

The Senate

Rural and Regional Affairs
and Transport
Legislation Committee

Airports Amendment Bill 2016 [Provisions]

March 2018

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Table of contents

| | |
|--|------------|
| Membership of the Committee | iii |
| Abbreviations | vii |
| Chapter 1 | 1 |
| Introduction and background | 1 |
| Referral of inquiry | 1 |
| Conduct of the inquiry | 1 |
| Consideration of the bill by other committees | 1 |
| Purpose of the bill..... | 2 |
| Interim report | 4 |
| Structure of the report..... | 5 |
| Acknowledgments | 5 |
| Chapter 2 | 7 |
| Key provisions | 7 |
| The Master Plan process..... | 7 |
| Monetary triggers for Major Development Plans..... | 10 |
| MDP processes | 11 |
| Chapter 3 | 15 |
| Issues | 15 |
| Response to the bill | 15 |
| The Master Plan process..... | 16 |
| Monetary triggers for Major Development Plans..... | 20 |
| MDP processes | 23 |
| Chapter 4 | 27 |
| Essendon Airport investigations and committee views | 27 |

| | |
|---|-----------|
| Essendon Airport accident..... | 27 |
| Committee views | 34 |
| Dissenting Report – Australian Labor Party | 39 |
| Appendix 1 | 43 |
| Submissions received..... | 43 |

Abbreviations

| | |
|----------------|---|
| AAA | Australian Airports Association |
| AAC | Archerfield Airport Corporation |
| AAL | Adelaide Airport Limited |
| AAT | Administrative Appeals Tribunal |
| Act | <i>Airports Act 1996</i> |
| AIPA | Australian and International Pilots Association |
| Airport lessee | Airport-lessee company |
| ANEF | Australian Noise Exposure Forecast |
| APAC | Australia Pacific Airports Corporation |
| ATSB | Australian Transport Safety Bureau |
| Bill | Airports Amendment Bill 2016 |
| CACG | Community Aviation Consultation Group |
| CASA | Civil Aviation Safety Authority |
| Committee | Senate Rural and Regional Affairs and Transport Legislation Committee |
| DIRD | Department of Infrastructure and Regional Development |
| EM | Explanatory Memorandum |
| MDP | Master Development Plan |
| Minister | Minister for Infrastructure and Transport |
| MP | Master Plan |
| NASAG | National Airports Safeguarding Advisory Group |
| NASF | National Airports Safeguarding Framework |
| NLR | Netherlands Aeronautical Research Laboratory |
| SACF | Sydney Airport Community Forum |

Chapter 1

Introduction and background

Referral of inquiry

1.1 On 9 February 2017, the Airports Amendment Bill 2016 (the bill) was referred to the Senate Rural and Regional Affairs and Transport Legislation Committee (committee) for inquiry and report by 28 March 2017.

1.2 In its first report of 2017, the Senate Standing Committee for the Selection of Bills recommended the bill be referred to the committee. In referring the bill, the Selection of Bills Committee suggested that consideration be given to several issues, including:

- concerns with changes to complex airport planning frameworks;
- that airport planning is normally lead by State authorities, rather than Federal;
- possible concerns in relation to changes to major development consent processes; and
- the significant community interest in airport planning issues.¹

1.3 On 28 March 2017, the committee tabled an interim report. On the same day, the Senate approved an extension of time for the tabling of a final report, to the first sitting day of March 2018.²

Conduct of the inquiry

1.4 Details of the inquiry, including links to the bill and associated documents, were made available on the committee's website. The committee also wrote to organisations and individuals likely to have an interest in the bill, seeking submissions by 6 March 2017.

1.5 The committee received 23 submissions which are listed at Appendix 1. Submissions were published on the committee's inquiry webpage.

1.6 The committee did not hold a public hearing and prepared its report on the basis of information published about the bill, and on issues raised by submissions to the inquiry.

Consideration of the bill by other committees

1.7 In its first report of 2017, the Senate Standing Committee for the Scrutiny of Bills made no comment on the bill.³ The Parliamentary Joint Committee on Human Rights considered the bill and determined it does not raise human rights concerns.⁴

1 Senate Standing Committee for the Selection of Bills, *Report No. 1 of 2017*, 9 February 2017, p. 2 and Appendix 1.

2 *Journals of the Senate*, No. 36, 28 March 2017, p. 1211.

Purpose of the bill⁵

Background

1.8 The Australian Government owns a number of federal airports which have been privatised via long-term leases. The Commonwealth maintains regulatory oversight in relation to certain activities on airport sites, such as building approvals and land use planning, via the *Airports Act 1996* (Act).⁶

1.9 The Act regulates federally-leased airports in Australia (except Tennant Creek and Mount Isa), and provides for the 'efficient and economic development and operation of airports'. The Act stipulates that all federally-leased airports will have Master Plans and an Environment Strategy, and that Major Development Plans are required for 'significant developments' at airports.⁷

1.10 Under the Act, a Commonwealth-owned airport can only be leased to a company, known as an 'airport-lessee company' (airport lessee). Only one airport lessee is allowed at each airport, and the company cannot lease another airport.⁸ Federally-leased airports, with the exception of Mount Isa and Tennant Creek, are required to prepare:

- Master Plans (MP) every five years to establish a strategic direction for efficient and economic development at the airport; and
- Major Development Plans (MDP) for specific major on-airport developments, once a monetary trigger is reached (currently \$20 million).⁹

1.11 The Act provides that the Minister for Infrastructure and Transport (Minister) is responsible for ensuring the 'orderly development and operation of federal leased airports', including through MP and MDP approvals.¹⁰

Overview of provisions

1.12 According to the Explanatory Memorandum (EM), the bill aims to amend a number of administrative arrangements relating to MPs and MDPs, to offer 'more flexible, proportionate' and efficient regulatory responses.¹¹

3 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 1 of 2017*, 8 February 2017, p. 4.

4 Parliamentary Joint Committee on Human Rights, *Report 1 of 2017*, 16 February 2017, p. 32.

5 The majority of the information in this section has been reproduced from the committee's interim report.

6 Discussion Paper, *Review of the Airports Building Control and Environment Protection Regulations*, Department of Infrastructure and Transport, 1 May 2013, p. 4.

7 *Airports Act 1996*, ss. 3 and 4.

8 *Airports Act 1996*, s. 4.

9 Explanatory Memorandum, Airports Amendment Bill 2016, p. 1.

10 Department of Infrastructure and Regional Development, *Submission 22*, p. 3.

1.13 The bill inserts new provisions in the Act and makes necessary consequential amendments to change the current five year MP submission cycle for secondary and general federal leased airports. The amendments would instead facilitate an eight year MP submission cycle for 15 airports (Table 1.1).

1.14 The bill retains the current five-year cycle for five major airports: Brisbane, Melbourne, Perth, Sydney (Kingsford-Smith), and Sydney West.¹²

Table 1.1: Airports under proposed eight-year Master Plan cycle

| | | |
|---------------|------------|------------|
| Adelaide | Gold Coast | Jandakot |
| Alice Springs | Hobart | Launceston |
| Archerfield | Canberra | Moorabbin |
| Bankstown | Darwin | Parafield |
| Camden | Essendon | Townsville |

1.15 In addition, the bill requires a renewed Australian Noise Exposure Forecast (ANEF) to be included in each new MP. This is in contrast to the current provision which requires an ANEF in each MP, but does not require that the ANEF must be renewed for each plan.¹³

1.16 Other key measures of the bill include:

- increasing the current \$20 million monetary trigger for MDPs to \$35 million;
- allowing the Minister to issue legislative instruments for two purposes:
 - to increase the threshold amount (monetary trigger) for MDPs every three years, taking into account price indexations which indicate changes in construction activity costs; and
 - to specify the cost that must be included, and must not be included, when calculating the cost of construction for an MDP;
- specifying a 15 business day statutory decision timeframe within which the Minister must consider applications from airport lessees for reduced consultation periods for MDPs, with such applications deemed approved if there is no Ministerial decision within this timeframe;

11 Explanatory Memorandum, Airports Amendment Bill 2016, p. 1.

12 Explanatory Memorandum, Airports Amendment Bill 2016, p. 1.

13 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, p. 5135.

- enabling the Minister to extend, more than once, the period that approved MDPs are required to be substantially completed; and
- enabling airport lessees to notify the Minister if an approved MDP is not able to proceed on the basis of exceptional circumstances.¹⁴

1.17 The bill also contains a number of application and transitional provisions to accommodate those airport lessees already in the process of developing or implementing MDPs and MDPs, and to clarify which provisions only apply on or after commencement.¹⁵

1.18 The then Minister for Infrastructure and Transport, the Hon Darren Chester MP, explained that the amendments would 'fine-tune existing regulation and streamline policy intentions'. He also indicated that the bill would not significantly change existing policies or regulatory oversight, but would offer several efficiencies and reduce administrative burdens.¹⁶

Interim report

1.19 On 21 February 2017, an aircraft crashed into a retail centre alongside Essendon Airport. The Australian pilot and four American passengers on board tragically died in the crash. The crash also resulted in a major fire at the DFO shopping complex next to the airport. The incident occurred soon after the initiation of this inquiry.

1.20 As noted by the interim report, this terrible accident brought to the fore the importance of appropriate airport planning regulations and processes.

