

The Senate

Rural and Regional Affairs
and Transport
Legislation Committee

Air Services Amendment Bill 2018

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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);¹ 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'.

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.²

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.³

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).⁴ In the 1950s, there were 65,000 aircraft movements a year and by 1966, there were 300,000 traffic

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.⁵ 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.⁶ The committee was informed that Moorabbin Airport's target is to reach 500,000 movements in the future.⁷

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.⁸

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.⁹

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,

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.¹⁰

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.¹¹

1.44 Many of the findings and a number of the References Committee's recommendations remain relevant today.¹² 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.¹³

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

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 (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'.¹⁴

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.¹⁵ Under the regulations, aircraft that do not meet these standards are prohibited from engaging in air navigation in Australia.¹⁶

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.¹⁷

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'.¹⁸ Mr Harfield further clarified that Airservices lacks regulatory powers to establish maximum noise levels or enforce compliance related to aircraft noise.¹⁹

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.²⁰ Presently

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).²¹

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.²²

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.²³

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.²⁴

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

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.²⁷
- 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.²⁸
- DIRDC advises government on the policy and regulatory framework for Australian airports and the aviation industry, including management of aircraft noise and regulatory oversight.²⁹
- 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.³⁰
- 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).³¹

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.³²
- 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.³³

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).

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.

Chapter 3

Consultation and representation

3.1 This chapter considers the evidence in relation to community consultation and representation, with regard to both current arrangements and proposed arrangements under the bill.

3.2 Overall, many submitters to the inquiry supported the general aim of the bill with regard to greater community consultation in relation to aircraft noise. There was also considerable support for a more formalised consultation process brought about through the engagement of a CAA and an Ombudsman.

3.3 Noting the complexity of current arrangements with regard to aircraft noise, a number of submitters took the view that the bill would provide the necessary clarity concerning roles and responsibilities. The ACT Department of Environment, Planning and Sustainable Development (ACT Department) indicated its support for the bill on the basis that its provisions would provide greater clarity with regard to the responsible authority for aircraft noise issues. It indicated that in the past, accountability for addressing aircraft noise complaints has, at times, been 'unclear between Canberra Airport, Air Services Australia, the Australian Airports Association and the Australian Government Department of Infrastructure and Regional Development'.¹

3.4 However, Airservices, the DIRDC and CASA raised a series of concerns with the bill. All three agencies argued that, in its current form, the bill will not achieve its stated objectives, but rather lead to duplication and a range of unintended consequences, potentially including a safety and cost impost.² The Australian Airports Association (AAA) also argued that the bill does not recognise the existing framework in place for managing aircraft noise, and suggested that it fails to demonstrate an understanding of the significant impacts of some of the proposed amendments.³

Community consultation and the role of Airservices Australia

3.5 Section 9(2) of the Air Services Act states that Airservices is obliged to 'exercise its powers and perform its functions in a manner that ensures that, as far as it is practicable, the environment is protected from...the effects of the operation and use of aircraft'.⁴ In addition, section 10 states that:

Airservices must, where appropriate, consult with government, commercial, industrial, consumer and other relevant bodies and organisations (including

1 ACT Department of Environment, Planning and Sustainable Development, *Submission 12*, pp. 1–2.

2 Airservices Australia, *Submission 9*; Department of Infrastructure, Regional Development and Cities, *Submission 11*.

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

4 *Air Services Act 1995*, para. 9(2)(a).

the [International Civil Aviation Organisation] and bodies representing the aviation industry).⁵

3.6 Under the current arrangements, Airservices works in partnership with others in the aviation industry to minimise the impact of aircraft noise on communities around airports. As part of this role, Airservices is required to ensure that flight departures and arrivals are designed to minimise noise impacts. It is also required to provide information about aircraft noise, monitor aircraft noise around major airports, and provide a national Noise Complaints and Information Service (NCIS).

3.7 Airservices indicated in its submission that there are a number of existing mechanisms in place to provide protections for communities related to aviation infrastructure proposals and noise impacts. It argued that the bill proposed a range of consultation provisions that 'either already exist or would increase the regulatory burden with no demonstrable outcome and at an additional cost'.⁶ This is because Airservices already engages the community on flight path changes, airspace design, infrastructure projects, safety, and environmental issues through a number of community, industry and government forums and mechanisms.⁷

3.8 DIRDC also raised concern that the proposed amendments may make the current consultation arrangements 'more cumbersome and less effective'. It noted that the Air Services Act and specifically, the Ministerial Statement of Expectations under section 12A of the Air Services Act require Airservices to 'undertake effective stakeholder engagement with the community and industry on the development of significant changes by Airservices to air traffic'.⁸ DIRDC made the point that a legislative requirement to oblige Airservices to establish community consultation groups would duplicate 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.⁹

3.9 It was also argued that Airservices is already required to undertake community consultation with regard to flight paths through the development of an Environmental Impact Statement (EIS) in accordance with the EPBC Act. In fact, Airservices' environmental obligations are defined in both the Air Services Act and Commonwealth environmental legislation.

