

Chapter 2

Key Provisions

2.1 The bill contains one schedule, with amendments to the Air Services Act and the EPBC Act.

Changes to Airservices Australia's functions

2.2 Item 2 of the bill amends the functions of Airservices to include activities to protect the human and natural environment, community amenity and residential areas from the effects of the operation of aircraft, as opposed to just protecting the environment.

2.3 The purpose of this amendment is to clarify the responsibilities of federal agencies in responding to residents' concerns regarding aircraft noise.¹ According to the EM, it will also allow Airservices to manage aircraft flying at low heights over residential areas.²

Consultation

2.4 Item 4 of the bill imposes responsibilities on Airservices to consult with local communities and other bodies in the performance of its functions. The purpose of the amendment is to legislate for consultation and the involvement of affected communities.³

2.5 It amends the Air Services Act to include a requirement to consult not just with government, commercial, industrial and consumer bodies, but also with aircraft noise and community groups.

2.6 Item 4 introduces extensive consultation requirements on Airservices. During consultations, Airservices must advise parties of how to make a complaint regarding Airservices' conduct, including to the Ombudsman. Furthermore:

- Airservices must establish community consultation groups representing communities affected by aircraft noise;
- Airservices must consult with these groups about all proposed significant changes to existing flight plan routes and all new flight plan routes, and must take steps to minimise any detrimental impacts identified through consultation;
- Airservices must publish the details of consultations undertaken and the results of consultations on its website; and
- Airservices must advise the Minister responsible for the EPBC Act (the Minister for Environment) of consultations to be conducted and request that

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

2 Explanatory Memorandum, Air Services Amendment Bill 2018, p. 2.

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

the Minister for Environment appoint a CAA to represent the affected community.

2.7 Item 4 requires Airservices to prepare a plan for the management of flight paths within five kilometres of central Melbourne prohibiting helicopters and fixed wing aircraft from flying at less than 2,000 metres above sea level over residential areas (excepting some aircraft in the public interest). Airservices must consult on the proposed plan.

2.8 Item 4 also allows for any person impacted by aircraft noise to request that Airservices review any flight plans made on or after 1 January 2012. Airservices must arrange for consultations as part of these reviews.

Board of Airservices Australia

2.9 Items 6 and 7 of the bill concern the Board of Airservices. Item 6 changes the number of members of the Board from six to 'between 6 and 8'. Item 7 requires the Board to include an expert in environmental management and a representative of an aircraft noise or community group.

Aircraft Noise Ombudsman

2.10 Item 8 of the bill inserts a new Part 5A of the Air Services Act to provide for the creation and operation of an ANO.

2.11 The EM clarifies that the Ombudsman is to be independent of Airservices. The role is defined as follows:

It is to review the handling of complaints and enquiries; report to relevant agencies or Ministers; monitor and report on the effectiveness of community consultation and other matters relating to aircraft noise; and make recommendations.⁴

Division 1

2.12 Division 1 of Part 5A sets out the establishment and functions of the Ombudsman. The functions are to:

- review the handling of complaints or enquiries made to Airservices, CASA or Defence about aircraft noise and report to these bodies and the Minister for Infrastructure and Transport (Minister for Transport) on these reviews;
- monitor and report on the effectiveness of community consultations regarding aircraft noise conducted by Airservices, CASA and Defence;
- monitor and report on the effectiveness of the presentation and distribution of information regarding aircraft noise;
- review other matters relating to the management of aircraft noise by Airservices or Defence upon request from these bodies; and

4 Explanatory Memorandum, Air Services Amendment Bill 2018, p. 4.

- make recommendations on improvements in managing aircraft noise to the Minister for Transport, Airservices, CASA or Defence.

Division 2

2.13 Division 2 of Part 5A sets out the details for the appointment, terms and conditions of the Ombudsman. The Ombudsman is to be appointed by the Governor-General, on a full-time basis and for a period not exceeding five years.

2.14 The bill states that the regulations may make provision for the appointment, remuneration, terms and conditions, resignation and termination of the Ombudsman.

Division 3

2.15 Division 3 of Part 5A outlines information regarding persons assisting the Ombudsman. It states that the staff necessary to assist the Ombudsman will be engaged under the *Public Service Act 1999* and made available by the Secretary of the DIRDC. It also states that consultants may be engaged by the Secretary to assist in the functions of the Ombudsman's office.

2.16 Division 3A states that the regulations may make provision for circumstances in which the Ombudsman may refuse to review a complaint and the circumstances in which the Ombudsman may transfer a complaint to another body.

Division 4

2.17 Under this division, the Ombudsman may conduct research or make inquiries into the effect of aircraft noise on communities and the ways in which legislation, policies or practices might be improved to assist communities affected by aircraft noise.

2.18 The Ombudsman must report quarterly to the Minister for Transport on the research and inquiries conducted. As part of these reports, the Ombudsman should indicate whether legislation, policies or practices are having an adverse effect on local communities.

Divisions 5 and 6

2.19 Division 5 of Part 5A sets out the circumstances in which the Minister for Transport may refer a matter to the Ombudsman for inquiry while Division 6 provides that the Minister for Transport may request advice from the Ombudsman.

2.20 Under Division 5, the Minister for Transport may request the Ombudsman inquire into the effect of legislation, policies or practices on communities affected by aircraft noise and the ways in which these can be improved. The Minister for Transport may require the Ombudsman to hold hearings, make a draft report available to the public and develop recommendations on the matter.

2.21 The division also sets out requirements for the Ombudsman to advertise an inquiry, conduct hearings, and table an inquiry report.

2.22 Under Division 6, the Minister for Transport may request advice from the Ombudsman on the effect of legislation, policies or practices on communities affected by aircraft noise and how these can be improved.

2.23 The division also provides for the circumstances in which the Minister for Transport may publish the advice given by the Ombudsman.

Division 7

2.24 Division 7 provides that regulations may make provision for the powers of the Ombudsman to obtain information and documents from Airservices, CASA and Defence for the purposes of performing the ANO's functions, including circumstances in which information or documents provided to the Ombudsman may be disclosed. This division also provides that regulations may determine the powers and functions of the Ombudsman to respond to affected communities, and for the review of decisions by the Ombudsman.

Complaints reporting

2.25 Item 9 of the bill requires Airservices to publish information or complaints made in relation to its conduct in its annual report, as well as information on how these complaints were handled.

Community Aviation Advocate

2.26 Item 10 of the bill amends the EPBC Act by inserting a new section 160A. Under this item, when Airservices informs the Minister for Environment of proposed changes to management of aircraft noise or airspace that may have an impact on the human or natural environment, community amenity or residential areas, the Minister for Environment must appoint a CAA.

2.27 The CAA must be independent of aviation interests and will assist, inform and advocate on behalf of affected communities.