

## Chapter 5

### Melbourne airspace and flight paths, flight path reviews and other related matters

5.1 This chapter considers the proposed amendments in relation to Melbourne airspace and flight paths. It also explores the evidence regarding proposed reviews of flight paths while also exploring the bill's provisions to increase the size of the Airservices Board.

5.2 Airservices explained in its submission that in order to safely and efficiently facilitate the expected doubling of air traffic over the next decade, new flight paths must be designed and introduced, with changes to existing routes also considered. It noted that flight procedure changes are common and that at the time of writing, it had 62 flight path changes across Australia in various stages of development.<sup>1</sup>

5.3 In light of community concerns about growing air traffic and resultant aircraft noise, Airservices made the point that airport locations are predefined and that flight paths have to be placed somewhere. It noted that managing communities affected by these plans was extremely complex as Airservices 'needs to facilitate aviation growth while balancing community impacts and maintaining the safety of air navigation as its most important consideration at all times'.<sup>2</sup>

#### Proposed subsection 10B – Melbourne airspace and flight paths

5.4 Item 4 of the bill proposes to replace section 10 of the Air Services Act with new proposed sections 10AA, 10A, 10B and 10C. Proposed subsection 10B relates to the specific circumstances of flight paths over Melbourne.

5.5 A number of submitters and particularly Melbourne community groups, supported changes to the way in which flight paths are managed in Melbourne. The EMG noted in this regard that the 'noise from increasing overflights is causing significant health and amenity impacts in Inner Melbourne'. It continued:

The problem arises from several sources; from helicopters flying and hovering over Inner Melbourne; from fixed wing aircraft on training or joy flights – some as low as 500 feet – and increasingly from heavy commercial aircraft approaching Tullamarine. The cumulative impacts are huge. People's quiet enjoyment of their houses and gardens is seriously affected and many residents have voiced their concerns.<sup>3</sup>

5.6 However, the point was made to the committee that Airservices does not have the authority to alter airspace classification as proposed in item 4 of the bill which introduces subsection 10B.

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1 Airservices Australia, *Submission 9*, p. 2.

2 Airservices Australia, *Submission 9*, p. 2.

3 East Melbourne Group, *Submission 5*, p. 1. See also Ms Shelley Faubel, East Melbourne Neighbour Network, *Proof Hansard*, 22 June 2018, p. 20.

5.7 The Airspace Act is the governing legislation for matters relating to Australia-administered airspace. Under this Act, CASA is required to determine the airspace classification system and how it is deployed.<sup>4</sup> Noting this, Airservices made the point that:

...the proposed amendment to the *Air Services Act 1995* cannot give Airservices the authority to implement the changes for Melbourne that the Bill is seeking.<sup>5</sup>

5.8 Similarly, DIRDC made the point that the proposed amendment would 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 2,000 metres above sea level over residential areas.<sup>6</sup>

5.9 CASA also noted that the bill's intention to declare prohibited airspace for all airspace users below 2,000 meters was 'inconsistent and incompatible with the Airspace Act and regulations' for which it has responsibility. Moreover:

The bill is also inconsistent with CASA's power to declare restricted airspace, whereby CASA must conduct a risk-based assessment to support any airspace restriction. Airservices has no powers to restrict aircraft flight outside controlled airspace and CASA has no powers to declare prohibited airspace unless such a declaration is compatible with the Airspace Regulations.<sup>7</sup>

5.10 Furthermore, Airservices and CASA raised the question as to whether the flight restrictions as proposed under subsection 10B would be best placed in aviation-related regulation or in another form of regulation.<sup>8</sup> In this regard, CASA noted that the bill's provisions appear to be predicated on the idea that Airservices can 'design procedures and airspace' that focus primarily on noise reduction. However, the current legislation (including the Airspace Act) recognises safety as the primary consideration.<sup>9</sup> CASA concluded that the principles that underpinned the bill were inconsistent with current legislation for this reason.<sup>10</sup>

5.11 DIRDC and Airservices also warned of the impact of such changes if given legislative effect. DIRDC noted that the proposed amendments would cause:

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4 Department of Infrastructure, Regional Development and Cities, *Submission 11*, p. [2]

5 Airservices Australia, *Submission 9*, p. 2.

6 Department of Infrastructure, Regional Development and Cities, *Submission 11*, p. [2]

7 Civil Aviation Safety Authority, *Submission 1*, p. 1.

8 Mr Jason Harfield, Airservices Australia and Dr Jonathan Aleck, Civil Aviation Safety Authority, *Proof Hansard*, 22 June 2018, p. 33.

