



Australian Government

Department of Infrastructure, Regional Development and Cities

Dr Jane Thomson
Committee Secretary
Senate Standing Committee on Rural and Regional Affairs and Transport
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Committee Secretary,

Subject: Air Services Amendment Bill 2018

Thank you for your letter of 3 April 2018 inviting the Department of Infrastructure, Regional Development and Cities to provide a submission to the Senate Rural and Regional Affairs and Transport – Legislation Committee regarding the Air Services Act Amendment Bill 2018.

Please find enclosed a copy of the Department's submission at Attachment A.

I trust the information provided will be of assistance to the Committee in its consideration of the Bill.

Yours sincerely

Brendan McRandle
Executive Director
Aviation and Airports Division

25 May 2018

Attachment

A. Departmental Submission on the Air Services Act Amendment Bill 2018.

Department of Infrastructure, Regional Development and Cities –

Response to the Air Services Amendment Bill 2018

The Department has a number of major concerns over the adverse impacts on Airservices Australia (Airservices) and the aviation industry from the Air Services Amendment Bill (2018) which proposes amendments to the Air Services Act 1995 (the Act) and the Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act).

The Department also suggests that the Bill in a number of places will not achieve its stated objectives and will lead to duplication and a number of unintended consequences.

Item 1 and Item 8 – Regulatory requirement for an Aircraft Noise Ombudsman (ANO)

The Bill proposes to establish a regulatory requirement for an independent, Government-funded ANO reporting to the Minister for Infrastructure and Transport whereas Airservices, which is fully funded by the aviation industry, funds the ANO.

In the Department's view the amendment is unnecessary considering the current ANO, who handles civil and military aircraft noise issues, is already independent and reports directly to the Airservices' Board or Chief of Air Force as appropriate on aircraft noise matters.

Over many years the ANO has delivered a range of reports and recommendations that have been implemented by Airservices that have helped improved noise information and reporting.

Item 2, Item 3 and Item 5- Change to definition of "environment"

The term "environment" in the Act is already broad and embraces a range of environmental impacts across all areas as well as addressing issues such as noise and matters including emissions.

In carrying out its functions, Airservices has long considered the environment to include the human and natural environment as well as built environments, consisting of community amenity and residential areas.

This is evidenced in previous assessments undertaken by Airservices that clearly show that the matters considered are broad and include matters outlined in this proposed amendment.

In addition, the proposed change to the term "environment" could be interpreted as narrower than the provisions of the EPBC Act given the proposed definition is narrower in scope than in the EPBC Act.

Item 4 - Additional consultation provisions and establishment of community consultation groups

The Department notes that Airservices has existing provisions that support wide consultation in the performance of its functions. The Bill's proposed approach appears to make these arrangements more cumbersome and less effective.

The Act and the current Ministerial Statement of Expectations provided to Airservices under Section 12A of the Act, in May 2017, require Airservices to undertake effective stakeholder engagement with the community and industry on the development of significant changes by Airservices to air traffic.

There are already Community Aviation Consultation Groups (CACG's) at federally-leased airports that enable community engagement on airport related matters, including any aircraft noise issues.

The legislative requirement to oblige Airservices to establish community consultation groups would be a duplication of airport responsibilities and creates the possibility of an open-ended number of new community groups needing to be formed to cover communities meeting the undefined concept of noise from “air traffic flyover impact”. This would impose an unnecessary, major regulatory and cost impost on the aviation industry, passed on to the travelling public, if Airservices were required to increase charges to implement this open-ended requirement.

Melbourne flight path plan, helicopter, and fixed wing aircraft prohibition

Airservices manages the day-to-day operation of the national airspace system in accordance with the Act and in exercising its powers and performing its functions, must regard the safety of air navigation as the most important consideration.

However it is the Airspace Act 2007 that is the governing legislation for matters relating to airspace. The Airspace Act sets out that it is the Civil Aviation Safety Authority (CASA) which is responsible for airspace regulation and for considering and approving changes to Australian-administered airspace.

