

# Chapter 1

## Introduction

### Referral of inquiry

1.1 On 28 March 2018, the Senate referred the Air Services Amendment Bill 2018 (the bill) to the Rural and Regional Affairs and Transport Legislation Committee (committee) for inquiry and report by 25 June 2018.

1.2 On 18 June, the Senate granted an extension of time for reporting until 16 August 2018.

### Conduct of the inquiry

1.3 The committee advertised the inquiry on its webpage calling for submissions by 30 May 2018. The committee also wrote to a range of organisations and individuals likely to have an interest in the matters covered by the bill, drawing their attention to the inquiry and inviting them to make written submissions.

1.4 The committee received 46 submissions, as listed in Appendix 1. Submissions were published on the committee's inquiry webpage.

1.5 The committee also received four types of form letters and published one of each type on its inquiry webpage. A total of 490 form letters were received, with each type voicing support for the bill.

1.6 The committee held a public hearing in Melbourne on Friday, 22 June. The list of witnesses is available at Appendix 2.

### Acknowledgement

1.7 The committee thanks the organisations and individuals that made submissions to the inquiry. This work has informed the committee's deliberations.

### Structure of the report

1.8 This report consists of six chapters. This chapter provides an overview of the bill and provides background information on the committee's engagement on aircraft noise matters. Chapter 2 discusses the key provisions of the bill. Chapter 3 considers the concerns raised in evidence regarding consultation and representation on aircraft noise. Chapter 4 looks at the bill's proposal for an Aircraft Noise Ombudsman. Chapter 5 explores evidence in relation to the proposals in the bill regarding Melbourne flightpaths, and the review of flight paths while the committee's conclusions are set out in Chapter 6.

### Purpose of the bill

1.9 The 10 proposed items in the bill seek to amend the *Air Services Act 1995* (Air Services Act), and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and has consequences for the *Airspace Act 2007* (Airspace Act).

1.10 The Air Services Amendment Bill 2018 has two primary aims. The first is to provide a consultation and reporting structure around aircraft noise. Measures in this regard include:

- requirements upon Airservices Australia (Airservices) to consult with local communities affected by aircraft noise and to report on aircraft noise;
- requirements upon Airservices to minimise the impact of aircraft operations on the human and natural environment, community amenity and residential areas;
- the establishment of an Independent Aircraft Noise Ombudsman (ANO/Ombudsman);<sup>1</sup> and
- the establishment of an independent Community Aviation Advocate (CAA/Advocate).

1.11 The second aim of the bill is to require Airservices to engage with the flight paths over Melbourne Airport and to provide for a review of flight paths. To this end, the bill seeks to empower Airservices with the authority to prepare a plan for management of flight paths and air space in central Melbourne. As part of this plan, the flights of helicopters and fixed wing aircraft below 2,000m above sea level within 5 kilometres of central Melbourne would be prohibited, with exemptions for emergency services, hospitals, defence and related purposes.

### **Provisions of the bill**

1.12 The bill would amend the Air Services Act to provide for a comprehensive consultation and reporting system, primarily with regard to aircraft noise.

1.13 The bill comprises 10 new items. The substantial majority of the proposed amendments relate to the responsibilities of Airservices and establishment of an Ombudsman. Key provisions are discussed in Chapter 2, and an overview of significant amendments is discussed below.

#### ***Responsibilities of Airservices Australia***

1.14 The bill prescribes a range of roles and responsibilities to Airservices. These are prescribed primarily within item 4 of the bill, which substitutes section 10 of the Air Services Act.

1.15 The bill amends paragraph 8(1)(d) and subsection 9(2) of the Air Services Act regarding Airservices' functions to require Airservices to conduct a range of activities directed at protecting the human and natural environment, community amenity and residential areas from the effects of aircraft noise.

1.16 Under paragraph 8(1)(d) of the Air Services Act, Airservices is currently required to conduct activities to 'protect the environment from the effects of, and the effects associated with, the operation of: (i) Commonwealth jurisdiction aircraft, whether in or outside Australia; or (ii) other aircraft outside Australia'.

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1 This provision would replace the current ANO which was established in 2010.

