point that Senator Wright has made. Let us say a person buys a block of land around the Henley Beach outlet. He gives this to his son who is saving up to get married. His son goes along to the local council to get a permit to build. He is told that he cannot build there or that it is subject to restrictions. At least, you say that building on that land is subject to the Department saying he can or he cannot build there. In this case, a couple of thousand pound has been paid to purchase the land and it is of no use to anybody. You do not even acquire it? -----

Senator Wood.

I am not suggesting when I speak of local authorities resuming land that the Department of Civil Aviation also resumes land. But the Department does confiscate the rights of people to utilise the land for the purposes that they may have had in mind, such as subdivision for home building. So, it is really a resumption of their rights without any payment. Furthermore, the Department is not prepared to pay them any compensation for the land value? --- This is the point. I have been accused of ~~imposing this provision~~ ^{overlooking the point}. But, with all respect, I do not think I am. We believe that there is

really no new restriction being placed on anything whether it is by way of amendment or ^{new} regulation. Those same people who purchase blocks under old regulation 92 have been there all the time. I do not know of any complaint that we have had that a person who has bought a block for the purpose of building a house is not in the same position now as he was before. The position is clearly identified in these Regulations. I do not know of anyone who has unwittingly purchased land and then has been unable to build on it. I refer to the question asked by Senator Bishop on this point.

Senator Wright.

The possibility is so obvious that it does not depend upon the proof of a particular case? -----

Senator Lawrie.

Under old regulation 92, was this plan exactly as it is today or has it been altered? --- (Mr. Hill) I would like to answer this question. This is where we get into a definition of what we are doing. It was, in plain reality, under regulation 92 a description including the plan^e and dimensions. As we said before, one of the reasons why we changed this was that the international requirements for these plan^es have become so complex that it is virtually impossible to put what is required in words and make it intelligible. We have resorted to this plan. It is related to natural features so that a person can easily identify whether he is affected or not.

Senator Bishop.

In other words, you have zoned the areas? --- Yes.

Senator Cohen.

Section 92 applies to aerodromes open to public use by aircraft engaged in international air navigation or air navigation within a territory? --- (Mr. Lewis) We have explained that provision subsequently. (Mr. Sexton) There are very few aerodromes that are not used by ^{those} aircraft. ~~to this extent.~~

Senator Willesee.

That argument does not make section 92 right. You are proceeding from a false base? --- (Mr. Lewis) /What I am referring to is section 92.

You say that section 92 was there, but what I am saying is that we have not examined whether section 92 is right? --- My only purpose was to show that we had the same sort of condition. Reference has been made to people being trapped into buying blocks of land and then not being allowed to build. This section has been in existence for 20 years. I know of no complaint in that time where a person has purchased a block of land and said: "Look, I bought this in the expectation of building. Here you are telling me now that if I build you will pull down my home." I know of no-one who has been in that position. Wherever we have ^{got} ~~gone~~ into any position like that and there has been ^{an approach to} ~~a runway~~, ^{we have} subsequently we ~~have~~ gone ahead and acquired ~~the rest of~~ the land.

If this is so remote a possibility, why not write it into the regulations? --- If it is a remote possibility, it is something we think we would solve by an act of grace.

Senator Wright.

Act of grace? Is that what you said? --- Yes.

You would solve it by an act of grace? Is that what you said? --- If it occurred, yes.

Senator Cohen.

What is to happen to Section 92? --- Section 92 continues to apply for all aerodromes other than those that are referred to in Statutory Rules 1966, No.6. (Mr. Sexton) An amendment has been made which is an addition to section 92. It provides that it shall not apply to aerodromes which are contained in the schedule to these new regulations. That is Statutory Rule 5 of 1966 which is a small rule added for special regulations. (Mr. Lewis) It is still the case that the bulk of our aerodromes are to be governed by section 92 although we will gradually extend this as we can do the work.

Senator Wright.

Is it not a fact that from time to time people around your airport in Melbourne - that is, Essendon Airport - have made claims for the nuisance that has increased there? --- From noise?

Yes? --- That is so.

This is the reverse position. The people complain that you are committing an unlawful act in aggravating the noise. You do not acknowledge that you have been authorised by statute to do so? --- You are putting that to me in an interrogative fashion?

In a discussional fashion? --- Well, I am not sure. I have not had a great deal to do with this. I live in Essendon. I am on the receiving end of this noise. I have a great deal to do with noise. I have not been handling this matter. I know that there have been a lot of complaints about noise. I do not know what we are relying on.