5 *Air Services Act 1995*, s. 10.

6 Airservices Australia, *Submission 9*, p. 3.

7 Airservices Australia, *Submission 9*, p. 3.

8 Department of Infrastructure, Regional Development and Cities, *Submission 11*, p. [1].

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

3.10 As part of its environmental assessment under the EPBC Act, Airservices is required to provide a detailed assessment of the risks in relation to community noise, aircraft emissions and other environmental impacts as defined under the EPBC Act.¹⁰

Proposed consultation obligations

3.11 In light of ongoing concerns regarding the extent to which communities are able to engage in aircraft noise forums and influence the decision making process, the bill proposes to establish a requirement upon Airservices to consult with communities affected by aircraft noise. As part of proposed amendments to section 10 of the Air Services Act, Airservices would be required to establish community consultation groups and make public the details about those arrangements and outcomes.

3.12 These provisions were supported by a number of submitters who took the view that by imposing a requirement upon Airservices to consult with affected communities, they would be heard.

3.13 However, concerns were raised that there are a range of consultation processes and mechanisms already in place which would be duplicated by the bill's requirement that Airservices establish its own consultation groups.¹¹ A number of submitters, including the AAA did not see any added value to the community in such a proposal, given that it could confuse local communities if multiple forums were established to deal with similar issues, amounting to an additional impost on limited resources.¹² Furthermore, Airservices submitted that the bill, as currently drafted, failed to 'specify how the proposed consultation groups would fit with existing consultation frameworks and appears to unnecessarily duplicate existing arrangements which are generally considered to be working well'.¹³

3.14 In order to understand how the current consultation arrangements operate, and contextualise the concerns raised in relation to them, the committee sought evidence on the effectiveness of existing consultation forums before considering the provisions of the bill and how they may impact current consultation processes.

Community Aviation Consultation Groups

3.15 Community Aviation Consultation Groups (CACGs) have been established at most of the 21 federally leased airports. These groups enable community engagement on airport-related matters, including aircraft noise concerns. They are not decision-making bodies, but rather, are designed for consultation purposes, to ensure that

10 Airservices Australia, *Airservices Environmental Assessment Process for Changes to Aircraft Operations (excluding on-ground works)*, http://www.airservicesaustralia.com/wp-content/uploads/13-167FAC_Environmental_assessment_PI.pdf (accessed 5 July 2018).

11 See for example, Australian Airports Association, *Submission 10*, p. 3

12 Australian Airports Association, *Submission 10*, p. 3.

13 Airservices Australia, *Submission 9*, p. 3.

'community views are effectively heard by the airport and to give members the opportunity to obtain information about what is happening on-airport'.¹⁴

3.16 The *National Aviation Policy White Paper: Flight Path to the Future* (Aviation White Paper) released in December 2009 outlined a framework for reform which would formalise CACGs to:

...ensure that local communities have direct input on airport planning matters, with appropriate arrangements for engagement with outer industry stakeholders such as airlines and Airservices Australia where necessary.¹⁵

The Australian Government will require all airports subject to the planning framework in the Airports Act...to establish and lead Community Aviation Consultation Groups. The Community Aviation Consultation Groups will address planning and development issues and a range of other operational matters, such as aircraft noise, which may affect airports' relations with their neighbours.¹⁶

3.17 The Aviation White Paper noted that while airports would be responsible for determining membership of the CACGs, they were expected to ensure a representative cross-section of community interests.¹⁷

3.18 Thereafter, in its 2010 report, the References Committee recommended that Airservices serve as a permanent member of all federal airport CACGs.¹⁸ In its 2011 response, the Australian Government noted that the Aviation White Paper had recognised stakeholder views that CACGs could work better if Airservices and CASA were represented on them. It further noted that this is 'already taking place'.¹⁹ Furthermore, the Australian Government upheld the view that mechanisms had already been implemented to improve community consultation and engagement in relation to airport operations and developments. It cited the CACGs as a key example of this, noting that the References Committee's proposal for an advocate position

14 Australian Government, *National Aviation Policy White Paper: Flight Path to the Future*, December 2009, p. 163, https://infrastructure.gov.au/aviation/publications/files/Aviation_White_Paper_final.pdf (accessed 4 July 2018).

15 Australian Government, *National Aviation Policy White Paper: Flight Path to the Future*, December 2009, p. 23.

16 Australian Government, *National Aviation Policy White Paper: Flight Path to the Future*, December 2009, p. 163.

17 Australian Government, *National Aviation Policy White Paper: Flight Path to the Future*, December 2009, p. 163.

18 Rural and Regional Affairs and Transport References Committee, *Effectiveness of Airservices Australia's management of aircraft noise*, Recommendation 1, 2 July 2010, p. 69.