1.17 The bill proposes to omit the words 'the environment' and 'the environment is' in paragraph 8(1)(d) and subsection 9(2) respectively of the Air Services Act, and to substitute both with 'the human and natural environment, community amenity and residential areas'.

1.18 It is suggested in the Explanatory Memorandum (EM), that the current provisions contained in paragraphs 8(1)(d) and 9(2) serve as a restriction on Airservices which is unable to manage aircraft in relation to community amenity or residential areas.

### ***Amendments to section 10***

1.19 The bill also seeks to repeal section 10 of the Air Services Act concerning Airservices' functions and powers and to replace it with a number of new provisions which widen the scope of Airservices' responsibilities to include consultation on aircraft noise.

1.20 The bill seeks to introduce new requirements on Airservices to provide advice during consultation on how to make a complaint about Airservices' conduct, including to the Ombudsman. In addition, Airservices is required to establish community consultation groups which represent communities affected by aircraft operations and to consult with them about significant proposed changes to flight paths and new flight plan routes. Thereafter, Airservices is required to publish details about the consultation process on its website including consideration by Airservices.

1.21 The bill further proposes three new subsections to the Air Services Act including 10A – consulting with communities; 10B – Melbourne flightpaths and 10C – Review of flight paths created or changed on or after 1 January 2012.

#### *Proposed subsection 10A – Consulting with communities*

1.22 This subsection proposes that Airservices take certain actions when proposing a new flight path that would likely impact on the human or natural environment, community amenity or residential areas. Under this provision, Airservices would be required to arrange community consultations.

1.23 In addition, Airservices would be required to advise the Minister for the Environment and Energy (Minister for Environment) responsible for the EPBC Act of the consultations undertaken and to request that the Minister for Environment appoint a CAA to represent the affected community.

#### *Proposed subsection 10B – Melbourne flightpaths*

1.24 This subsection proposes that Airservices prepare a plan for the management of flight paths and air space within 5 kilometres of central Melbourne.

1.25 The EM acknowledges that Airservices is not responsible for flight paths over Melbourne where a substantial number of small aircraft fly at low altitude over residential areas. However, the bill seeks to empower Airservices to give effect to a flight plan, following community consultation, which would prohibit helicopters and fixed wing aircraft from flying below 2,000 metres above sea level, with exemptions for emergency and related services.

*Proposed subsection 10C – Review of flight paths*

1.26 This new subsection would allow a person affected by aircraft noise to request a review of any new or changed flight path made on or after 1 January 2012.

***Aircraft Noise Ombudsman***

1.27 Item 1 inserts a definition of the ANO to be established under a new proposed section 73A of the Air Services Act.

1.28 The ANO would be responsible to review the handling of complaints, report to the relevant agencies and ministers, monitor and report on the effectiveness of the community consultation initiatives undertaken by Airservices, and make recommendations.

***Community Aviation Advocate***

1.29 The bill seeks to insert a new section 160A into the EPBC Act to provide for a CAA.

1.30 The role of the Advocate would be to assist, inform and advocate on behalf of communities likely to be affected by proposed changes in the management of aircraft noise or airspace.

**Scrutiny of Bills Committee**

1.31 In Scrutiny Digest 5 of 2018 dated 9 May 2018, the Committee for the Scrutiny of Bills (Scrutiny Committee) raised specific concerns with regard to proposed section 73F of the bill.

1.32 The proposed section provides that the ANO may, by written instrument, delegate his or her functions and powers to an Senior Executive Service (SES) employee in the Department of Infrastructure, Regional Development and Cities (the Department/DIRDC), or an Australian Public Service (APS) employee holding or performing the duties of an Executive Level 1 or 2 position in the Department.

1.33 The Scrutiny Committee raised concerns that the proposed section 73F allows the delegation of administrative powers to a 'relatively large class of persons, with little or no specificity as to their qualifications or attributes'. The Scrutiny Committee continued:

Generally, the committee prefers to see a limit set either on the scope of powers that might be delegated, or on the categories of people to whom those powers might be delegated. The committee's preference is that delegates be confined to the holders of nominated offices or to members of the Senior Executive Service. Where broad delegations are provided for, the committee considers that an explanation of why these are considered necessary should be included in the explanatory memorandum. In this case, the explanatory materials provide no information about why these powers are proposed to be delegated to departmental employees holding or performing the duties of Executive Level 1 or 2 positions.<sup>2</sup>

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2 Senate Committee for the Scrutiny of Bills, *Digest 5 of 2018*, 9 May 2018, p. 6.