9 Civil Aviation Safety Authority, *Submission 1*, p. 1.

10 Civil Aviation Safety Authority, *Submission 1*, p. 1.

...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.<sup>11</sup>

5.12 CASA raised similar concerns and concluded that:

The airspace aspects of this bill do not deliver the necessary outcomes required to support aviation (safety, efficiency and equitable access), and could generate significant environmental impacts. The bill would also have a major impact on the capacity and efficiency of airports around Melbourne, with likely significant economic impacts on both airspace users and passengers.<sup>12</sup>

***Impact on aviation services and operations***

5.13 The application of the bill's altitude restriction is intended to limit joy flights, media flights and helicopters hovering over sporting events.<sup>13</sup> However, the point was made by a number of submitters that the restriction would have a significant impact on all aviation operations in the Melbourne basin.

5.14 DIRDC warned that the proposed restriction on commercial operations within 5 km of the Melbourne city centre would have a 'significant economic impact' on Melbourne's tourism industry. It also noted that the proposed change would significantly impact the aviation industry and the operations of Melbourne, Essendon and Moorabbin airports, as well as airspace users at Point Cook.<sup>14</sup>

5.15 Airservices explained the cascading detrimental effects that would result from the proposed changes. Alongside safety concerns, Airservices highlighted a number of adverse economic impacts that would emanate from the proposed restrictions. In addition, it noted that the consequent service delays resulting from the changes would have an additional knock-on effect at other airports. Moreover the proposed changes:

...would impede the use of existing runways at both Melbourne and Essendon airports, departures and arrivals at Essendon would not be permitted, and inbound aircraft to Melbourne would not be able to fly instrument approaches, essential for the safety and efficient operation of the airport, as this procedure requires an altitude of 3000 feet (2000 metres equates to approximately 6500 feet). This would cause serious safety concerns for the industry, Airservices and CASA and would result in a significant financial and operational impact on Melbourne and Essendon airports, the airlines and other aircraft operations, and the broader Victorian and Australian economy.<sup>15</sup>

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11 Department of Infrastructure, Regional Development and Cities, *Submission 11*, p. [2].

12 Civil Aviation Safety Authority, *Submission 1*, p. 2.

13 Senator Janet Rice, *Proof Hansard*, 22 June 2018, p. 47.

14 Department of Infrastructure, Regional Development and Cities, *Submission 11*, p. [2].

15 Airservices Australia, *Submission 9*, pp. 2–3. See also Civil Aviation Safety Authority, *Submission 1*, p. 1.

5.16 The point was also made by the AAA that, despite the bill's intention to apply only to small fixed-wing aircraft, it will 'impact all fixed-wing aircraft as currently drafted'.<sup>16</sup>

5.17 Microflite made clear that the proposed altitude restriction would ground its operations, and its 'entire tourism business from Melbourne, servicing the hotels and tourists, would be closed'.<sup>17</sup> Similarly, the AAA noted that the restriction would have significant impacts on all General Aviation (GA) operations while also impacting aviation safety as the proposed changes would 'prevent instrument approaches being used for inbound aircraft into Melbourne'.<sup>18</sup>

5.18 In considering the impact of the proposed provisions, Airservices' Mr Harfield made the point that trying to balancing the competing needs of local communities, aircraft and tourism operators was a complex task. However, he noted that under the Air Services Act, the agency must consider air navigation safety as the priority. Thereafter, and as far as practicable, 'we must manage the effects of aircraft operations on the environment'.<sup>19</sup>

### **Proposed subsection 10C – Review of flight paths**

5.19 As part of proposed amendments to section 10 of the Air Services Act, the bill seeks to introduce a new subsection 10C. Under this proposal, any person impacted by the take-off and landing of aircraft or high density, flyover air traffic can request that Airservices undertake a review of flight paths created or changed on or after 1 January 2012.