19 Australian Government, *Government response to Senate Rural and Regional Affairs and Transport References Committee Inquiry Report on the effectiveness of Airservices Australia's Management of Aircraft Noise*, February 2011, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Completed_inquiries/2008-10/aircraft_noise/index (accessed 4 July 2018).

would 'constitute a duplicate of the role intended for community representatives' within the CACGs.²⁰

3.19 Airservices' policy on community consultation is contained in its Communication and Consultation Protocol which is currently under review. It notes that while Airservices does not have formal membership of the CACGs, it is represented at each of the CACGs and that 'we actively participate in these meetings to engage with the community on issues that might affect them, including changes to procedure'.²¹

3.20 The DIRDC Guidelines for CACGs state that CACGs are a 'mechanism to ensure appropriate community engagement on airport planning and operations'.²² It notes that membership of a CACG should include persons who can contribute views representative of, amongst other things:

...community organisations, resident groups or individuals, ensuring the representation of residents affected by airport development and operations.²³

Evidence regarding effectiveness of CACGs

3.21 The AAA made the point that each of the 21 federally leased airports is subject to the *Airports Act 1996* (Airports Act) which requires them to undertake extensive public consultation, including a need to establish a CACG.²⁴

3.22 According to the AAA, Airservices attends and actively participates in the CACGs. At the forums, Airservices will provide updates on relevant activities and address issues of aircraft noise that may have arisen from changes to flight paths. AAA cited a 2015 departmental review into the efficacy of the consultation arrangements which found that 'overall CACGs meet the objectives of facilitating open discussion and supporting strategic dialogue between airports, communities and governments'.²⁵

20 Australian Government, *Government response to Senate Rural and Regional Affairs and Transport References Committee Inquiry Report on the effectiveness of Airservices Australia's Management of Aircraft Noise*, February 2011.

21 Airservices Australia, *Communication and consultation protocol*, July 2016, p. 4, http://www.airservicesaustralia.com/wp-content/uploads/Communication-and-consultation-protocol_WEB.pdf (accessed 6 July 2018).

22 Department of Infrastructure and Regional Development, *Community Aviation Consultation Groups (CACG) Guidelines*, Issued February 2011, Revised November 2016, p. 1, https://infrastructure.gov.au/aviation/airport/planning/files/CACG_Guidelines_2016.pdf (accessed 6 July 2018).

23 Department of Infrastructure, Regional Development and Cities, *Community Aviation Consultation Groups (CACG) Guidelines*, Issued February 2011, Revised November 2016, p. 5.

24 Australian Airports Association, *Submission 10*, p. 1.

25 Department of Infrastructure, Regional Development and Cities cited in Australian Airports Association, *Submission 10*, p. 3.

3.23 However, evidence from a number of community groups suggested that CACGs are not operating as envisaged. Mr Frank Rivoli, Secretary of the Hume Residents Airport Action Group served on the Melbourne CACG as a community representative for a four year period from 2012. Mr Rivoli explained the reasons for community frustration with the CACGs process:

Our concerns are not being addressed seriously. Aircraft noise answers are usually on the basis that there's nothing that can be done about aircraft noise. It's a product of aviation. Airservices says, 'We're doing our best to manage but our responsibility is to the safety of air travellers and so on'.²⁶

3.24 Mr Rivoli informed the committee that since 2014, the Melbourne CACG has not made a single recommendation which resulted in any 'worthwhile things for the community, apart from some proposals to change some building proposals'. Mr Rivoli further noted that in addition to the CACG process at Melbourne airport, there is a noise abatement committee organised by the airport but which contains no community representative.²⁷

3.25 Similarly, Mr John Cincotta, Member of the Dingley Village Community Association, informed the committee that at CACG meetings, information sharing takes place but that there is no consultation. He noted that, as a consequence, 'there are no initiatives or change that comes from the community engagement'.²⁸

3.26 The Moorabbin Airport Residents Association Incorporated (MARA) is an active member of the CACG for Moorabbin Airport. It reported that 'consultation with community representatives is minimal' and that many stakeholders in attendance at CACG meetings are not local residents but rather business owners who operate on airport land and are generally not supportive of resident appeals for reduced noise and improved safety.²⁹

3.27 Airservices recognised that there is scope for improvement with regard to the quality of its community consultations. It submitted that 'there are opportunities to improve engagement at CACGs' and that it understood 'some airports struggle to attract community participation and information is not always disseminated effectively from members to the broader community'.³⁰ Mr Harfield explained that the current consultation mechanisms, including CACGs 'aren't necessarily representative of the community as a whole'.³¹ Drawing on the most recent experience with the