1.34 The Scrutiny Committee drew its concerns to the attention of senators and left it to the Senate as a whole to determine the appropriateness of allowing the Ombudsman to delegate his or her functions and powers to departmental employees in Executive Level 1 or 2 positions.

1.35 The Scrutiny Committee also raised concerns with regard to Item 8 of Schedule 1 of the bill which leaves significant matters to be set out in the regulations. It reiterated its view that significant matters should be included in primary legislation unless 'a sound justification for the use of delegated legislation is provided'. However, it notes that in this instance, the EM does not contain an explanation as to why it is necessary to leave these matters to be set out in the regulations.<sup>3</sup>

### **Note on references**

1.36 References to the Committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard.

### **Background**

1.37 Managing aircraft noise is recognised as seeking a balance between the needs and interests of an extensive range of parties and affected groups including:

- pilots who want easier access to airports;
- passengers who want shorter flights;
- airlines which seek to minimise the levels of fuel consumption and greenhouse gas emissions;
- local communities who do not want to have their health and lifestyle disrupted;
- airports which want to maximise flight numbers;
- local businesses which enjoy the economic benefits of local airport growth; and
- all parties who want to ensure the safety of passengers and local communities alike.

1.38 One of the primary characteristics of many airports in Australia is that they operate in close proximity to residential areas. In fact, there has been considerable population growth near and around airports in Australia over some years. As a case in point, there was no residency around the Moorabbin Airport when it opened in 1949. Today, there is 100 per cent residential density and the airport lies approximately 21 kilometres from Melbourne's central business district (CBD).<sup>4</sup> In the 1950s, there were 65,000 aircraft movements a year and by 1966, there were 300,000 traffic

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3 Senate Committee for the Scrutiny of Bills, *Digest 5 of 2018*, 9 May 2018, p. 7.

4 Mr John Cincotta, Dingley Village Community Association, *Proof Hansard*, 22 June 2018, p. 16.

movements recorded at the airport.<sup>5</sup> Today, the airfield is open 24/7 and has become the second busiest airport in the country. The 236,438 recorded movements in 2016 do not include night circuit training and other movements that take place when the Moorabbin tower is closed.<sup>6</sup> The committee was informed that Moorabbin Airport's target is to reach 500,000 movements in the future.<sup>7</sup>

1.39 The committee is also acutely aware of the impact of aircraft noise on local communities and personal wellbeing. Over many years, the committee has received complaints from members of the public about aircraft noise and its impact on local communities. The committee has often taken up these concerns and raised them directly with the relevant agencies at Senate Estimates hearings.

1.40 Therefore, the committee appreciates the extent of frustration and concern amongst a number of communities affected by aircraft noise. During this inquiry, the committee was provided graphic, detailed accounts of the impact of aircraft noise on people's health and quality of life. Evidence received by the committee argued that aircraft noise has had a significant and ongoing impact on communities under flight paths and around airports. Mr Ian Mitchell, President of the East Melbourne Group explained the impact on his community in East Melbourne:

Our elderly and sick residents complain continuously about the noise. Significant sleep disturbance from aircraft noise is experienced by many residents and impacts general and mental health. It's starting to have an impact on mental health. House lights shake and doors and furniture rattle as aircraft pass overhead. Residents with children find it hard for them to rest with constant noise. There's documented evidence in the medical literature that aircraft noise can cause all sorts of impairments, hypertension, sleep disturbance, et cetera.<sup>8</sup>

1.41 A substantial number of submissions to the inquiry also detailed efforts, often over many years, to engage in airport consultation forums. These efforts, and the attendant frustrations for community groups were expressed by Mr Frank Rivoli, Secretary of the Hume Residents Airport Action Group who observed that:

The issues we raise are dismissed by the airport operator, stakeholders, the department of infrastructure and Airservices, on the basis that the airport is an important piece of infrastructure and economic driver.<sup>9</sup>

1.42 To some extent, the sentiments of Mr Rivoli underpin the primary issues raised during the inquiry regarding the need for balance between community amenity,

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5 Moorabbin Airport, *History*, <http://www.moorabbinairport.com.au/corporate/history> (accessed 4 July 2018).