I have seen press reports from time to time that groups of citizens were urging somebody to take legal action and so forth? --- (Mr. Edwards) No legal action has been taken.

I expect that it would be authorised by statute? --- I would think that it probably would be. (Mr. Lewis) Just quickly on this point, as you know we have introduced procedures relating to operations to lessen this problem.

We have every admiration for the efficiency and consideration of the Department. What we do wish to have understood is our concern to right the law so that at law people will have rights?--- I appreciate your point.

Senator Lawrie.

It has been stated that regulation 92 still remains in these new regulations. Do I understand that this regulation only applies to those seven airports? --- There are only four airports involved.

This regulation would not apply to Tullamarine? --- Not at the present time.

Senator Cohen.

Or Essendon? --- That is correct.

Chairman.

Has anyone anything further to say? --- (Mr. Sexton) I thought that I might have something to say in relation to the

legislative background of regulation 92 and also this new regulation. I have prepared a very short statement of which I have copies for members of the Committee. This sets out the legislative development since 1947. I think that this might be relevant for the Committee's deliberations. The statement reads -

Air Navigation (Buildings Control) Regulations.

1. Section 5 (1.) of the Air Navigation Act 1920-1950 conferred power to make regulations for the purpose of giving effect to the Chicago Convention and other international Conventions, and generally in respect of air navigation matters within the law-making power of the Commonwealth Parliament. Section 5(3.)(b) of the Act (as inserted in 1947) provided as follows -

'(3.) The power to make regulations under this section shall include power to make provision for -

.....

(b) the removal or marking of objects which constitute potential hazards to air navigation and such other measures as are necessary to ensure the safety of aircraft;

.....'.

2. Regulation 92 of the Air Navigation Regulations was made in 1947. That regulation dealt with the matters expressly mentioned in section 5(3.)(b) of the Air Navigation Act, namely, 'the removal or marking of objects' constituting potential hazards to air navigation. Sub-regulation (4.) gave a right to recover all reasonable expenses and the amount of any actual loss or damage incurred and suffered in complying with directions given pursuant to the regulation.

3. The Air Navigation Act was comprehensively amended in 1960. Section 26(1) of the Act conferred power to make regulations for the purpose of, among other things, carrying out and giving effect to the Chicago Convention, as amended, and to any Annex to the Convention relating to international standards and recommended practices. The power to make regulations was further spelled-out in section 26(2.). Paragraph (g) of section 26(2) and section 26 (3.) are relevant for present purposes.

4. Paragraph (g) of section 26(2.) refers specifically to the regulations that may be made dealing with the question of obstructions, hazards or potential hazards to aircraft flying in the vicinity of aerodromes. The paragraph provides that, for that purpose, the regulations may make provisions that -

- (a) prohibit the construction of buildings;
- (b) restrict the dimensions of buildings; and
- (c) provide for the removal of buildings or for the marking of buildings.

The paragraph also authorizes regulations making provision for or in relation to other measures necessary to ensure the safety of aircraft using an aerodrome or flying in the vicinity of an aerodrome.

5. Whereas the forerunner to section 26(2.)(g) - i.e., section 5(3.)(b) of the Air Navigation Act 1920-1950 - referred specifically only to 'the removal or marking of objects', section 26(2.)(g) refers also to 'the prohibition of buildings or other structures' and to 'the restriction of the dimensions of buildings or other structures'. The greater particularity in section 26 (2.) (g) conforms more precisely to the international standards as laid down in Annex 14 (as amended) of the Chicago Convention.

6. Section 26 (3.) of the Air Navigation Act 1920-1960 provides as follows -

'(3.) Where the regulations make provision for the removal or marking of structures or obstacles referred to in paragraph (g) of the last preceding sub-section, the regulations shall also include provisions for the payment of compensation to any person who suffers loss or damage or incurs expense in or as a direct result of the removal or marking.'

7. The Air Navigation Act 1920-1960 does not include any provision on the lines of sub-section (3.) of section 26 that requires the regulations to make provision for compensation in respect of 'the prohibition of the construction of buildings or other structures' or of 'the restriction of the dimensions of buildings or other structures'.

Senator Willesee.

You used the words "international standards . What bonds are there between the Commonwealth and these international standards?--- We have an obligation to give effect to these standards by reason of being a signatory to the International Convention. (Mr. Lewis) Might I just follow up Mr. Sexton's point. Perhaps it might be useful if the Committee would like to retain a working copy which relates to the very question that Senator Willesee addressed to Mr. Sexton - that is, are we bound to these international standards? We are bound, as Mr. Sexton has pointed out, to the specific detail of these standards. What I am giving to the Committee is referred to as Annexure 14 to the Convention of the International Civil Aviation Organisation. It might bring about some better appreciation by the Committee - and I say this with the greatest respect - because it sets out all the technical problems that we have. This is in an attempt to give clarity of definition to something to which we are bound internationally.