26 Mr Frank Rivoli, Hume Residents Airport Action Group, *Proof Hansard*, 22 June 2018, p. 4.

27 Mr Frank Rivoli, Hume Residents Airport Action Group, *Proof Hansard*, 22 June 2018, p. 5.

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

29 Moorabbin Airport Residents Association Inc, *Supplementary Submission 42*, pp. 3–4.

30 Airservices Australia, *Submission 9*, p. 3.

31 Mr Jason Harfield, Airservices Australia, *Proof Hansard*, 22 June 2018, p. 38.

Hobart Airport, Mr Harfield explained that Airservices had relied on 'some of these mechanisms incorrectly and didn't do the appropriate consultation'.³²

Hobart Airport CACG

3.28 In April 2018, the ANO released an investigation report into complaints about the introduction of new flight paths in Hobart. Seven months earlier, in September 2017, Airservices had implemented changes to flight paths for aircraft arriving and departing Hobart Airport. According to the ANO, it became apparent that local residents had not received any warning of the implementation of the changes, which included a change to the Standard Instrument Departure (SID) and Standard Arrival Route (STAR), for each end of the main runway. Over a period of 6 weeks, 50 complaints were received on the changed flight paths. The ANO observed that:

The complaints reflected the community's concerns about quality and effectiveness of community consultation, the quality of information provided to the public, the handling of their complaints and action taken by Airservices in response to community concerns.³³

3.29 In observing that Airservices had relied on the Hobart CACG to consult with the community on the flight path changes, the ANO stated that it found this approach 'problematic'. It made the point that CACGs cannot 'reach to all residents potentially affected by Airservices' initiated changes'. The ANO continued:

This is particularly so given the stated purpose of CACGs which centres on "airport operations". They do not always offer an opportunity for affected residents to provide feedback to Airservices on its proposals for change.³⁴

3.30 The ANO made the point that different CACGs operate in different ways:

Not all CACG meetings are publicised. Not all minutes of meetings are published. Not all CACGs publish details of membership so that residents can raise issues to be pursued on their behalf by CACG members. Airservices has no control over CACG Chair or membership appointments. It has no control over venue, scheduling, agenda or process. It is unwise, at best, for Airservices to abandon determination of its own community consultation program by making a forum over which it has so little influence the primary site of its community engagement.³⁵

3.31 Furthermore the ANO concluded that, rather than amounting to 'inadequate consultation' as described by Airservices itself, presenting information at the CACG

32 Mr Jason Harfield, Airservices Australia, *Proof Hansard*, 22 June 2018, p. 38.

33 Aircraft Noise Ombudsman, *Investigation into complaints about the introduction of new flight paths in Hobart*, April 2018, p. 1, http://ano.gov.au/reportsstats/reports/Hobart_Noise_Improvements_Apr2018_Review_ASA_Response.pdf (accessed 5 July 2018).

34 Aircraft Noise Ombudsman, *Investigation into complaints about the introduction of new flight paths in Hobart*, April 2018, p. 22.

35 Aircraft Noise Ombudsman, *Investigation into complaints about the introduction of new flight paths in Hobart*, April 2018, p. 22.

on two occasions amounted to the 'absence of consultation' on the part of Airservices.³⁶ The ANO recommended that Airservices:

...abandon its stated policy of making the [CACGs] the primary site of its community consultation and instead, with the input and leadership of a skilled practitioner of community engagement, develop a community consultation strategy and guidelines to inform individual detailed strategies for individual changes.³⁷

3.32 The ANO made 12 other recommendations directed at Airservices to, amongst other things, 'develop and support a sophisticated approach to community consultation in line with and informed by modern standards of community engagement'. The ANO recommended the utilisation of a 'skilled practitioner of community engagement' who could provide leadership and support to Airservices to promote 'better performance in community consultation' processes.³⁸ Additionally, the ANO recommended that before commencing community consultations, Airservices should become acquainted with 'the context and recent history of that community' and take those matters into account 'in its decision making and in its engagement design'.³⁹ Finally, the ANO made the point that Airservices should base:

... its consultations from a critically analytical perspective so as to ensure that all relevant matters have been considered and the information provided to the community is timely, correct, relevant, transparent, comprehensive, consistent and logically sound.⁴⁰

3.33 Prior to the release of the ANO report, Airservices publicly acknowledged in October 2017 that it did not consult local communities appropriately in Hobart.⁴¹ Mr Harfield noted in May 2018 that:

Hobart is an area that is continuing to grow and the air traffic's growing but it's something we have to look at across the entire country because we're experiencing year-on-year growth of three to four per cent in air traffic continually. We're expecting to see a 60 per cent increase in traffic over the next 15 years and we've got to continue to maintain the safety and efficiency of the system. That doesn't take into account that, with this change in implementing it, we made a mistake at the start and didn't do the appropriate consultation. We're not taking away from that. Now, going

36 Aircraft Noise Ombudsman, *Investigation into complaints about the introduction of new flight paths in Hobart*, April 2018, p. 22.