6 Moorabbin Airport, *Airport traffic statistics*, <http://www.moorabbinairport.com.au/aviation/airport-traffic-statistics> (accessed 4 July 2018).

7 Miss Karen Hastings, Moorabbin Airport Residents Association, *Proof Hansard*, 22 June 2018, p. 10.

8 Mr Ian Mitchell, East Melbourne Group, *Proof Hansard*, 22 June 2018, p. 20.

9 Mr Frank Rivoli, Hume Residents Airport Action Group, *Proof Hansard*, 22 June 2018, p.1.

safety and wellbeing on the one hand with that of aviation safety and sustainability as well as local economic development on the other. They also speak of the need for effective and meaningful community consultation and engagement mechanisms, as well as clarity with regard to division of responsibilities regarding aircraft noise matters. These concerns were echoed in Senator Rice's second reading speech. She made the point that affected communities had no formal role in consultation processes and she argued for legislative provisions to provide clarity regarding roles and responsibilities:

What is clear is that we need legislative change to clarify responsibility and affirm meaningful community consultation and involvement in the processes that lead to aircraft noise impacts on residents.<sup>10</sup>

1.43 In 2010, the Rural and Regional Affairs and Transport References Committee (References Committee) tabled its inquiry report into the effectiveness of Airservices Australia's management of aircraft noise. The committee received 181 submissions and conducted four hearings to produce an extensive report with 10 recommendations.<sup>11</sup>

1.44 Many of the findings and a number of the References Committee's recommendations remain relevant today.<sup>12</sup> The work of the References Committee is considered throughout this report.

## **Aircraft Noise**

1.45 The International Civil Aviation Organisation (ICAO) recognises that aircraft noise is the most significant cause of adverse community reaction related to the operation and expansion of airports. It has made the point that:

As part of proper land-use planning and management, community engagement by airport operators and other aviation stakeholders is the key link between environmental stewardship and mitigating environmental constraints to aviation operation and growth.<sup>13</sup>

1.46 Internationally, aircraft noise has been controlled since the 1970s through Standards and Recommended Practices (SARPs). SARPs set noise limits for aircrafts

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10 Senator Janet Rice, *Senate Hansard*, 27 March 2018, p. 2271.

11 Rural and Regional Affairs and Transport References Committee, *Inquiry into the effectiveness of Airservices Australia's management of aircraft noise*, 2 July 2010, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Rural\\_and\\_Regional\\_Affairs\\_and\\_Transport/Completed\\_inquiries/2008-10/aircraft\\_noise/report/index](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Completed_inquiries/2008-10/aircraft_noise/report/index) (accessed 27 July 2018).

12 Rural and Regional Affairs and Transport References Committee, *Inquiry into the effectiveness of Airservices Australia's management of aircraft noise*, 2 July 2010, p. 69.

13 International Civil Aviation Organisation, Community engagement for aviation environmental management, <https://www.icao.int/environmental-protection/Pages/Community-engagement-for-aviation-environmental-management.aspx> (accessed 4 July 2018).

by ensuring the latest 'noise reduction technology is incorporated into aircraft design' and 'demonstrated by procedures that are relevant to day-to-day operations'.<sup>14</sup>

1.47 The Air Navigation (Aircraft Noise) Regulations 2018 require all aircraft operating in Australian airspace to comply with noise standards and recommended practice introduced under the Convention on Civil Aviation.<sup>15</sup> Under the regulations, aircraft that do not meet these standards are prohibited from engaging in air navigation in Australia.<sup>16</sup>

1.48 Although regulations are in place to limit the noise emitted by aircraft, there is no national threshold for a limit on aircraft noise. Mr Jason Harfield, Airservices' Chief Executive Officer (CEO) clarified that government agencies are unable to enforce compliance with noise standards because there is:

...no standard on what an acceptable noise threshold is, and none of the entities in the management of aircraft noise—whether it's CASA, [Airservices], airports, airlines or the Aircraft Noise Ombudsman—has a power to enforce a standard that doesn't exist.<sup>17</sup>

1.49 Mr Harfield added that there are discussions of what is deemed an acceptable and unacceptable noise threshold, and although it appears to be a simple concept, it is in practice 'quite complex'.<sup>18</sup> Mr Harfield further clarified that Airservices lacks regulatory powers to establish maximum noise levels or enforce compliance related to aircraft noise.<sup>19</sup>

### ***Noise Abatement Procedures***

1.50 Noise abatement procedures (NAPs) are used to reduce aircraft noise. According to Airservices, NAPs reduce the impact of noise on communities by implementing procedures for runway use and flight paths to minimise the number of flights over residential areas. Air traffic control is responsible for implementing NAPs, which may be subject to weather conditions and aircraft requirements.

1.51 Airservices conducts reviews of NAPs in order to check their effectiveness. As part of this review process, Airservices will consult community forums.<sup>20</sup> Presently

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14 ICAO, *Reduction of Noise at Source*, <https://www.icao.int/environmental-protection/Pages/Reduction-of-Noise-at-Source.aspx> (accessed 27 July 2018).

15 Air Navigation (Aircraft Noise) Regulations 2018, <https://www.legislation.gov.au/Details/F2018L00448/Download> (accessed 27 July 2018)

16 Air Navigation (Aircraft Noise) Regulations 2018, <https://www.legislation.gov.au/Details/F2018L00448/Download> (accessed 27 July 2018)

17 Mr Jason Harfield, Airservices Australia, *Proof Hansard*, 22 June 2018, p. 37.

18 Mr Jason Harfield, Airservices Australia, *Proof Hansard*, 22 June 2018, p. 37.

19 Airservices Australia, *Submission 9*, p. 1.

20 Airservices Australia, *Noise abatement procedure*, <http://www.airservicesaustralia.com/aircraftnoise/aircraft-operations/noise-abatement-procedures/> (accessed 27 July 2018).



there are five reviews publicly available for Brisbane, Gold Coast, Canberra and Perth (for which there are two reviews).<sup>21</sup>

### ***Monitoring aircraft noise***

1.52 The Airservices Noise and Flight Path Monitoring System (NFPMS) collects aircraft noise and flight path data from major airports in Brisbane, Cairns, Canberra, the Gold Coast, Sydney, Melbourne, Essendon, Adelaide and Perth. NFPMS monitors are located amongst local communities situated around those airports; however, monitoring does not occur on private property.<sup>22</sup>

1.53 The noise monitoring program is not conducted in order to determine compliance with aircraft noise regulations; due to the fact that there are 'no regulations which specify a maximum, allowed level of aircraft noise'. Instead, monitoring is conducted to determine the aircraft noise contribution to the overall noise to which a community is exposed. Amongst its other purposes is to assist government with implementing legislation such as curfew acts and regulations.<sup>23</sup>

1.54 In addition to the NFPMS, which is a long-term monitoring program, Airservices manages a short-term program that deploys monitoring units for a period of one to 12 months. These units are typically used for areas that do not require permanent noise monitoring, or in a location where a permanent unit cannot be installed. This data is published, and assists with determining the impact of procedural changes and suitable NFPMS sites as well as refining noise modelling activities.<sup>24</sup>

1.55 Noise monitoring data is produced quarterly, and reviewed regularly by Airservices to 'ensure they meet current needs'.<sup>25</sup> Presently there are four noise monitoring network reviews publicly available for Perth (2011), Melbourne (2012), Gold Coast (2012) and Canberra (draft – 2015).<sup>26</sup>

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21 Airservices Australia, *Noise abatement procedure reviews*, <http://www.airservicesaustralia.com/publications/noise-reports/noise-abatement-procedure-reviews/> (accessed 27 July 2018).

22 Airservices Australia, *Monitoring aircraft noise*, <http://www.airservicesaustralia.com/aircraftnoise/monitoring-aircraft-noise/> (accessed 27 July 2018).