1.21 On 2 March 2017, the committee received a letter from Minister Chester, requesting that the committee consider extending the inquiry in light of the tragic accident and the resulting investigations.¹⁷

1.22 The committee subsequently made a recommendation in its interim report to extend the final reporting date to the first sitting day in March 2018, which was agreed to by the Senate. It was anticipated that the extended reporting date would allow the committee to consider the findings and recommendations of the investigations into this incident, which may have implications for this bill.¹⁸

14 Explanatory Memorandum, Airports Amendment Bill 2016, p. 1.

15 Explanatory Memorandum, Airports Amendment Bill 2016, pp. 8-9.

16 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, p. 5134.

17 See Rural and Regional Affairs and Transport Legislation Committee, Interim Report, 28 March 2017, Appendix 1, p. 7, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/AirportsAmendmentBill/Interim_Report

18 Rural and Regional Affairs and Transport Legislation Committee, Interim Report, 28 March 2017, pp. 3-5. The Essendon Airport accident is discussed further in Chapter 4.

Structure of the report

1.23 This chapter details the overall purpose of the bill. Chapter 2 of the report provides detailed information on the significant provisions of the bill. Chapter 3 considers the issues raised by submitters about the bill's provisions.

1.24 Chapter 4 considers the bill in light of the terrible accident at Essendon Airport on 21 February 2017, and the work of the National Airports Safeguarding Advisory Group (NASAG) regarding public safety zones around airports.

1.25 Chapter 4 also presents the committee's views and recommendation.

Acknowledgments

1.26 The committee thanks those organisations and individuals that made submissions to the inquiry.

Chapter 2

Key provisions

2.1 The amendments proposed by the bill are a result of consultation that commenced in July 2014, with the release of a discussion paper by the Department of Infrastructure and Regional Development (DIRD).¹ The paper sought stakeholder views on options to streamline the administrative arrangements for MPs and MDPs.

2.2 After a second discussion paper was released in 2015, DIRD found that airport lessees 'favoured proposed reductions in regulation while other stakeholders largely supported the status quo or a tightening of existing regulatory provisions'. The bill therefore 'seeks to strike a balance between these competing views'.²

2.3 During the presentation of the bill to the House of Representatives, the Minister noted that the bill could be considered in three parts. The three key areas of the bill involve:

- (i) amending the existing MP process;
- (ii) changing the monetary trigger for an MDP; and
- (iii) amending regulatory processes involved with MDPs.³

2.4 This chapter provides detail on the amendments made by these three parts of the bill and the consequences of these changes.

The Master Plan process

Airport Master Plans

2.5 An airport MP provides for the future coordinated development of an airport and should 'establish the strategic vision for the economic and efficient use of the airport over the planning period'.⁴

1 The Department of Infrastructure and Regional Development is now known as the Department of Infrastructure, Regional Development and Cities. The committee has chosen to identify the Department by its former designation, reflecting the fact that the presentation of the bill, the submissions made to the committee and the presentation of other evidence occurred under that title.

2 Department of Infrastructure and Regional Development, *Submission 22*, pp. 3-4.

3 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, pp. 5134-5136.

4 Department of Infrastructure and Transport, *Master Plan Amendments – Guidelines*, January 2012, p. 2, https://infrastructure.gov.au/aviation/airport/planning/files/Master_Plan_Amendment_Guidelines_2012.pdf (accessed 9 February 2017).

2.6 The Act sets out the required content of each airport MP. MPs contain information about, among other things, development objectives, land use intentions, the ANEF, flight paths and environmental issues.⁵

2.7 The MP covers a forward period of 20 years, and must be renewed every five years. The MP also incorporates an Environment Strategy, detailing the airport's plans to manage environmental issues in the next five years, and beyond.⁶

2.8 The Minister noted that the five year MP process can be burdensome on airport lessees, as 'the current legislative process requires an airport lessee company to expend significant resources and it can take the company two years on average to develop each plan'.⁷

2.9 Further, DIRD advised that since the MP process was introduced, the cost of compliance had increased significantly and, depending on the airport, was estimated at between \$500 000 and \$2.5 million for each MP.⁸

2.10 To address these concerns, Item 9 of the bill amends section 76(1)(a) of the Act to extend the five year MP renewal period to eight years, for those airports listed in Table 1.1. The bill makes a number of consequential amendments throughout the Act to implement the eight year timeframe for applicable airports. The Brisbane, Melbourne, Perth, Sydney (Kingsford Smith) and Sydney West airports will continue to require a new MP every five years.⁹

2.11 The amendment acknowledges the long-term implementation timeframes of many airport infrastructure projects, with the Minister stating that MPs are currently required:

irrespective of the operational, administrative, resourcing and financial capacity of individual airports or the level of impact their operations have on the community. Implementing an eight-year master plan cycle for secondary and general aviation airports, will minimise the impact of these factors.¹⁰

5 *Airports Act 1996*, ss. 71 and 79.

6 'Airport Planning and Regulation', Department of Infrastructure and Transport, February 2017, <https://infrastructure.gov.au/aviation/airport/planning/index.aspx> (accessed 21 February 2017).

7 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, p. 5134.

8 Department of Infrastructure and Regional Development, *Submission 22*, p. 4.

9 Airports Amendment Bill 2016, schedule 1, item 9.

10 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, p. 5134.

2.12 The five year timeframe for major airports was retained in recognition of the higher level of activity at these airports, their forecast passenger numbers, and their impact on the environment, economy and surrounding communities.¹¹

Australian Noise Exposure Forecast (ANEF)

2.13 An ANEF is defined as:

a contour map showing the forecast of aircraft noise levels that is expected to exist in the future. It is based on expected aircraft movement numbers, type of aircraft and forecast route structures, daily distribution by time period of arrivals and departures, configuration of runways, air traffic control procedures and flight paths, etc.¹²

2.14 An ANEF must be included in all MPs, and be prepared by airports prior to the release of the draft MP for public consultation. ANEFs are produced with a forecast of 20 or more years, or the ultimate practical capacity of the airport. ANEFs are endorsed by Airservices Australia.¹³

2.15 ANEFs are used by governments and land use planning agencies for long-term planning of developments around airport sites. However, as noted by DIRD, predictions in an ANEF are limited by the data available at the time the forecast is prepared and do not incorporate, for example, technological improvements to aircraft.¹⁴

2.16 The current law provides that an ANEF must be included in an MP, but it does not specify that the ANEF must be renewed for each new plan.¹⁵ Item 11 of the bill inserts a new subsection 76(1A) into the Act, requiring airports to obtain a new ANEF for each renewal of its MP, and to include this in the draft MP given to the Minister for approval. Further, the provision provides that the ANEF must be endorsed within the last 180 days of the period specified by section 76(1) of the Act, relating to draft MP timeframes. As detailed in the EM:

This amendment will ensure each final master plan comprises an up-to-date representation of the potential noise impacts of airport operations. The amendment also facilitates integrated and coherent land use planning

11 Department of Infrastructure and Regional Development, *Submission 22*, p. 4.

12 Department of Infrastructure and Regional Development, *Submission 22*, p. 5.

13 Airservices Australia, *Factsheet: Airport Master Plans*, p. 2, http://www.airservicesaustralia.com/wp-content/uploads/13-087FAC_Airport_Master_Plans_WEB.pdf (accessed 6 December 2017).

14 Department of Infrastructure and Regional Development, *Submission 22*, p. 5.

15 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, p. 5135.

outcomes; in particular, to manage incompatible and sensitive land uses from encroaching too close to airports.¹⁶

Monetary triggers for Major Development Plans

2.17 The Act provides a number of circumstances whereby the requirement for an MDP is triggered, for example, constructing a new runway or extending an existing one, constructing new passenger terminals, or if the development is likely to have a significant environmental or community impact.¹⁷

2.18 In some instances an MDP will be required where the major development reaches a monetary trigger, determined since 2007 as \$20 million. Examples of major developments with a monetary trigger include construction of new access roads, buildings or taxiways.¹⁸

2.19 DIRD noted that the monetary trigger is ancillary to the existing triggers in the Act for an MDP. As a consequence, the monetary trigger is only considered after the other triggers are considered first.¹⁹

2.20 The bill, at Items 18 and 19, makes amendments to section 89 of the Act to increase the monetary trigger threshold amount for an MDP to \$35 million, with the increase based on 'changes and conditions in...construction industry costs' and 'economic and marketplace conditions'. The new threshold will only apply to MDPs given to the Minister after commencement of the bill.²⁰

2.21 In addition, the bill determines that the threshold can be reviewed and increased via legislative instrument, every three years. If a new threshold is determined this way it:

- must remain the same or be higher than the previous determined amount;
- must take into account changes in construction activity costs since the last determination to keep pace with economic conditions; and
- may take into account changes in an index on construction activity costs as published by the Australian Statistician.²¹

16 Explanatory Memorandum, Airports Amendment Bill 2016, p. 4.

17 Department of Infrastructure and Regional Development, *Submission 22*, p. 6.

18 *Airports Act 1996*, ss. 88 and 89.

19 Department of Infrastructure and Regional Development, *Submission 22*, p. 6.

20 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, p. 5135; Explanatory Memorandum, Airports Amendment Bill 2016, p. 8.