5.20 DIRDC reiterated that the Airspace Act is the governing legislation for matters regarding airspace rather than the Air Services Act. It is the Airspace Act that empowers CASA to regularly review classifications of volumes of Australian-administered airspace.

5.21 DIRDC also argued the point that the trigger for a review should rest with the safety regulator and air traffic experts, rather than private individuals. It also clarified that in undertaking these reviews and determining appropriate safe, efficient and environmentally responsible flight paths, CASA and Airservices are required to consult with community and industry stakeholders.<sup>20</sup>

5.22 Airservices explained that proposed subsection 10C is broad in scope and could potentially include enroute flight paths. As flight path changes are regularly undertaken, it noted that this requirement would place a considerable regulatory

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16 Australian Airports Association, *Submission 10*, p. 5.

17 Mr Jonathan Booth, Microflite Helicopter Services, *Proof Hansard*, 22 June 2018, p. 31.

18 Australian Airports Association, *Submission 10*, p. 5.

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

20 Department of Infrastructure, Regional Development and Cities, *Submission 11*, p. [3].

burden on Airservices with 'no guarantee of an improved outcome for the community'.<sup>21</sup>

5.23 Airservices upheld the view that existing consultation processes put in place before 1 January 2012 were considered adequate. In addition, it highlighted that the bill does not consider that additional mechanisms would be required to review flight procedures designed by entities other than Airservices. It concluded that:

Given that many of these flight path changes are linked to infrastructure projects (such as new parallel runways) or are being made to enhance safety, there could be significant economic and safety implications should they not be implemented within a reasonable timeframe.<sup>22</sup>

5.24 Airservices further noted that flight procedures for new parallel runways are finalised after the Minister for Transport has approved a Major Development Plan and once construction has commenced. It noted, therefore, that the possibility of a further review process would 'add additional constraints on Airport Lessee Companies (ALCs) and potentially effect the significant capital investments that ALCs have made to fund these infrastructure projects'. Airservices concluded that the bill neither anticipates these issues nor considers how they could be resolved.<sup>23</sup>

5.25 The AAA argued that the bill also failed to take into account the planning issues associated with restricting aviation operations over residential areas. It noted that there was no consideration given to how a residential area is to be defined, given that most CBDs and other city areas are mixed used zones, where residential infrastructure and activity co-exists with retail and commercial activity. The AAA suggested that the bill did not consider how potential land use re-zoning applications will be dealt with and whether the proposed amendment would negate such proposals. It concluded:

The AAA believes this proposed amendment is ill-conceived and would only serve to severely disrupt aviation operations in the Melbourne area, as well as setting a dangerous precedent for managing aircraft noise issues in other jurisdictions.<sup>24</sup>

### **Proposed amendment to the definition of 'environment'**

5.26 A number of submitters argued in favour of the proposed amendments to paragraph 8(1)(d) and subsection 9(2) of the Air Services Act to require Airservices to carry out activities to protect the human and natural environment, community amenity and residential areas from the effects of the operation and use of aircraft, and associated effects. EMG's Mr Woodward succinctly captured commonly held views on the need for the amendment to the definition:

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21 Airservices Australia, *Submission 9*, p. 4.