23 Airservices Australia, *Monitoring aircraft noise*, <http://www.airservicesaustralia.com/aircraftnoise/monitoring-aircraft-noise/> (accessed 27 July 2018).

24 Airservices Australia, *Short term noise monitoring*, <http://www.airservicesaustralia.com/publications/noise-reports/short-term-monitoring/> (accessed 27 July 2018).

25 Airservices Australia, *Monitoring aircraft noise*, <http://www.airservicesaustralia.com/aircraftnoise/monitoring-aircraft-noise/> (accessed 27 July 2018).

26 Airservices Australia, *Noise monitoring network reviews*, <http://www.airservicesaustralia.com/publications/noise-reports/noise-monitoring-network-reviews/> (accessed 27 July 2018).

### ***Responsibility for managing aircraft noise***

1.56 Aircraft noise management is shared between Commonwealth, state and local governments, airlines, aircraft operators, air navigation service providers and airports. Stakeholders include:

- Airservices, which has a major role in managing aircraft noise and distributing information about aircraft noise management (including aircraft noise monitoring). It works closely with airports and airlines to ensure, if possible, that flight paths avoid residential areas and noise-abatement principles are implemented. Airservices handles aircraft noise enquiries and complaints through its Noise Complaint and Information Service.<sup>27</sup>
- The Civil Aviation Safety Authority (CASA) is an independent statutory authority that is responsible for the regulation of civil aviation operations in Australia, and the operation of Australian aircrafts overseas. Its primary consideration is air safety, with environmental effects of aircraft activities considered thereafter. CASA, through the Office of Airspace Regulation, is responsible for airspace regulation.<sup>28</sup>
- DIRDC advises government on the policy and regulatory framework for Australian airports and the aviation industry, including management of aircraft noise and regulatory oversight.<sup>29</sup>
- The ANO conducts independent reviews of Airservices' and the Department of Defence's management of aircraft noise-related activities. These reviews typically consider the handling of complaints, community consultation processes and the presentation and distribution of aircraft noise-related information.<sup>30</sup>
- Australian airports help ensure, whenever possible, that their noise-generating activities have minimal impact on local communities. Federally leased airports are required to develop a Master Plan that incorporates an Environmental Strategy that includes the noise impact of its operations. Airports are also required to engage with stakeholders through Community Aviation Consultation Groups (CACGs) and Planning Coordination Forums (PCFs).<sup>31</sup>

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27 Airservices Australia, *Aircraft noise*, <http://www.airservicesaustralia.com/aircraftnoise/> (accessed 27 July 2018).

28 Aircraft Noise, *Who is responsible for what*, <http://aircraftnoise.com.au/working-together/who-is-responsible-for-what/> (accessed 27 July 2018).

29 Department of Infrastructure, Regional Development and Cities, *Aviation Environment and Airport Safeguarding*, <https://infrastructure.gov.au/aviation/environmental/index.aspx> (accessed 27 July 2018).

30 Aircraft Noise Ombudsman, *About us*, <http://www.ano.gov.au/> (accessed 27 July 2018).

31 Department of Infrastructure, Regional Development and Cities, *Airport Planning & Regulation*, <https://infrastructure.gov.au/aviation/airport/planning/index.aspx> (accessed 27 July 2018).

- The Department of Defence (Defence) works with communities and local councils located near its bases and training areas to provide advice on land zoning and to reduce aircraft noise impacts. Defence has an Aircraft Noise Management Strategy and endorsed Air Force Fly Neighbourly Policy with impacted communities.<sup>32</sup>
- State and territory governments determine planning frameworks for areas adjacent to airports. These frameworks ensure that development is avoided in areas impacted, or likely to be impacted, by high aircraft noise. Local councils are responsible for implementing these frameworks.<sup>33</sup>

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32 Department of Defence, *Managing aircraft noise while protecting Australia's national interests*, <http://www.defence.gov.au/AircraftNoise/> (accessed 27 July 2018).

33 Aircraft Noise, *Who is responsible for what*, <http://aircraftnoise.com.au/working-together/who-is-responsible-for-what/> (accessed 27 July 2018).