21 Airports Amendment Bill 2016, schedule 1, item 19; Explanatory Memorandum, Airports Amendment Bill 2016, p. 6.

Cost of construction

2.22 The bill further legislates that the Minister can determine, through legislative instrument, what should be included or excluded in determining the 'cost of construction' when airport lessees prepare an MDP. This would include, for example, the cost of the base building fit-out, such as internal cladding.²²

2.23 As detailed by the EM, the instrument will set out:

the costs that must be included and excluded in an airport-lessee company's calculations when determining if the construction cost of a major airport development triggers the requirement for a major development plan. This amendment is necessary to remove any confusion for industry and ensure a consistent costing application across all federal leased airports.²³

MDP processes

2.24 While an MDP must include development objectives and show its consistency with the MP, it must also take into account public comments. The Act prescribes the public consultation process that an airport lessee must undertake before an MP and MDP plan is submitted for ministerial consideration.²⁴

Consultation periods

2.25 Airport lessees are required to engage in ongoing and regular consultation with 'airport users, state/territory governments, local authorities, and the community to improve information sharing and strengthen planning and development outcomes'.²⁵

2.26 Before giving an MDP to the Minister for approval, the airport lessee is required by the Act to consult on the draft with the relevant state Minister. The airport lessee must also notify the public that a draft MDP has been prepared and is available for inspection. Copies of any comments received by the public must be provided to the Minister when submitting the draft for approval.²⁶

2.27 The consultation period for public comment on a draft MDP is 60 days (or a lesser period approved by the Minister, of not less than 15 business days). Section

22 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, p. 5135.

23 Explanatory Memorandum, Airports Amendment Bill 2016, p. 6.

24 *Airports Act 1996*, ss. 91 and 92.

25 Department of Infrastructure and Transport, *Airport Development Consultation Guidelines*, October 2012, p. 2, https://infrastructure.gov.au/aviation/airport/planning/files/FINAL_Consultation_Guidelines_2012.pdf (accessed 21 February 2017).

26 *Airports Act 1996*, s. 92.

92(2B) of the Act allows the Minister to approve a shorter consultation period if a written request is made by the airport lessee.²⁷

2.28 A shorter consultation period can only be approved if the Minister is satisfied that the draft MDP aligns with the details of the proposed development set out in the final MP, and does not raise any issues likely to have a significant impact on the airport community.²⁸

2.29 Currently, there is no legislated timeframe within which the Minister must determine a request for shorter consultation. Item 22 of the bill will insert a new subsection 92(2BA) into the Act to provide a 15-business-day statutory timeframe for the Minister to consider a request for a reduced consultation period. If no Ministerial decision is made within this period, the request will be considered approved. The EM argues that this:

will not impact the prescribed requirements for public consultation, however it will provide industry with certainty regarding the Ministerial decision timeframe, which could then be accounted for in the airport's planning process.²⁹

Substantial completion of an MDP

2.30 The Act allows the Minister to approve (or refuse) an MDP. Unless an approval states otherwise, the development proposed by the MDP must be substantially completed no more than five years after the approval. The Act currently allows the Minister to extend this five-year period only once, for up to two years.³⁰

2.31 The bill, at Item 23, substitutes section 94(7B) and proposes to amend the extension approval process by removing restrictions and allowing the Minister to extend the completion date as many times as required. An extension is only possible if the initial five year period, or the further extended period, has not expired. As is currently the case, the Minister can impose conditions on an approval.³¹

2.32 In presenting the bill, the Minister argued that:

on rare occasions some larger or more complex developments, such as a new runway, may be subject to unforeseen delays and exceptional circumstances beyond airports' control. As a result, achieving a substantially complete status may require more than the standard seven-year time frame.

27 *Airports Act 1996*, ss. 92(2A) and 92(2B).

28 Department of Infrastructure and Regional Development, *Submission 22*, p. 8.

29 Explanatory Memorandum, Airports Amendment Bill 2016, p. 7.

30 *Airports Act 1996*, ss. 94(7A) and (7B).

31 Explanatory Memorandum, Airports Amendment Bill 2016, p. 7.

Where an airport is committed to substantially completing an approved major development plan, the airport should be given the opportunity to do so without penalty.³²

2.33 DIRD submitted that circumstances beyond an airport's control could include a change in economic conditions or market circumstances, or other 'exceptional or unforeseen circumstances' beyond the airport lessee's control that impact on the viability of the development.³³

Ceasing an MDP approval

2.34 Item 24 of the bill inserts a new section 96AA into the Act, allowing an airport lessee to withdraw from an approved MDP, in exceptional circumstances beyond its control. Withdrawal can only occur if there are no building approvals in place (that is, the project has not commenced). The airport lessee must provide the Minister with a withdrawal notice, at least 50 business days before the statutory date of substantial completion, detailing the exceptional circumstances and why the development is no longer viable.³⁴

2.35 The Minister must acknowledge the withdrawal notice, and the MDP ceases from the date the Minister makes this acknowledgement. The airport lessee must then, within 20 business days, publish a notification with information about the exceptional circumstances, and why it is unviable for the development to proceed. This aims to ensure that stakeholders remain informed.³⁵

2.36 The Minister noted these amendments 'recognise that airports would have already expended significant financial and administrative resources to have a major development plan approved'. The new provisions are expected to reduce regulatory uncertainty, and 'ensure an efficient and streamlined process'.³⁶

2.37 DIRD emphasised that airport lessees were unlikely to seek a withdrawal from an MDP, given that an MDP approval was likely to cost approximately \$300 000 to \$1 million per project.³⁷

32 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, p. 5136.

33 Department of Infrastructure and Regional Development, *Submission 22*, p. 9.

34 Airports Amendment Bill 2016, schedule 1, item 24.

35 Explanatory Memorandum, Airports Amendment Bill 2016, p. 7.

36 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, p. 5136.

37 Department of Infrastructure and Regional Development, *Submission 22*, p. 9.

Appeal rights

2.38 As the bill introduces new Ministerial decisions it also, at Item 25, determines whether some of these decisions should be subject to review by the Administrative Appeals Tribunal (AAT).

2.39 The new legislative instruments in relation to MDPs which determine cost of construction, and the monetary trigger threshold, are not subject to AAT review. Likewise, a decision of the Minister in ceasing an MDP (under new section 96AA) is not a reviewable decision.³⁸

Transitional provisions

2.40 The bill contains a number of transitional provisions, in acknowledgement of the various stages that airports may be at in the MP or MDP process, prior to commencement of the bill.

2.41 In relation to MPs, the EM explains that the amendments to the MP timeframe 'only apply to draft master plans given to the Minister on or after commencement' so that 'any master plan approved prior to commencement will expire five years from the day on which it was approved'.³⁹

2.42 However, the EM notes the transitional provisions recognise:

there is typically a significant consultation process leading up to the lodgement of a master plan. Where a master plan is submitted and consultation notice is published within 12 months of commencement [of the bill], the airport-lessee company can elect to not have the amendments apply to that master plan without penalty. Therefore, an airport...may elect to submit a 5 year master plan within 12 months of commencement.⁴⁰

2.43 Beyond this 12-month period after commencement, it appears all new draft MPs will be subject to the new eight year timeframe.

38 Airports Amendment Bill 2016, schedule 1, item 25; Explanatory Memorandum, Airports Amendment Bill 2016, p. 7.

39 Explanatory Memorandum, Airports Amendment Bill 2016, p. 8.

40 Explanatory Memorandum, Airports Amendment Bill 2016, p. 8.

Chapter 3

Issues

3.1 This chapter presents the views of submitters concerning the key provisions of the bill, both in support of, and against, the proposed amendments.

Response to the bill

3.2 Overall, there was broad support for the bill and its key elements. However, as indicated throughout this chapter, submitters supportive of the bill did raise concerns over specific provisions.

3.3 The Australian Airports Association (AAA), as the representative of 260 major and other airports, stated that it 'strongly supports' the amendments. AAA argued that the amendments will reduce regulatory burdens, and could have even been more extensive.¹

3.4 Sydney Metro Airports (Bankstown and Camden) supported the intent and the majority of the provisions of the bill. Its submission noted that the bill allowed the Act:

to remain contemporary in the way it is administered in particular in relation to Airport Master Plans and Major Development Plans whilst ensuring that a balance of interests of the Airport operators, aviation industry and the community is maintained.²

3.5 The Canberra Airport was in strong support of the bill, submitting that the bill was a result of rigorous public consultation, and of government and industry working to 'resolve a planning and development regime that weighs legislative costs with benefits'. Canberra Airport also supported the bill's approach in treating large and medium-sized airports differently.³

3.6 The ACT Government supported all proposed amendments, and suggested that the changes to the MP timeframes and the MDP monetary triggers were both sensible provisions that would streamline airport operations.⁴

3.7 Similarly, Brisbane Airport Corporation was in strong support of the bill, stating that the amendments proposed reflected changes in the economic environment in which airports now operate.⁵

1 Australian Airports Association, *Submission 14*, pp. 1-2.

2 Bankstown Airport Limited and Camden Airport Limited (Sydney Metro Airports), *Submission 1*, p. 2.

3 Canberra Airport, *Submission 15*, p. 2.

4 ACT Government, *Submission 19*.

3.8 The Hobart International Airport Community Aviation Consultation Group (CACG) supported the bill, and considered the MP and MDP changes as beneficial to airport management, with no disadvantages to the community.⁶

3.9 The Queensland Department of Transport and Main Roads was also in support of the amendments, particularly the changes to the MP timeframes, the increase to the MDP monetary threshold, the new requirements in relation to ANEFs, and the withdrawal of MDPs in certain circumstances.⁷

3.10 Qantas Group expressed its support for the amendments to MP and MDP timeframes and processes, stating that they would streamline administrative requirements. Qantas Group noted that the current arrangements were generating inefficient outcomes for industry while increasing administrative, financial and compliance costs.⁸

3.11 However, Perth Airport submitted that, while supportive of the bill, many of the provisions did not go far enough. Perth Airport expressed its view that the bill was:

a missed opportunity for significant red tape reduction and cost efficiencies to be realised by airports, particularly considering the lengthy period between initial consultation and legislative amendments and the unlikelihood of another review being undertaken in the near future.⁹

The Master Plan process

Airport Master Plans

3.12 While a number of submitters were in support of amending the MP timeframes from five to eight years for some airports, there were concerns raised that the amendments either did not go far enough, or that the MP process in general needed reconsideration.