37 Aircraft Noise Ombudsman, *Investigation into complaints about the introduction of new flight paths in Hobart*, April 2018, p. 51.

38 Aircraft Noise Ombudsman, *Investigation into complaints about the introduction of new flight paths in Hobart*, April 2018, p. 51.

39 Aircraft Noise Ombudsman, *Investigation into complaints about the introduction of new flight paths in Hobart*, April 2018, p. 51.

40 Aircraft Noise Ombudsman, *Investigation into complaints about the introduction of new flight paths in Hobart*, April 2018, p. 51.

41 Mr Jason Harfield, Airservices Australia, *Estimates Hansard*, 22 May 2018, p. 64.

forward, we're going back out to the community...We're working with the community and consulting, pushing that track further east away, which requires air space changes and a number of things. But we're working through that with the community as we speak.⁴²

Other consultation forums – Fly Neighbourly Agreements

3.34 Another consultation forum relates to the Fly Neighbourly Agreements. A Fly Neighbourly Agreement (FNA) is an agreement between aircraft operators and communities or authorities with an interest in reducing the disturbance caused by aircraft within a particular area. According to CASA, an FNA is a voluntary agreement under which aircraft operators agree to operate in a particular manner. It may include self-imposed limits on operating heights, the frequency of operations and areas of operation.⁴³ CASA further noted that:

The nature, scope and terms of an agreement are matters for the parties to the agreement to determine. Arrangements for monitoring of and compliance with the agreement are also matters for the parties involved.⁴⁴

3.35 The FNA for Moorabbin Airport was established in 2011 and specifies requirements for circuit training hours, altitude, noise abatement, runway use, aircraft operations, the Moorabbin Airport Training Area (MATA), engine use, helicopter operations and matters for pilots.⁴⁵

3.36 The committee heard submitters' concerns about the effectiveness of the MATA FNA. MARA reported that the FNA 'is actually of little help to residents' because it 'does not address the frequency of operations over the same residential area – the root cause issue for residents'.⁴⁶

3.37 Mr Cincotta informed the committee that it would make no difference if the agreement didn't exist:

What it doesn't address is that there are 700 to 1,000 movements a day, 8 am to 10 pm, at 10 to 15 second intervals. So the root cause of the issue is the number of movements from older-type planes. They fly at lower heights compared to a Tullamarine or a Sydney airplane. The planes flying at 1,000 feet doesn't address the issue, so it's ineffective.⁴⁷

42 Mr Jason Harfield, Airservices Australia, *Estimates Hansard*, 22 May 2018, p. 66.

43 Civil Aviation Safety Authority, *Fly Neighbourly Agreements – Information and Guidelines*, <https://www.casa.gov.au/file/149191/download?token=uvAQUKId> (accessed 16 July 2018).

44 Civil Aviation Safety Authority, *Fly Neighbourly Agreements – Information and Guidelines*.

45 Airservices Australia, *Moorabbin Airport: Noise Information Pack*, August 2013, <http://www.airservicesaustralia.com/wp-content/uploads/Moorabbin-Airport-Noise-Information-Pack.pdf> (accessed 23 July 2018).

46 Moorabbin Airport Residents Association Inc, *Submission 42*, p. 3.

47 Mr John Cincotta, Dingley Village Community Association, *Proof Hansard*, 22 June 2018, p. 13.

3.38 The effectiveness of the FNA for the City of Melbourne was also questioned. This FNA, which was negotiated by the Melbourne City Council and agreed to in 2016, establishes curfews for services from the CBD helipad 'to between the hours of 7 am and 8 pm Monday to Friday, and 9 am to 8 pm on weekends and public holidays'.⁴⁸ It also limits to training flights in the CBD to between 11 am and 1 pm.⁴⁹

3.39 Mr Ian Mitchell from the East Melbourne Group (EMG) explained that the Melbourne FNA was established with the intention to limit helicopter activity in the area. Mr Mitchell stated that since its establishment, the EMG had witnessed an increase in air traffic and that the FNA was 'not really successful' because many joy flight businesses make decisions based on the needs of their business rather than the community.⁵⁰

3.40 Microflite Helicopter Services (Microflite), who primarily operate tourist services from a helipad based in the Melbourne CBD, explained that it was the first of two companies to enter into the FNA.⁵¹ Its CEO, Mr Jonathan Booth, added that his company tries to minimise the impact its operations has on the community by using tourist aircraft that limit their noise signature, flight paths that limit the time spent over built-up areas, and aircraft that fly above:

...industrial areas, river ways, train lines, out over the bay and things like that. We also limit the time, duration and quantity of scenic flights. We have a smaller scenic-flight window that we allocate our aircraft to and we also make the scenic flights longer, which puts an artificial cap on them, because it creates an entry price point. It limits the amount of flights that we do in that market.⁵²