Under the Airspace Act and Airspace Regulations, CASA is responsible for determining the airspace classification system and how it is deployed as well as having responsibility for the classification and designation of all Australian administered airspace. CASA also has sole responsibility for the regulation of the design of all Australian administered airspace.

For this reason, the proposed amendment to the Act will not give Airservices the authority to give effect to a flight path plan for Melbourne (without CASA approval) or result in a prohibition on helicopters and fixed wing aircraft from flying at less than 2000 metres above sea level over residential areas.

If such changes were given legislative effect, they would cause potential safety issues, unwarranted delays due to changes in arrival and departure paths and a significant increase in carbon emissions and fuel burn as well as increasing departures and arrivals over other residential areas.

There would also be a significant economic impact on Melbourne’s tourism operations through the restriction of commercial operations within 5nm of the Melbourne city centre and would significantly impact on the aviation industry and the operations of Melbourne, Essendon and Moorabbin airports as well as airspace users at Point Cook.

Flight path review mechanism

The Bill seeks to include a mechanism for any person impacted by the take-off and landing of aircraft or high density, flyover air traffic to request that Airservices review the flight paths created or changed on or after 1 January 2012.

However, as stated above, the Airspace Act is the governing legislation for matters relating to airspace and includes provisions for CASA to regularly review classifications of volumes of Australian-administered airspace as well as the services provided by Airservices.

It is appropriate that the trigger for review processes for the safe, efficient and environmentally responsible take-off and landing of aircraft should rest with the safety regulator and our air traffic experts, not individual persons. However in undertaking these reviews and determining appropriate safe, efficient and environmentally responsible flight paths, there are clear requirements set out for CASA and Airservices to consult with community and industry stakeholders.

In performing its functions Airservices already consults on any proposed changes to flight paths and the Act already requires Airservices to consider protection of the environment in performing its functions. In addition, through engagement with community forums, such as the CACGs, Airservices is continually seeking improvements and ways to minimise impact of aircraft noise.

In addition, Airservices is not the only designer of flight path procedures, therefore additional review mechanisms would be required to review procedures designed by private entities working for airports and airlines and to cover these will add a further regulatory burden.

Item 6 and Item 7 - Increased Board membership

The proposed amendments seek to increase the Airservices Board membership from nine to “between nine and eleven” members to require the mandatory appointment of two new appointees that meet the exclusive criteria of an “expert in environmental management and a representative of an aircraft noise or related community group”.

However the size of the current Airservices Board already provides for a mix of skills dealing with the issues related to Airservices functions such as safety, transport, financial and information technology management, infrastructure investment and the environment, and should not be selected solely on the basis of “mandated” criteria.

Item 9 – Complaints Reporting

The proposed “detailed commentary” amendments seek to impose unnecessary reporting provisions on Airservices in the Act. There is already publicly available information on complaints handling by Airservices and quarterly public reporting by the ANO.

Item 10 - Amendments to the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

The proposed amendment would require the Minister for the Environment and Energy to appoint a Community Aviation Advocate for each Airservices proposal for a change of flight path or airspace which has, or is likely to have a significant impact on the human and natural environment, community amenity or residential areas. Similarly If the Minister forms this opinion “through other means”, the Minister must also appoint an advocate in relation to the changes.

The Department notes however that Airservices is not the only party that puts forward airspace change proposals to CASA, which therefore makes this provision discriminatory by not covering other proposals from airport and airline operators.

The Department also notes that there are likely to be a diversity of views from those affected by any changes in aircraft or airspace management. In these circumstances the community advocate may end up having to “advocate” a position that conflicts with the positions of other parts of the community that they are representing to the Minister for the Environment and Energy.

The provision allowing the Minister to “form this opinion through other means” is ambiguous and does not provide the certainty needed in legislative approval processes.

Community groups are already consulted as part of current airspace change proposal arrangements and are better placed to pick and perform their own community representation roles instead of having a particular “advocate” imposed by regulation as advocated by this amendment.