3.13 Adelaide Airport Limited (AAL), on behalf of the Adelaide and Parafield airports, supported the move from five to eight years for MPs. AAL argued that the current MP cycle was onerous, a significant financial burden, and did not reflect the 'strategic long-term nature of such facilities'.¹⁰

5 Brisbane Airport Corporation, *Submission 16*, p. 1.

6 Hobart International Airport Community Aviation Consultation Group, *Submission 2*.

7 Queensland Government Department of Transport and Main Roads, *Submission 21*.

8 Qantas Group, *Submission 23*, p. 1.

9 Perth Airport, *Submission 6*, p. 4.

10 Adelaide Airport Limited, *Submission 12*.

3.14 The amendments to the MP process were supported by Sydney Metro Airports (Bankstown and Camden). Camden Airport in particular argued it will benefit from the changes, as 'aeronautical activity and development have been stagnant for several years whilst the cost of carrying out a Master Plan equates to 1.7 years of aeronautical revenue for that airport'.¹¹

3.15 Airservices Australia supported the amendments to the MP timeframes, and in particular the retention of the five year review period for the five major airports. Airservices stated that retention of the five year MP timeframe allowed it, and similar agencies, to consider, plan and implement industry changes, while meeting the expectations of the travelling public.¹²

3.16 However, the AAA submitted that the five year cycle retained for the major airports could be more flexible. As an MP took up to two years to complete, the AAA noted that there was effectively a three-year gap between plans, resulting in a significant regulatory burden.¹³

3.17 While the AAA was generally supportive of the eight year cycle, it argued that a more appropriate timeframe would be ten years, which would align with the airport planning processes of many state and local government planning authorities. The AAA suggested that a ten year cycle review could be supported by a five year review option, triggered only if significant or unforeseen developments had occurred. It was argued that MP processes under such a scheme would save the industry 'tens of millions of dollars'.¹⁴

3.18 A similar view was put forward by the Australia Pacific Airports Corporation (APAC), which considered a ten year MP cycle period as more appropriate. APAC argued that the MP process attracts significant time and resources, and that there did not appear to be 'significantly improved outcomes for stakeholders or communities of interest' from implementing an eight-year timeframe.¹⁵

3.19 Perth Airport expressed its disappointment that it had been excluded from the proposed changes introducing an eight year MP submission cycle, and did not support the differential submission cycle. Perth Airport argued that, in its development of MPs over the past 30 years, only 'incremental or marginal' changes had been made to each iteration. Therefore:

Perth Airport believes that an eight year cycle for all airports is sufficient review at a timeframe that provides confidence to the Minister and the

11 Bankstown Airport Limited and Camden Airport Limited (Sydney Metro Airports), *Submission 1*, p. 2.

12 Airservices Australia, *Submission 18*, p. 1.

13 Australian Airports Association, *Submission 14*, pp. 2-3.

14 Australian Airports Association, *Submission 14*, p. 3.

15 Australia Pacific Airports Corporation, *Submission 13*, p. 1.

community that the plans for Perth Airport are appropriate having regard to providing suitable airport services and compatibility of Perth Airport's plans with surrounding urban planning and development.

...Perth Airport is not aware of any airport for which the planning or development is so dynamic that it would warrant a master plan review more frequently than 8 years.¹⁶

3.20 Some submitters argued against any changes to the five-year MP cycle. The City of Cockburn, for example, stated that there did not appear to be 'any significant pressures on the current timeframe that would suggest any significant change is required'.¹⁷

3.21 The City of Cockburn further argued that an eight year MP review cycle would not allow social, environmental or economic factors to be adequately addressed, placing airports at risk when operating within local planning frameworks.¹⁸

3.22 The Archerfield Airport Corporation (AAC) was of the view that the MP process was 'very laborious and expensive', particularly for smaller airports like the AAC, where regulatory processes had become 'debilitating'. AAC argued that the amendment to eight year MP cycles for some airports 'does very little to alleviate the compulsion of the present regime'. The AAC went on to state that it was of:

dubious merit to have such impediment prescribed, and the resources of airport licensees consumed, for the development of a new master plan that is essentially a carbon-copy of the previously approved plan....We sometimes feel that Archerfield airport is drowning in red tape.¹⁹

3.23 Rather than moving to an eight year MP cycle, the AAC submitted that smaller airports should have their MPs remain current:

until the licensee initiates a review, or proposed developments become inconsistent with the currently approved Master Plan, rather than being precipitated by an arbitrary time line.²⁰

Australian Noise Exposure Forecast (ANEF)

3.24 The inclusion of a new ANEF in each new MP was supported by a number of submitters.²¹

16 Perth Airport, *Submission 6*, p. 2.

17 City of Cockburn, *Submission 4*, p. 1.

18 City of Cockburn, *Submission 4*, p. 1.

19 Archerfield Airport Corporation, *Submission 7*, p. 3.

20 Archerfield Airport Corporation, *Submission 7*, p. 4.

21 Hobart International Airport Community Aviation Consultation Group, *Submission 2*; Canberra Airport, *Submission 15*; Qantas Group, *Submission 23*.

3.25 Airservices Australia supported the amendment. Airservices noted that over an eight year period, there may be significant change in aircraft operations, that could 'substantially change ANEF contours around the airport and therefore development planning'.²²

3.26 The Sutherland Shire Council welcomed the ANEF amendments and considered them to be significant. The Council stated that the new requirements would help local governments and communities to 'better assess, manage and respond to the potential impacts from changes to aircraft activity and noise'.²³

3.27 Some submitters, however, expressed concerns about the procedures around the ANEF. Perth Airport, while supportive of the inclusion of ANEFs in MPs, did not support the requirement to update the ANEF with each MP. Perth Airport argued that ANEFs were unlikely to significantly change, with the endorsement process for ANEFs being lengthy and costly. Perth Airport suggested that airport lessees should be given the discretion to determine whether to update an ANEF.²⁴

3.28 Similar to its views on the MP process, the AAC saw little benefit in the need to update ANEFs for each new MP, if there had been 'no significant change that would warrant a revision of the noise profile'. AAC argued that such updates would be costly and time consuming, especially for smaller airports. As an alternative, AAC suggested that the requirement of a new ANEF in each new MP only apply to the major airports.²⁵

3.29 The AAC further commented on the requirement introduced by the bill that a new MP be developed within 180 days of each newly endorsed ANEF. AAC submitted that this had:

the potential to drag airports into a never ending whirlpool of expensive and time consuming master planning and discourages airport operators from updating their ANEFs at intervals that aren't suitably aligned with their Master Plan cycles.²⁶

3.30 The Melbourne CACG raised general concerns in relation to the adequacy of the ANEF. The Melbourne CACG suggested that limitations with the ANEF were 'widely recognised', with ANEF metrics being outdated and holding no meaning for those residents currently exposed to aircraft noise. The Melbourne CACG called for the mandatory inclusion of alternative noise metrics in MPs, in addition to the ANEF,

22 Airservices Australia, *Submission 18*, p. 2.

23 Sutherland Shire Council, *Submission 20*.

24 Perth Airport, *Submission 6*, pp. 2-3.

25 Archerfield Airport Corporation, *Submission 7*, pp. 3, 4.

26 Archerfield Airport Corporation, *Submission 7*, p. 4.

to achieve better planning outcomes and to provide airport communities with more meaningful information about aircraft noise.²⁷

Draft and final ANEFs

3.31 The AAA supported the amendments relating to the ANEF, but raised concerns over the fact that a final and endorsed ANEF must be included with a draft MP, rather than a draft ANEF.²⁸ It was argued that this resulted in a 'convoluted and inefficient consultation process'. The AAA suggested that the bill be amended to allow for draft, rather than final, ANEFs to be included in the draft MP. Such a process would allow the draft ANEF to be endorsed in conjunction with approval of a new MP.²⁹

3.32 APAC held the same position, suggesting that the requirement for ANEFs to be endorsed prior to inclusion with a draft MP be reviewed. APAC argued that requiring an endorsed ANEF, rather than a draft, would add complexity to the process, and 'for limited value'.³⁰

Monetary triggers for Major Development Plans

3.33 There was mixed support among submitters for the increase to the MDP monetary trigger, from \$20 million to \$35 million.