3.41 Mr Booth expressed disappointment with the EMG's view that the FNA was not working because he believed it to be successful. He noted that it had impacted Microflite's operations, profitability and economics.⁵³

Other forums – Airport Master Plans and Major Development Plans

3.42 Airservices informed the committee that significant community consultation also occurs through the Major Development Plans process in accordance with requirements under the Airports Act. This consultation process takes place when 'airspace changes are required due to airport infrastructure projects, such as the new parallel runways at Brisbane, Melbourne and Perth'.⁵⁴ Airservices submitted that Major Development Plans are 'extensive' and include 'advertising, a 60 day public

48 Mr Jonathan Booth, Microflite Helicopter Services, *Proof Hansard*, 22 June 2018, p. 27.

49 Mr Jonathan Booth, Microflite Helicopter Services, *Proof Hansard*, 22 June 2018, pp. 30–31.

50 Mr Ian Mitchell, East Melbourne Group, *Proof Hansard*, 22 June 2018, p. 21.

51 Mr Jonathan Booth, Microflite Helicopter Services, *Proof Hansard*, 22 June 2018, p. 30.

52 Mr Jonathan Booth, Microflite Helicopter Services, *Proof Hansard*, 22 June 2018, p. 27.

53 Mr Jonathan Booth, Microflite Helicopter Services, *Proof Hansard*, 22 June 2018, p. 27.

54 Airservices Australia, *Submission 9*, p. 3.

comment period, and a requirement to give community views due regard'.⁵⁵ Major Development Plans are approved by the Minister for Transport.⁵⁶

3.43 The AAA asserted that airport Master Plans and Major Development Plans provide a public consultation mechanism that enables the community to:

...provide input into proposed projects (such as new runways) that may result in changes to airspace and flight paths. Airports devote significant time and resources to these public consultation arrangements to address any concerns that may be raised by the community.⁵⁷

3.44 However, the effectiveness of airport Master Plans and Major Development Plans were questioned by a number of submitters. For example, the Hume Residents Airport Action Group expressed concern with the Major Development Plan for Melbourne Airport. It argued that consultative groups were not provided with documentation, which is contrary to community consultation requirements.⁵⁸

3.45 MARA submitted that the Moorabbin Airport's most recent Master Plan was factually incorrect in stating that the:

...potential for noise to impact upon neighbouring areas is considered low due to the distance to surrounding residential areas and the nature of commercial and aviation activities carried out at the airport.⁵⁹

3.46 MARA argued that this statement was incorrect due to the daily volume of student pilots and aircraft flying circuits over residential areas. MARA expressed the view that the Moorabbin Airport, Airservices or any other government agency lack 'any control over the type and amount of noise generated from aircraft flying at low altitude over residential areas'.⁶⁰ Subsequently, residents in the area are 'consistently hammered by an unacceptable level of aircraft-related noise'.⁶¹

Community Aviation Advocate

3.47 The bill proposes to insert a new section 160A into the EPBC Act to provide for a CAA. The role of the CAA 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.

3.48 Senator Rice indicated that the advocate position would be taken up by someone with the skills in 'understanding what the issues being faced by the

55 Airservices Australia, *Submission 9*, p. 3.

56 Airservices Australia, *Submission 9*, p. 3.

57 Australian Airports Association, *Submission 10*, p. 3.

58 Hume Residents Airport Action Group, *Submission 19*, p. 1.

59 Moorabbin Airport Residents Association Inc, *Submission 42*, p. 2.

60 Moorabbin Airport Residents Association Inc, *Submission 42*, p. 2.

61 Moorabbin Airport Residents Association Inc, *Submission 42*, p. 2.

community are and is able to communicate those issues and actually make sure that those issues are being adequately addressed by Airservices'.⁶²

Evidence in support of a Community Aviation Advocate

3.49 A number of community groups and individuals supported the prospect of a legislated CAA position for a number of reasons.

3.50 Mr Rivoli expressed the view that by giving the position legislative power, the advocate would be able to inform communities of decisions and work to strengthen the ties between airport development stakeholders and local communities.⁶³ Mr Trevor Neal, Secretary of the Residents Against Western Sydney Airport argued that a formal advocate would be more likely to be able to assist in identifying solutions to problems in the community when compared to current processes. Mr Neal continued:

We find it incredibly frustrating that nobody at department or government level wants to acknowledge that there's a problem. It's all about the financial benefits that might come to the community, without taking into account the environmental and residential impacts. So if we have an advocate...that's within the legislative process, I think there is more opportunity to find solutions than we've got open to us at the moment.⁶⁴

3.51 Similarly, Mr David Woodward, Subcommittee Member of the EMG argued the point that providing for an advocate in legislation would provide 'the power that many of us in the community don't have'.⁶⁵