22 Airservices Australia, *Submission 9*, p. 4.

23 Airservices Australia, *Submission 9*, p. 4.

24 Australian Airports Association, *Submission 10*, p. 5.

This includes direct and indirect effects of aircraft noise and defines the scope of those effects. There are many other communities suffering similar or even more severe noise assault across Australia, and the regulators must be held to account. The existing legislation is flawed. It provides little or no protection and redress for communities impacted by aircraft noise. This cannot be allowed to continue. There needs to be a better balance between a safe, efficient and effective air industry which identifies and recognises impacts on affected communities from aircraft noise.<sup>25</sup>

5.27 However, the AAA argued that it wasn't clear how the proposed amendment will result in any 'discernible benefit for impacted communities'. It noted that the considerations proposed were already taken into account by Airservices as part of its consultation processes as required under current legislation. AAA concluded that the amendment:

...will only further complicate an already complex issue, with the potential to unduly burden already limited Airservices resources and distract from its primary objective of safety.<sup>26</sup>

5.28 DIRDC suggested that the term 'environment' in the Air Services Act is broad and embraces a range of environmental impacts across all areas as well as addressing issues such as noise and emissions. DIRDC noted that 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'.<sup>27</sup>

5.29 Rather than expanding the definition, DIRDC argued that the proposed amendment could be interpreted as narrower in scope to that provided for in the EPBC Act.<sup>28</sup> The Department of the Environment and Energy raised a similar concern, submitting that an explicit definition in the Air Services Act could be interpreted as inconsistent with the existing definition of 'environment' in the EPBC Act.<sup>29</sup>

5.30 Airservices argued that the current definition meets the aspirations of the bill as it is already required to consider the impact of aircraft noise on communities.<sup>30</sup> CASA's Dr Aleck added that if environmental considerations were to be given equal weight to that of safety under the legislation, it would have serious repercussions for CASA and its remit.<sup>31</sup>

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25 Mr David Woodard, East Melbourne Group, *Proof Hansard*, 22 June 2018, p. 18.

26 Australian Airports Association, *Submission 10*, p. 2.

27 Department of Infrastructure, Regional Development and Cities, *Submission 11*.

28 Department of Infrastructure, Regional Development and Cities, *Submission 11*, p. [2].

29 Department of the Environment and Energy, *Submission 12*, p. 2.

30 Mr Jason Harfield, Airservices Australia, *Proof Hansard*, 22 June 2018, p. 41.

31 Dr Jonathan Aleck, Civil Aviation Safety Authority, *Proof Hansard*, 22 June 2018, pp. 41–42.

## Increasing the Airservices Board membership – Items 6 and 7

5.31 The composition and functions of the Airservices Board are set out in Section 21 of the Air Services Act. The Airservices Board comprises six members as well as the Chairperson, Deputy Chairperson and CEO.

5.32 Items 6 and 7 of the bill insert a new subsection 22(6) into the Air Services Act to expand the membership of the Airservices Board by up to two members. The provisions further require that the board include an expert in environmental management and a representative of a community group affected by aircraft noise.

5.33 These proposed arrangements were supported by community groups. The EMG opined that the Airservices Board as it currently exists, 'is underrepresented in skills needed to effect its mandate and good governance'.<sup>32</sup> Residents Against Western Sydney Airport also supported the inclusion of specialists and suggested that the two new appointees replace 'at least two current board members, whose knowledge and expertise are duplicated'.<sup>33</sup>

5.34 However, DIRDC raised concern with this proposal, noting that the current Airservices Board already provides for a mix of skills of relevance to Airservices' functions including safety, transport, financial and information technology management, infrastructure investment and the environment. It also upheld the view that board members should not be selected solely on the basis of 'mandated' criteria.<sup>34</sup>

5.35 Mr Brendan McRandle, Executive Director of the Aviation and Airports Division, DIRDC, questioned the appropriateness of additional positions on the Airservices Board.<sup>35</sup> He reminded the committee that 'there are certain requirements on boards around how you exercise your functions and in whose interests you are actually operating', which are set out in the Corporations Act.<sup>36</sup> Mr McRandle questioned whether:

...putting additional members on a board with an environmental background, for example, would on the whole lead to any meaningful change to the way the board would need to operate given its legislation....When we talk about the environmental aspects, certainly noise and acoustics are one element. But, if you require aircraft to fly higher, they're climbing for longer and using more fuel burn, and there's more emissions. So there are other things that you also need to trade off in the environmental sphere.<sup>37</sup>

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32 Mr David Woodward, East Melbourne Group, *Proof Hansard*, 22 June 2018, p. 18.