3.34 The AAL fully supported the increase, and expressed the view that the raised threshold would 'increase the ability for airports to unlock the economic and employment potential of on-airport developments'.³¹

3.35 The AAA supported the monetary threshold amendments, and strongly supported the monetary threshold being increased every three years. The AAA noted that it had previously recommended the threshold be increased to \$50 million, especially in light of the other MDP triggers in the Act that were invoked, regardless of cost.³²

3.36 Perth Airport was of a similar view, and argued that for the increase to be of any benefit to airports, the threshold should be \$40 to \$50 million.³³

27 Melbourne Airport Community Aviation Consultation Group, *Submission 10*, pp. 1-2.

28 ANEFs are endorsed by Airservices Australia, which assesses their technical accuracy. Airservices Australia, *ANEF and ANEI*, March 5 2014, <http://www.airservicesaustralia.com/services/anef-and-anei/> (accessed 24 November 2017).

29 Australian Airports Association, *Submission 14*, p. 3.

30 Australia Pacific Airports Corporation, *Submission 13*, p. 2.

31 Adelaide Airport Limited, *Submission 12*.

32 Australian Airports Association, *Submission 14*, p. 4.

33 Perth Airport, *Submission 6*, p. 3.

3.37 Sydney Airport argued that 'inflation has significantly eroded the value of the [current] threshold', leading to relatively minor developments being subject to the 'complex, lengthy and costly' MDP process. Sydney Airport therefore supported both the increase to the threshold, and the proposal to index this threshold with regard to construction costs, noting that the change would not affect the other non-monetary MDP triggers contained in the Act.³⁴

3.38 However, the City of Cockburn considered the current threshold of \$20 million as appropriate, arguing that any developments over this value could potentially have a significant detrimental impact on airport operations and surrounding lands and communities. The City of Cockburn argued that:

Deciding to lift the MDP threshold especially for general aviation airports creates a further level of risk for the community and local government in its ongoing relationship with federally regulated airports.³⁵

3.39 AIPA considered that the increase of the monetary trigger would exacerbate existing operational risks, as the higher threshold value would exclude a number of projects from the MDP process on the basis of cost, and would therefore not properly consider risk. AIPA argued that it:

recognises the advantages of creating regulatory divisors for planning approval processes using dollar costing as a proxy for project size and complexity. However, like all proxies, it has limitations. The most significant of these limitations is that environmental and operational risk consequences are not well correlated with project size and complexity.³⁶

3.40 DIRD was of the view that the increased monetary threshold would not reduce the visibility of airport developments, especially in light of the other MDP triggers in the Act, and the fact that MDPs had to be consistent with an airport's approved MP.³⁷

3.41 The Melbourne CACG asserted that the proposed increase of the MDP monetary threshold was far in excess of inflation since 2007, when the \$20 million threshold was determined. It was argued that it was 'not credible' to increase the threshold on the basis of construction industry costs and marketplace conditions. The Melbourne CACG maintained that:

arbitrarily increasing the trigger threshold by amounts greater than inflation will deny the community an opportunity to review and comment on some significant development proposals.

The CACG submits that the MDP monetary trigger threshold should not be increased beyond \$25 million at this time.³⁸

34 Sydney Airport, *Submission 5*, pp. 2-4.

35 City of Cockburn, *Submission 4*, p. 2.

36 Australian and International Pilots Association, *Submission 3*, pp. 2- 3.

37 Department of Infrastructure and Regional Development, *Submission 22*, p. 7.

3.42 The Melbourne CACG also offered its support for the review of the monetary threshold every three years. It did, however, raise concerns that there were insufficient safeguards to protect community interests, given the increase would be at the absolute discretion of the Minister. The Melbourne CACG argued that the bill should be amended, to compel the Minister to consider the actual index of construction activity costs (published by the Australian Bureau of Statistics) when determining a new threshold, as this would improve transparency.³⁹

Cost of construction

3.43 The bill proposes to allow the Minister to determine, via legislative instrument, what constitutes the cost of construction for the purposes of determining the MDP monetary threshold. Some submitters, while generally supportive of this measure, held some concerns over the content of the legislative instrument.

3.44 Sydney Metro Airports (Camden and Bankstown) argued that, while supporting the use of a legislative instrument to determine cost of construction, there should be flexibility when considering what this constitutes. The submission argued that costs should not include, among other things,⁴⁰ finance and legal costs, tenant-specific fit-out costs, and site remediation costs.

3.45 This view was also put forward by AAA, who argued that it was important to ensure that internal building fit-out costs were not included in determining construction costs.⁴¹

3.46 Perth Airport went further, stating that it did not support the proposal to include base building fit-out in the cost of construction, given that there was a high degree of uncertainty as to the costs of such work at the time of preparing an MDP. An airport could therefore be at risk of overestimating or underestimating construction costs, with direct implications for the MDP trigger.⁴²

3.47 The committee notes that the content of the instrument is a matter for consideration by the Minister, subsequent to successful passage of the bill. However, as part of its submission, DIRD provided a general description of the costs of construction that should be considered. These included, among other things, site establishment, groundworks, footings, cladding and roofing, and base building fitout

38 Melbourne Airport Community Consultation Group, *Submission 10*, p. 2.

39 Melbourne Airport Community Consultation Group, *Submission 10*, p. 3.

40 Bankstown Airport Limited and Camden Airport Limited (Sydney Metro Airports), *Submission 1*, pp. 2-3.

41 Australian Airports Association, *Submission 14*, p. 4.

42 Perth Airport, *Submission 6*, p. 3.

and finishes. DIRD agreed that costs should not include items such as legal fees, site remediation costs or design fees.⁴³

MDP processes

Consultation periods

3.48 There was some support for the bill's proposal to automatically approve a request from an airport lessee for a shorter public consultation period, in the absence of a ministerial decision within 15 business days.

3.49 Support for the amendment was provided by Perth Airport and AAA. AAA stated that this amendment would provide airports with certainty around timeframes, and therefore would benefit the strategic and operational business decisions made in relation to the MDP.⁴⁴

3.50 An alternative view of the amendment was put forward by a number of submitters. For example, the Sydney Airport Community Forum (SACF), while being mostly supportive of the bill, argued that the automatic approval for reduced consultation periods set the default as 'one of acceptance rather than rejection'. SACF members felt this would 'set a dangerous precedence and could lead to accidental abuse'. SACF argued that the bill should be amended, so that an extension request was declined if the Minister did not respond within the statutory timeframe.⁴⁵

3.51 A similar argument was made by Mr Robert Hayes, who submitted that an extension decision should be deemed not approved if the Minister does not make a decision within the required timeframe. Mr Hayes argued that an 'airport-lessee could unreasonably use this [provision] to gain unfair advantage, to avoid reasonable consultation or to otherwise act to the detriment of the community'.⁴⁶

3.52 However, DIRD submitted that this 'deemed approval' provision was consistent with the current decision-making powers contained in the Act regarding MPs and MDPs.⁴⁷ DIRD further argued that without this amendment, the lack of certainty around the decision-making timeframe would impact on 'commercial timeframes and broader opportunity costs'.⁴⁸

43 Department of Infrastructure and Regional Development, *Submission 22*, pp. 13-14.

44 Perth Airport, *Submission 6*, p. 3; Australian Airports Association, *Submission 14*, p. 4.

45 Sydney Airport Community Forum, *Submission 8*.

46 Mr Robert Hayes, *Submission 9*, p. 2.

47 Under the Act, if no Ministerial decision is made on a draft MP or MDP within 50 business days, the draft MP or MDP is deemed approved. Department of Infrastructure and Regional Development, *Submission 22*, p. 9.

48 Department of Infrastructure and Regional Development, *Submission 22*, pp. 8.

3.53 In considering this bill, the Parliamentary Library raised questions about this proposed amendment. The Bills Digest stated that:

This amendment seems to raise the possibility that the Minister could simply not decide on the request, and then be deemed to have approved the short period, even if the development is inconsistent with the airport master plan, or raises issues that have a significant impact on the local or regional community. In other words, it appears that new subsection 92(2BA) could potentially be used to circumvent the requirements in subsection 92(2B).

Note also that this amendment does not seem to have been among the amendments proposed in the Department's second discussion paper in 2015.⁴⁹

Substantial completion of an MDP

3.54 Qantas Group expressed its support for the amendments which would allow the Minister to extend the completion date for a major development as many times as required. Qantas Group argued that this amendment:

minimises regulatory uncertainty for the airline industry and ensures a more streamline process. Furthermore, this allows airports to factor in unforeseen delays or significant changes in forecast demand to better align the delivery of infrastructure in line with demand.⁵⁰

3.55 AAA likewise favoured the amendment, but expressed concern that the wording of the amendment was not suitable. AAA proposed amending the provision to provide that an extension could be given if a project was 'substantially commenced' rather than 'substantially completed'. It was argued that 'substantially commenced' would align with the approach taken by state planning authorities, and would provide more clarity than 'substantially completed', which was considered by AAA to be ambiguous and ill-defined.⁵¹

Ceasing an MDP approval

3.56 The bill provides that airport lessees can withdraw from an MDP without penalty, in exceptional circumstances.

3.57 While the AAA supported these amendments it did, however, urge for clarity around what would constitute 'exceptional circumstances', noting that the definition should still ensure flexibility to include any issues that may have been unforeseeable when the MDP was prepared.⁵²

49 Sophie Power, Airports Amendment Bill 2016, *Bills Digest No. 73*, 2016-17, Parliamentary Library, Canberra, 2017, p. 10.