3.52 Mr Cincotta argued that an advocate would be particularly helpful in circumstances where Airservices is resistant to making changes to its current operations. He argued that involved communities wanted Airservices to be required to liaise with the community and ascertain the root causes of issues in order to be able to come up with practical solutions. He argued that at present, the culture of Airservices 'isn't there in terms of working with communities'.⁶⁶

Evidence against a Community Aviation Advocate

3.53 Airservices argued that the role of the advocate is ill-defined and that the bill does not contain any specific requirements or qualifications for the position other than that the appointee must be independent of aviation interests. Airservices also suggested that the bill does not describe the powers and responsibilities of the advocate and fails to indicate whether the advocate has to report back to the Minister for Environment. Furthermore, it is not clear how the advocate would interact with pre-existing community consultation processes. Airservices concluded that:

62 Senator Rice, *Proof Hansard*, 22 June 2018, p. 16.

63 Mr Frank Rivoli, Hume Residents Airport Action Group, *Proof Hansard*, 22 June 2018, p. 6.

64 Mr Trevor Neal, Residents Against Western Sydney Airport Inc, *Proof Hansard*, 22 June 2018, p. 6.

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

66 Mr John Cincotta, Dingley Village Community Association, *Proof Hansard*, 22 June 2018, p. 13.

Past experience indicates the limited effectiveness such a position is able to achieve and highlights the complexity where there is no single solution that is able to be delivered to the satisfaction of all parties.⁶⁷

3.54 Mr Harfield, although sympathetic with the bill's objective, opined that Airservices does not consider the establishment of an advocate as the most appropriate way of achieving a better consultation mechanism.⁶⁸ He listed the following existing requirements on Airservices to engage in community consultation:

- the requirement to consult with the community and relevant stakeholders on any particular change, as specified under section 10 of the Air Services Act;
- section 9 of the Air Services Act specifying that Airservices 'must regard the safety of air navigation and, as far as is practicable, minimise the effects of aircraft operations on the environment';
- community consultation forums; and
- the ANO.⁶⁹

3.55 DIRDC took the view that the proposed amendment is discriminatory because Airservices is not the only party that provides proposals for airspace changes to CASA. It noted that others, such as airport and airline operators, also put forward proposals and they are not included under the provision. In addition, DIRDC noted the likelihood of a diversity of views from those affected by any changes in aircraft or airspace management. It explained that:

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.⁷⁰

3.56 This concern was also shared by both Airservices and the ANO, as both argued that it would be unclear which members of the community the advocate would represent.⁷¹ Using flight paths as an example, the ANO explained that:

...people at different points along the flight paths might have different concerns, or the flight path change might be providing an advantage to one section of the community and a disadvantage to another section of the community. How does someone whose role is to be an advocate deal with that essential conflict?⁷²

3.57 In addition, DIRDC made the point that community groups are already consulted as part of current airspace change proposal arrangements and that they are

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

68 Mr Jason Harfield, Airservices Australia, *Proof Hansard*, 22 June 2018, p. 39.

69 Mr Jason Harfield, Airservices Australia, *Proof Hansard*, 22 June 2018, p. 44.

70 Department of Infrastructure, Regional Development and Cities, *Submission 11*, p. 3.

71 Mr Jason Harfield, Airservices Australia, *Proof Hansard*, 22 June 2018, p. 45.

72 Ms Narelle Bell, Aircraft Noise Ombudsman, *Proof Hansard*, 22 June 2018, p. 42.

better placed to pick and perform their own community representation role rather than having a particular advocate imposed by regulation as proposed under the bill.⁷³ DIRDC also queried how an advocate 'would operate in practice to deliver clearer benefits'. It suggested that a more beneficial option is to look 'at the existing arrangements and seeing what improvements could be made'.⁷⁴

3.58 The Australian Mayoral Aviation Council (AMAC) raised concern that the bill was not clear as to whether the proposal for an advocate was for an individual appointment for a specific period to operate nationally or whether a person is to be appointed separately in relation to each and every event that triggered such representation of community interest:

In either case the Bill remains silent on how the appointee is to function and just how the CAA is to relate to the community to be impacted as well as with the agency responsible to triggering the intervention of a CAA.

In other words is it proposed that the CAA should have particular status and access or is the appointee to have no greater status than a member of the general community but happens to have a level of understanding and/or standing within the aviation sector?

In addition, how is the CAA to communicate with, obtain input from, and provide information to, the broader community being represented?⁷⁵

ANO findings and recommendations

3.59 The committee considered the findings and recommendations of the ANO's two more recent reports on Hobart Airport in 2018 and Perth Airport in 2015.

3.60 As previously indicated, shortcomings with the existing CACGs process were highlighted in the ANO 2018 investigation into complaints about flight path changes at Hobart Airport.

3.61 The Ombudsman recommended that Airservices abandon its position that CACGs be the primary facilitator of community consultation and instead, advocated for Airservices to engage a 'skilled practitioner of community engagement' to develop consultation strategies and guidelines designed specifically to inform individual changes to airport flight paths. Similarities can be drawn between this ANO recommendation and the CAA position outlined in the bill.