33 Residents Against Western Sydney Airport Incorporated, *Submission 3*, p. 5.

34 Department of Infrastructure, Regional Development and Cities, *Submission 11*, p. [3].

35 Mr Brendan McRandle, Department of Infrastructure, Regional Development and Cities, *Proof Hansard*, 22 June 2018, p. 50.

36 Mr Brendan McRandle, Department of Infrastructure, Regional Development and Cities, *Proof Hansard*, 22 June 2018, p. 50.

37 Mr Brendan McRandle, Department of Infrastructure, Regional Development and Cities, *Proof Hansard*, 22 June 2018, p. 50.

5.36 Mr McRandle concluded that it would be more useful for individuals with such expertise to operate at the technical and managerial levels, rather than on the Airservices Board.<sup>38</sup>

5.37 Airservices submitted that the existing government oversight and appointment framework adequately ensures that the Airservices Board is balanced, diverse and possesses the relevant skillset needed to fulfil its purpose. For this reason, Airservices did not support the proposed changes, and questioned whether increasing the number of board members:

...will achieve better outcomes for the community, given the narrow qualifications for the additional positions and the legislative and fiduciary requirement that all board members must exercise their powers and perform their functions in the best interest of Airservices.<sup>39</sup>

### **Committee observations**

5.38 This chapter has highlighted the complexities in balancing the often competing needs of the aviation industry with that of local communities while ensuring air navigation safety in Australia. These complexities, and competing considerations, are reflected in the clear divide in stakeholders' view about the provisions discussed in this chapter. On the one hand, government agencies and the AAA all expressed concern with proposed subsections 10B, 10C, proposed amendments to the term 'environment' and Items 6 and 7 of the bill. In direct contrast, community groups largely supported the proposed amendments.

5.39 Government agencies, along with the AAA all raise a number of concerns with the bill. A primary concern is that the bill incorrectly attributes Airservices as the responsible agency for administering flight paths. The committee heard that Airservices lacks the appropriate authority to alter airspace classification as CASA, under the Airspace Act, is responsible for the classification and designation of all Australian-administered airspace.

5.40 The committee recognises the concerns of Airservices, CASA and DIRDC that the bill's intention to prohibit airspace users operating below 2,000 meters (6,500 feet) is incompatible with existing legislation. Further, these agencies made it clear that this restriction would have a significant impact on safety as well as adverse economic consequences for Melbourne, including service delays, thereby negatively impacting the operations of all Melbourne-based airports.

5.41 The committee also acknowledges the concerns expressed by government agencies that the bill's proposed subsection 10C would impose a considerable regulatory burden on Airservices, without any guaranteed improvement for affected communities. Furthermore, the committee notes the point made by DIRDC that the

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38 Mr Brendan McRandle, Department of Infrastructure, Regional Development and Cities, *Proof Hansard*, 22 June 2018, p. 50.

39 Airservices Australia, *Submission 9*, p. 5.

trigger for a review should rest with the safety regulatory and air traffic exports, rather than private individuals.

5.42 The proposed amendment to omit 'the environment' and to substitute it with 'the human and natural environment, community amenity and residential areas' in paragraphs 8(1)(d) and subsection 9(2) of the Air Services Act was rejected by a number of agencies and key stakeholders. DIRDC, Airservices, CASA and the AAA all maintained that Airservices was already required to consider the 'environment' to include the human and natural environment under the current definition.

5.43 The committee recognises that existing legislation requires Airservices to take aircraft noise and its impact on local communities into account. However, as previous chapters have highlighted, there appears to be considerable scope for Airservices to improve the way in which it engages with and provides information to affected communities.

5.44 The bill also proposes to increase the membership of the Airservices Board. Though supported by community groups, DIRDC and Airservices raised concern with the proposal. DIRDC stated that the Airservices Board already has the relevant skills to meet Airservices' functions while Airservices questioned whether the proposal would result in a better outcome for the community.