50 Qantas Group, *Submission 23*, p. 2.

51 Australian Airports Association, *Submission 14*, p. 5. The same view was put forward by Perth Airport, *Submission 6*, p. 4.

52 Australian Airports Association, *Submission 14*, p. 5.

3.58 APAC expressed a similar view, and requested further explanation as to what may constitute 'exceptional circumstances'. APAC contended that a number of factors, including 'market conditions and a change in financial circumstances', could influence investment decisions and development progress, but it was unclear from the bill what circumstances would be considered exceptional.⁵³

3.59 Perth Airport was supportive overall of the inclusion of an MDP retraction provision. However, it did not support the clause that proposed to allow an MDP to be withdrawn, only if a building approval was not already in place. Perth Airport suggested that there were 'many circumstances outside an airport lessee's control which may result in the development becoming unviable after site works have already commenced', and that 'project circumstances may change due to market, economy or investment reasons'.⁵⁴

53 Australia Pacific Airports Corporation, *Submission 13*, pp. 2-3.

54 Perth Airport, *Submission 6*, p. 4.

Chapter 4

Essendon Airport investigations and committee views

4.1 This chapter considers the investigations into the February 2017 accident at Essendon Airport, as they relate to the bill's provisions. In particular, and as identified by the interim report, the committee considers the work of the National Airports Safeguarding Advisory Group (NASAG) and the implementation of public safety zones around airports.

4.2 This chapter also presents the committee's views and recommendation on the bill.

Essendon Airport accident

4.3 On 21 February 2017, a Beechcraft B200 Super King Air (VH-ZCR) took off from Essendon Airport and crashed into the DFO retail complex running alongside the airport, which resulted in a major fire at the shopping centre. The accident tragically killed the pilot and four American tourists on board.

4.4 Airport regulation, planning and development processes play important roles in ensuring ongoing aircraft and passenger safety. The importance of these processes was amplified by the terrible accident at Essendon.

4.5 Particular concerns in relation to airport land use and planning were raised after the accident. Some stakeholders noted that residential and commercial developments were being constructed in increasingly closer proximity to airport runways, thus reducing the space available for aircraft to take evasive action or make emergency landings when necessary.

4.6 There is considerable interaction between federal, state and local governments when determining the use of land around both major and general airports. The committee is not in a position to consider planning and approval processes at a state and local level, but has given some consideration to the intersection of the bill with federally-leased airport land use planning, in light of the tragedy at Essendon.

4.7 As noted in the interim report, the committee was advised by DIRD that following the accident, it was examining the development approval processes for land use planning at Essendon Airport.¹

4.8 The committee was further advised that the NASAG was considering the adoption of draft national guidelines, regarding runway public safety zones around

1 Mr Mike Mrdak, Department of Infrastructure and Regional Development, *Estimates Hansard*, 27 February 2017, p. 179.

airports, and runway end safety zones (collectively referred to in this report as public safety zones).²

4.9 Following receipt of this advice, the committee determined that the findings and recommendations of the investigations into this tragedy, and the work of NASAG, would be taken into consideration when deliberating on the bill. Discussion on these issues follows.

Investigations into the Essendon Airport crash

4.10 On 29 March 2017, the Australian Transport Safety Bureau (ATSB) released its preliminary report into the Essendon crash. The report presented some information but did not make any findings. However, it did highlight that the continuing investigation would include a review of the approval process for the building that was struck by the aircraft.³

4.11 At additional estimates in February 2017, DIRD advised that it had:

had a look at the development approval processes involved in the land-use planning at the airport and we have compiled that information. We have provided advice to the minister in relation to both the details of the accident investigation process, along with the ATSB, and details of the development approval process for the buildings located at the DFO site. We now stand prepared to work with the ATSB in their investigation of these matters.⁴

4.12 DIRD further stated that it would await the findings of the ATSB investigation into the accident, before examining further the processes undertaken for building development approvals, and determining whether amendments were needed to those processes.⁵

4.13 In March 2017, the ATSB advised that its final report, which would contain the findings of the investigation, would be released in 'around 12 months', being March 2018.⁶ On 9 February 2018, it was announced that the investigation was

2 Mr Mike Mrdak, Department of Infrastructure and Regional Development, *Estimates Hansard*, 27 February 2017, p. 182.

3 Australian Transport Safety Bureau, *Collision with terrain involving B200 King Air VH-ZCR at Essendon Airport, Victoria on 21 February 2017*, Investigation number AO-2017-024, https://www.atsb.gov.au/publications/investigation_reports/2017/aair/ao-2017-024/ (accessed 5 December 2017).

4 Mr Mike Mrdak, Department of Infrastructure and Regional Development, *Estimates Hansard*, 27 February 2017, p. 179.

5 Mr Mike Mrdak, Department of Infrastructure and Regional Development, *Estimates Hansard*, 27 February 2017, pp. 179-180, 181.

6 Australian Transport Safety Bureau, *Statement on update: Essendon accident*, 29 March 2017, <https://www.atsb.gov.au/newsroom/news-items/2017/update-essendon-accident/> (accessed 5 December 2017).

complete and a draft report was in the final stages of completion. It was anticipated that the final report would be released in late May or early June 2018.⁷

4.14 It has since been announced that the ATSB will undertake a separate investigation into building approval and planning processes, from an aviation perspective. This would include:

any airspace issues associated with the [DFO] development, to determine the transport safety impact of the development on aviation operations at Essendon Airport.⁸

4.15 The ATSB stated that this separate investigation into building approvals was due to the 'specialist nature of the approval process and airspace issues attached to the retail centre development'.⁹

Committee view

4.16 The committee notes with some concern the significant amount of time that will have lapsed between the accident, and the final report being issued by the ATSB, should the May 2018 deadline be achieved.

4.17 The committee's concerns are exacerbated by reports that an investigation into a near-collision of two aircraft at Mount Hotham, Victoria, in September 2015 has yet to be completed. As of 9 February 2018, the draft report into the Mount Hotham incident was in the final stages of completion, as the completion date had been extended due to 'a number of factors'.¹⁰ Of particular significance is that the pilot allegedly at fault in the September 2015 incident, was the pilot involved in the Essendon Airport crash in February 2017.¹¹

4.18 The committee is of the view that investigations by the ATSB should be completed in a timelier manner. Doing so would allow serious safety issues to be addressed soon after serious incidents occur, and may prevent such incidents from happening in the first place.

7 Australian Transport Safety Bureau, *Collision with terrain involving B200 King Air VH-ZCR at Essendon Airport, Victoria on 21 February 2017*, Investigation number AO-2017-024, Updates, 9 February 2018, https://www.atsb.gov.au/publications/investigation_reports/2017/aair/ao-2017-024/ (accessed 20 February 2018).

See also Aleks Devic, 'New probe to focus on airport planning', *Herald Sun*, 17 February 2018, p. 10.

8 Aleks Devic, 'New probe to focus on airport planning', *Herald Sun*, 17 February 2018, p. 10.

9 Aleks Devic, 'New probe to focus on airport planning', *Herald Sun*, 17 February 2018, p. 10.

10 Australian Transport Safety Bureau, *Near-collision and Operational Event involving Beech Aircraft Corp. B200, VH-OWN and Beech Aircraft Corp. B200, VH-LQR, Mount Hotham Victoria on 3 September 2015*, https://www.atsb.gov.au/publications/investigation_reports/2015/aair/ao-2015-108/ (accessed 20 February 2018).

11 Ean Higgins, 'Why was Essendon crash pilot at controls?', *The Australian*, 8 November 2017.

4.19 The committee notes that the ATSB's investigation into building planning and approval processes may make findings in relation to the construction approvals for the DFO building alongside Essendon Airport.

4.20 If so, the committee encourages the Minister, DIRD and the Senate to be aware that such findings could directly impact on the provisions of this bill. It seems logical to the committee that any such findings are considered in future as airports develop MPs and MDPs.

4.21 In developing its legislative agenda, it would be prudent for the government to give careful consideration to whether the findings of the ATSB investigation will necessitate further amendments to airport planning legislation.

4.22 This would also give some assurance to stakeholders that the safety concerns around airport land use have been given serious consideration in the development of airport planning laws.

National Airports Safeguarding Advisory Group

4.23 The National Airports Safeguarding Framework (NASF), established in 2012, is a national airport land use planning framework. NASF aims to improve the safety outcomes at airports by 'ensuring aviation safety requirements are recognised in land use planning decisions', with guidelines adopted by jurisdictions on various safety issues.¹²

4.24 The NASAG, which developed the NASF and is consulted on amendments to the NASF guidelines, is comprised of Commonwealth, state and territory government planning and transport officials, the Civil Aviation Safety Authority (CASA), Airservices Australia, the Department of Defence, and the Australian Local Government Association.¹³

4.25 The NASF currently contains seven guidelines (Guidelines A to G), which cover a range of airport planning requirements.¹⁴ Of particular importance to the committee is NASF and NASAG progress on the implementation of guidelines for public safety zones around airports. These zones provide safety areas at the ends of

12 Department of Infrastructure and Regional Development, *The National Airports Safeguarding Framework*, 1 December 2016, https://infrastructure.gov.au/aviation/environmental/airport_safeguarding/nasf/ (accessed 5 December 2017).