Senator Cohen.

Mr. Sexton, do I understand that the purport of this memorandum is that there is no power to make regulations providing

for compensation where you are prohibiting the ~~restriction~~^{construction} of buildings?--- (Mr. Sexton) I would not go so far as to say that.

I know that you have not. This is an area on which I would like to have your views?--- It really raises two questions. First of all, there is the question of ~~power~~^{policy} and then the question of power, ~~where this was~~.

We have been dealing rather with the question of policy? --- Yes. On the question of power, it is interesting that section 26 (3.) of the Air Navigation Act 1920/1960 contains a direction requiring compensation in certain cases. It does raise a possibly interesting legal question ~~where~~^{whether} that is the only case in which you could provide for compensation. On the other hand, I am not prepared to express an opinion that you could ~~have~~^{not} a regulation making provision for compensation.

Senator Wright.

Do you still retain in the area to which section 92 is applicable the provisions of sub-section (4) of regulation 92 which provides -

All reasonable expenses and the amount of any actual loss or damage incurred and suffered by any person in complying with the directions contained in a notice served upon him in pursuance of this regulation may be recovered from the Department.

? --- That is correct.

There is a corresponding provision in the new regulations which says that compensation is payable where the building is removed or is marked. The distinction lies in that very statement. You do not give compensation under the new regulation where a person is refused permission to build? --- There is no doubt about that.

That refusal of permission is a ministerial action on the same level of interference as the direction under section 92 (4.) ? --- The direction under 92 ~~is~~ is restricted to removal or marking.

Excuse me. If you go back to section 92 (1.) there is no control prohibiting an erection? --- That is the point that I

have tried to make in the paper that I have given to the Committee because section 92 (1.) limits the powers of the Minister to order removal or marking.

Senator Lawrie.

Do we understand that this control is a completely new principle in the regulation? --- There is an extension of the controls, but Mr. Lewis, I think, has already directed his mind to this matter this morning. (Mr. Lewis) To finish off what Mr. Sexton is saying, what we believe we are now doing under the Statutory Rules is carrying out directly what we were doing indirectly under regulation 92.

Senator Bishop.

You put the handcuffs on this time? -----

Senator Wright.

Mr. Sexton, I ask you to look at clause 26 of the Air Navigation Act 1920-1960 where you will see it is provided -

(2.) Without limiting the generality of the preceding provisions of this section, the regulations that may be made under the powers conferred by those provisions include regulations for or in relation to -

.....

(g) the prohibition of the construction of buildings or other structures, the restriction of the dimension of buildings or other structures, and the removal in whole or in part or the marking of buildings, other structures, trees or other natural obstacles, that constitute or may constitute obstructions, hazards or potential hazards to aircraft flying in the vicinity of an aerodrome, and such other measures as are necessary to ensure the safety of aircraft using an aerodrome or flying in the vicinity of an aerodrome.

Your regulation making power by that provision would appear to be limited to such buildings or structures as may constitute hazards or potential hazards to aircraft? --- Yes. This only gives the Minister the power -----

Excuse me. There is doubt in my mind that the words "hazards or potential hazards" apply to all three brackets of the preceding nouns. I would think that they should be so interpreted in separation. I would suggest that there is no doubt about the

validity of regulation 3. where you have power to prohibit 20 feet out from the perimeter of an airport a dog kennel three feet high. This can only be constructed if you give permission. It could be possibly suggested that that construction would constitute or might constitute an obstruction, or a hazard or a potential hazard to aircraft. I can see that in the old regulation you adhered to that ambit of power but now you are going beyond that ambit of potential hazard to aircraft. I put that to you for comment? --- With respect, I think the answer is to be found in regulation 7 (4.) where it is provided that the Minister shall not refuse an application unless he is satisfied that the building or other structure being erected -----

That does not depend upon the objective fact as to whether it is a potential hazard. It depends upon the Minister's opinion? --- That is true.

Senator Wright.- Mr. Chairman, this is carefully watched by the High Court these days owing to the very grave use that has been made of ministerial satisfaction. The THE ILE Q case in the High Court contained some very stringent views that the Department of Civil Aviation surely ought to take as guide lines.

Chairman.- As there are no further questions, I thank you, gentlemen, for your attendance before this Committee.

The witnesses withdrew.

The Committee adjourned.