13 Department of Infrastructure and Regional Development, *The National Airports Safeguarding Framework*, 1 December 2016.

14 See Department of Infrastructure and Regional Development, *Factsheet: National Airports Safeguarding Framework*, https://infrastructure.gov.au/aviation/environmental/airport_safeguarding/nasf/framework_factsheet.aspx (accessed 6 December 2017).

runways, on and off airport, to minimise the risk of damage by aircraft during take-off or landing.¹⁵

4.26 Mr Mike Mrdak, then Secretary of DIRD, updated the committee on the progress of public safety zone areas:

Since [2012], the Commonwealth and Queensland have been working on a guideline for public safety areas for aerodromes. There is no such guideline in place in Australia at this time. There is very limited guidance available from the International Civil Aviation Organisation on such runway safety zones, and we have been looking and researching examples...in the UK and the United States.

The current situation is that a draft guideline is being prepared and finalised by the Commonwealth and Queensland, which is due to shortly go out to the other jurisdictions for consideration. There has been some resistance by some jurisdictions to having such a land-use planning requirement; however, we are working this through. This has been prompted by concerns over many years...around this issue of the lack of such guidance to Australian land-use planners, both on and off airport.¹⁶

4.27 DIRD advised that progress has been slow on the development of the public safety zone guidelines, given the disparities between the Commonwealth's role, and that of state and local governments off airport, and the need to have a consistent approach through all states and territories. Further issues were identified by Mrs Kerryn Macaulay, Aviation and Airports Division, DIRD, who stated that:

There are two different issues [with public safety zones]. If it is a greenfields arrangement where you are building a new airport then it is a much easier thing to deal with. But obviously we are going to be dealing with airports that already exist, that already have developments around them. And some of those are housing developments. That is where some of the sensitivities are in terms of getting the messaging out that this is an important thing to have, and future developments would take these things into consideration to reduce the number of people who are living in or are concentrated in those zones so that we can protect them into the future.¹⁷

4.28 In response to questions on notice, CASA advised on the progress NASAG was making on the implementation of public safety zone guidelines:

15 Department of Infrastructure, Transport, Regional Development and Local Government, *Discussion Paper: Safeguards for airports and the communities around them*, June 2009, p. 14, https://infrastructure.gov.au/aviation/environmental/files/Safeguarding_Discussion_Paper_Jun09.pdf (accessed 6 December 2017).

16 Mr Mike Mrdak, Department of Infrastructure and Regional Development, *Estimates Hansard*, 27 February 2017, p. 167.

17 Mrs Kerryn Macaulay, Department of Infrastructure and Regional Development, *Estimates Hansard*, 27 February 2017, p. 183.

At the most recent NASAG meeting on 14 March 2017, members agreed to brief their respective Ministers on a draft Public Safety Zones Guideline that has been developed by the Commonwealth and Queensland Governments in consultation with other NASAG members. Subject to Ministers' agreement, NASAG will conduct targeted stakeholder consultation on the draft Guideline in the second half of 2017. The draft Guideline would then be released for wider public consultation prior to being presented to the Transport and Infrastructure Council for endorsement.¹⁸

4.29 The committee was advised at additional estimates in February 2017 that Queensland was, at that time, the only jurisdiction to have implemented public safety zone legislation.¹⁹

4.30 It appears that a draft guideline in relation to public safety zones has still yet to be released for public consultation, or finalised.²⁰ The committee has been unable to determine whether any further work has been progressed on the implementation of nation-wide public safety zones, in line with the Queensland legislation.

4.31 CASA was of the view that, with regard to the accident at Essendon Airport, a public safety zone would not have played any role in the accident, as the aircraft did not enter what would be considered a public safety zone area.²¹

4.32 CASA further advised that it would not have objected to the location of the shopping complex in relation to the Essendon Airport runway, as the building location adhered with current regulations.²²

Committee view

4.33 It is apparent to the committee that the development of public safety zone guidelines should be progressed as a matter of priority. Notwithstanding the sensitivities around differences in jurisdiction and presenting a clear message on the

18 Civil Aviation Safety Authority, answers to questions taken on notice, 27 February 2017 (received 19 May 2017).

19 Mr Andrew Tiede, Civil Aviation Safety Authority, *Estimates Hansard*, 27 February 2017, p. 164.

20 There are indications that draft guidelines (Guideline H) for public safety zones have been in development; see for example ACT Government, *Airport planning matters*, http://www.planning.act.gov.au/customer_information/airport-planning-matters (accessed 6 December 2017) and Adelaide Airport Consultative Committee, Minutes, 19 August 2016, <http://www.adelaideairport.com.au/corporate/wp-content/uploads/2016/11/AACC-Minutes-19-August-2016-DRAFT-1.pdf> (accessed 6 December 2017).

21 Mr Andrew Tiede, Civil Aviation Safety Authority, *Estimates Hansard*, 27 February 2017, p. 164.

22 Mr Shane Carmody, Civil Aviation Safety Authority, *Estimates Hansard*, 27 February 2017, p. 175.

need for these guidelines to stakeholders, such guidelines would be an invaluable part of the airport land use planning process.

4.34 The consideration of public safety zones should be incorporated into the development of future MPs and MDPs, in accordance with the adopted guidelines. Such a process would be of great importance to the safety of aircraft and passengers, and to the commercial and residential developments built in close proximity to airports.

4.35 The committee encourages NASAG to release the draft guideline for public consultation as soon as possible, which should be followed by the prompt endorsement of the guideline and its application across the nation's airports.

Submissions relating to land use planning

4.36 In commenting on the bill, some submitters took the opportunity to voice their concerns about broader planning and development risks and safety issues around airports. Many of these concerns were amplified by the events at Essendon Airport and also highlighted the need to better assess the risks associated with land use on and around airports.

4.37 For example, Perth Airport was of the view that there needed to be a 'greater effort, through the Council of Australian Governments process, to have a consistent approach to land use policy and regulations across Australia, based on the NASF guidelines'.²³

4.38 The Melbourne CACG submitted that it:

strongly supports the existence [of] a robust land use planning framework around airports to protect existing and future residents, and ensure the important economic and social roles performed by airports are sustainable.²⁴

4.39 In its submission, AIPA stated that it did not support the bill in its current form, and argued new provisions should be inserted into the Act to address operational risk management.²⁵

4.40 AIPA was most concerned with buildings and structures near runways creating 'dangerous turbulent wakes in strong winds', and changing light sources and in-flight visibility. Land use near airports could result in the 'hazardous wind disturbance of aircraft'. AIPA suggested that:

The existing legislative framework does not provide a uniform management scheme for these operational risks. The Airports Amendment Bill 2016

23 Perth Airport, *Submission 6*, pp. 5-6.

24 Melbourne Airport Community Consultation Group, *Submission 10*, p. 1.

25 Australian and International Pilots Association, *Submission 3*, p. 1.

potentially makes the situation worse by excluding more projects on the basis of cost being treated as "major" developments that require appropriate risk treatments.²⁶

4.41 AIPA called for a provision requiring an MDP to properly consider developments 'likely to have significant impact on operational risks to aircraft using the airport' and that may 'compromise the efficient operation of airports'. Such a provision would require operational risks to be assessed, regardless of development costs. AIPA argued that the bill should not proceed without this emphasis on safety.²⁷

4.42 CASA expressed its concern that the increase to the MDP monetary trigger in the bill could have an effect on aviation safety. However, CASA argued that risks could be:

remediated by continued monitoring by the Department of Infrastructure and Regional Development as the relevant agency and advice to all federal leased airport managers that any construction (even below the current or proposed dollar trigger) should be discussed with CASA for possible safety implications prior to proceeding.²⁸

4.43 CASA did highlight that the issue of building-generated wind shear and turbulence had emerged in recent years, given the increased prevalence of buildings constructed at heights just below the prescribed airspace at the site. CASA was able to provide advice based on the NASF and additional criteria by the Netherlands Aeronautical Research Laboratory (NLR). CASA argued that:

NASF and NLR criteria are used because CASA, like every other aviation safety regulator, does not have standards relating to this matter.²⁹

Committee views

Essendon Airport accident

4.44 As the investigations continue into the tragedy that occurred at Essendon Airport in February 2017, the committee observes that such a terrible event may trigger reinvigorated discussions at all levels of government on broader airport land use planning and development issues, to improve the safety for all those who engage with airports.

4.45 The recently announced ATSB investigation into the building approval process for buildings around Essendon Airport, resulting from the Essendon crash, will play an important role in progressing discussions about aviation safety in relation

26 Australian and International Pilots Association, *Submission 3*, pp. 2-3.

27 Australian and International Pilots Association, *Submission 3*, pp. 3-4.

28 Civil Aviation Safety Authority, *Submission 11*, p. 1.

29 Civil Aviation Safety Authority, *Submission 11*, Attachment A, p. 2.

to urban development. As previously noted, the findings of this investigation should be carefully considered in the context of legislative changes to airport planning laws.

4.46 The committee hopes that the important work of NASAG goes some way to addressing the concerns of stakeholders about building and structures near runways, and the impact these have on safe aircraft operation.

4.47 It appears to the committee that the encroachment of developments, be they residential or commercial, on and near airport land presents significant safety concerns. It is essential that safety on and around airports is given proper consideration at all times, without being overridden by commercial pressures.

4.48 The committee is of the view that a holistic approach should be taken to airport planning, and this should be reflected in the MP process. It should be incumbent on all airport lessees, developers and planners to do more than the bare minimum to adhere to airport planning legislation and frameworks, in order to give proper consideration to broader safety considerations.

Master Plans

4.49 An eight year MP cycle is likely to provide considerable benefits to the airport lessees of secondary and general airports, and representatives of these airports offered considerable support for the change. The committee believes it is sensible to retain the five year MP cycle for the five major airports, given their size and complexity, and potential impact on nearby communities.

4.50 The committee understands the view of some submitters that the MP cycle could be further extended to ten years for some airports, particularly given the financial and labour costs involved with compiling such a complex document. However, as acknowledged by AAA, the amendments are a result of extensive consultation and eight years is considered by the committee to be a suitable compromise.

ANEFs

4.51 Given that the MP process has been extended from five to eight years, the committee sees it as sensible to require a new ANEF to be obtained for each MP.

4.52 Despite any extra administrative or regulatory tasks this may involve, it would appear to the committee that new ANEFs would provide better information to local communities and airport stakeholders. It is hoped this will support better planning outcomes and allow for more informed consultation with stakeholders and communities around airports during the MP process.

Monetary triggers for MDPs

4.53 The review and possible revision of the MDP monetary trigger every three years will ensure the trigger better reflects the prevailing economic environment at the

time. Utilising statistical information should help reduce large increases in the trigger amount, noting the larger the monetary trigger, the fewer large-scale airport developments will be subject to MDPs and associated public consultation processes.

4.54 The committee notes the view of some submitters that a higher monetary trigger increases the risk of some developments, as the higher threshold will exclude some significant developments from the MDP process. Given that the Act contains a number of triggers for an MDP, including if a development is likely to have significant environmental or community impacts, the committee is satisfied that appropriate protections remain in place to consider all major developments.

MDP consultation periods

4.55 It was argued that the automatically approved reduced consultation period, in the absence of a Ministerial decision within 15 business days, will provide certainty to airport lessees for their planning processes. It appeared to some submitters that consideration had not been given to the impact this amendment may have on airport community groups and other airport stakeholders.

4.56 The committee notes DIRD's advice that a shorter consultation period can only be approved if the draft MDP aligns with the final MP, and will not raise any issues likely to have a significant impact on the airport community.

4.57 The committee appreciates the complexity and detail involved in MDPs, and therefore encourages suitable public consultation wherever possible. The committee trusts that in the event a request is automatically approved under these new provisions, it does not result in any negative consultation or planning outcomes.

Substantial completion of an MDP

4.58 The committee understands the need for extending the completion deadline for major developments in certain circumstances, and the need to do so without penalty for the parties involvement. This will provide greater certainty to airport lessees when undertaking major works, especially in instances where significant time, money and resources have already been invested.

4.59 However, lengthy extensions for major development completion should consider the flow-on effects of ongoing and incomplete construction for stakeholders, such as airlines, retailers and other commercial interests, and the surrounding local residential communities.

4.60 Overall, the committee sees the bill presenting a number of common sense amendments to federal airport regulation, developed after extensive consultation.

4.61 The committee does note, however, the potential for the ATSB investigation into building approval processes to have an impact on airport planning regulation, which may require further legislative amendment. The committee encourages the government to take this into account when developing its legislative agenda.

4.62 The committee commends the bill to the Senate.

Recommendation 1

4.63 The committee recommends that the Senate pass the Airports Amendment Bill 2016.

Senator Barry O'Sullivan

Chair

Dissenting Report – Australian Labor Party

Background

1.1 Aviation is a significant creator of jobs and a driver of economic development in our cities and regions. Indeed, the sector contributes in excess of \$30 billion per annum (equivalent to 2 per cent of annual GDP) to the Australian economy, and directly and indirectly supports over half a million jobs.

1.2 In particular, our airports are critical pieces of national economic infrastructure. They connect us with each other as well as with the rest of the world. But their operations can impact significantly on the social amenity of the communities of which they are a part of.

1.3 That's why developments at our airports must be well planned and communities properly consulted. Accordingly, while in government Labor, as part of its National Aviation White Paper, implemented the following:

- prohibited developments incompatible with aviation use on federal airport sites unless exceptional circumstances exist, and making sure nearby developments are compatible with airports' core activities and long term planning;
- required federal airports to establish Community Aviation Consultation Groups to address planning and development issues and a range of other operational matters, such as aircraft noise;
- obligated federal airports to submit more detailed Master Plans (MP);
- introduced a new Major Development Plan (MDP) trigger that will be activated by any development with a significant community impact, regardless of size or cost, ensuring the community and stakeholders get the opportunity to scrutinise developments that may be contentious within the local area;
- established the Aircraft Noise Ombudsman;
- stopped older, noisier aircraft flying over residential areas; and
- maintained curfews at Sydney, Adelaide, Gold Coast and Essendon Airports.

Airports Amendment Bill 2016

1.4 The Airports Amendment Bill 2016 (the Bill) seeks to amend the *Airports Act 1996* to streamline processes for development at and around federally-leased airports.

1.5 Unusually for infrastructure, the Federal Government is the consent authority for major airport development, with States and Territories playing a secondary role. Under existing Federal legislation, 19 of the 21 federally-leased airports are required to prepare an MP every five years, for final approval by the Federal Minister. The MP spans a 20-year forward horizon and outlines the strategic direction for development of the airport.

1.6 The MP update process requires community consultation. In addition, specific major developments at airports (including certain projects currently above a \$20 million construction cost) require Federal approval of a MDP.

1.7 The twenty-one airports subject to this legislation are: Canberra, Sydney, Brisbane, Darwin, Bankstown, Gold Coast, Alice Springs, Camden, Townsville, Tennant Creek, Archerfield, Mt. Isa, Melbourne, Hobart, Adelaide, Perth, Essendon, Launceston, Parafield, Jandakot and Moorabbin.

1.8 Western Sydney Airport is also included.

Issues raised by the Bill

1.9 While Labor supports the majority of the amendments to airport planning proposed by the Bill, it holds concerns over two key amendments that have been put forward.

Consultation periods for Major Development Plans

1.10 The Bill proposes to introduce, via a new subsection 92(2BA), a legislated timeframe in which the Minister must determine a request for a shorter consultation period on an MDP.¹ If the Minister does not make a determination within 15 business days, the request for a reduced consultation period will be deemed approved.

1.11 Labor cannot support this 'deemed approval' provision. It should be well within a Minister's capability to consider a request for reduced consultation, within 15 days. In circumstances where this doesn't occur, it would not be appropriate that the request would be deemed approved anyway.

1.12 Labor believes that the current legislative regime provides adequate scope for reduced consultation periods, and that further relaxation of these rules is not justified. The right balance is achieved under the existing legislative framework.

Monetary triggers for Major Development Plans

1.13 An MDP must be completed in a number of circumstances, including when a monetary trigger is reached. The current monetary trigger of \$20 million was determined in 2007, and the Bill proposes to increase this threshold by 75 per cent, to \$35 million.

1.14 It is Labor's view that this increase is excessive. The Government has argued that this increase reflects changes to construction industry costs and other economic conditions that have occurred since 2007. Labor disagrees with this position and takes the view that a \$15 million increase does not reflect changes in construction costs over a 10-year period. Indeed, according to the ABS Construction CPI, costs have increased by 20 per cent since 2007.

1.15 Further, a number of major and sizeable airport construction projects would fall under a \$35 million threshold. Therefore, such projects would be exempt from

1 The consultation period for public comment on a draft MDP is 60 days, or a lesser period approved by the Minister, of not less than 15 business days.

public consultations and other assessments on what impact these developments would have on various stakeholders, both on and off-airport.

1.16 Labor proposes that \$25 million is a more appropriate monetary trigger threshold for MDPs.

Conclusion

1.17 The Bill is being considered against a backdrop of considerable growth in air travel. Over the last twenty years, international passenger movements have grown at an average annual rate of 4.5 per cent while domestic passenger movements have increased by 2.5 per cent.

1.18 It is also being considered at a time when there is considerable development around the nation's major airports, with a new greenfields airport underway in Sydney, and major developments at different stages of progress in Melbourne, Brisbane and Perth, among others.

1.19 Labor strongly supports this investment in aviation infrastructure. However, development at our airports must be well planned and communities properly consulted.

1.20 Accordingly, Labor is of the view that the Bill should be amended to reduce the monetary trigger threshold for MDPs to \$25 million, and to remove the automatic approval of requests for shorter public consultation periods in relation to MDPs.

Senator Glenn Sterle
Deputy Chair
Senator for Western Australia

Senator Malarndirri McCarthy
Senator for the Northern Territory

Appendix 1

Submissions received

| Submission Number | Submitter |
|------------------------------|------------------|
| 23 | Qantas |