3.62 Airservices has specific obligations with regard to community consultation on aircraft noise matters and an array of protocols and standards are in place that requires it to engage with and take account of community concerns. However, the ANO found that Airservices had not complied with its own protocols and standards with regard to

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

74 Mr Brendan McRandle, Department of Infrastructure, Regional Development and Cities, *Proof Hansard*, 22 June 2018, p. 49.

75 Australian Mayoral Aviation Council, *Submission 28*, p. 4.

the Hobart flight path changes.⁷⁶ The ANO's recommendations, such as the engagement of community consultation expertise, seek to ensure that Airservices fulfils these obligations.

3.63 In its 2015 report with regard to Perth Airport, the ANO made 25 recommendations which identified:

- a need for more explicit information about the status of proposals for change when presented to the public;
- a need for adequate consultation, based on timely, complete and comprehensible information being available to the public, prior to the introduction of changes;
- capacity for assessments of the impacts of change to better reflect the issues that will most affect the public's response to possible changes;
- a need for improved responsiveness by Airservices to ANO requests for information; and
- an improved approach for published material to address directly the concerns of those who will be affected by changes, both those who might benefit and those who might be disadvantaged.⁷⁷

3.64 Amongst a number of recommendations regarding community consultation, the ANO recommended that:

Airservices should consider the social, economic and cultural context of the communities it is consulting and ensure consultation strategies enable accessibility, understanding and an opportunity for genuine engagement in the issues within those communities.⁷⁸

3.65 In response to the ANO's report, Airservices indicated that it would update its Communication and Consultation Protocol, in consultation with the ANO, to include a number of key principles for community and stakeholder engagement.⁷⁹

76 Aircraft Noise Ombudsman, *Investigation into complaints about the introduction of new flight paths in Hobart*, April 2018, p. 24.

77 Aircraft Noise Ombudsman, *Investigation into Complaints about the Perth Noise Improvement Proposals*, November 2015, p. 2, http://www.ano.gov.au/reportsstats/reports/Perth_Noise_Improvements_2015_Review_ASA_Response.pdf (accessed 31 July 2018).

78 Airservices Australia, *Airservices Australia's Management response to the ANO Report – "Investigation into Complaints about the Perth Noise Improvement Proposals"* (November 2015), p. 2, http://www.ano.gov.au/reportsstats/reports/Perth_Noise_Improvements_2015_Review_ASA_Response.pdf

79 Aircraft Noise Ombudsman, *Investigation into Complaints about the Perth Noise Improvement Proposals*, November 2015, Recommendation 18, p. 33.

Committee observations

3.66 The committee recognises that the provisions of the bill considered in this chapter may provide a more formal and prescribed pathway for engagement. To this extent, the bill may go some way to addressing the first concern of affected communities which is that of a regulatory framework for community consultation. As expressed by Mr Woodward from the EMG, if the relevant provisions of the bill are enacted:

We will be heard. Whether it resolves our issue is another question, but the first step is to be heard.⁸⁰

3.67 Notwithstanding this point, the question remains as to whether the mechanism proposed by the bill will add another layer to an already complex process, without providing an adequate means for communities to engage and be heard.

3.68 It was made clear to the committee that the Air Services Act already provides a number of mechanisms to facilitate meaningful community engagement, and that there is considerable scope for Airservices to better utilise these mechanisms.

3.69 The point was made that many of the bill's aspirations for genuine community consultation and representation can be realised within the existing legislative framework as it provides scope for the establishment of consultative groups and an array of other methods and mechanisms to achieve timely, transparent and constructive community engagement.

80 Mr David Woodward, East Melbourne Group, *Proof Hansard*, 22 June 2018, p. 25.

Chapter 4

Aircraft Noise Ombudsman

4.1 The bill proposes to establish an independent Aircraft Noise Ombudsman responsible to review the handling of complaints by Airservices, report to the relevant agencies and ministers, and report on the effectiveness of community consultation initiatives undertaken by Airservices.

Current arrangements

4.2 Airservices has responsibility for managing complaints and enquiries about aircraft noise and operations through its NCIS. The NCIS is the 'Australian aviation industry's main interface on aircraft noise issues for the community'.¹ Amongst other things, its role is to explain aircraft movements and flight plans and to consider possible changes to air traffic management as well as to advise if they are not possible, or refer them for further investigation. However, the NCIS is not empowered to change flight schedules.² If members of the public are dissatisfied with the NCIS, they may lodge complaints and enquiries with the ANO.³

4.3 The ANO was established in September 2010 as an independent administrative office in response to recommendations in the Aviation White Paper. In January 2015, the ANO, Airservices and Defence signed a Memorandum of Understanding and amended the ANO Charter to extend the role of the ANO to provide an independent complaint and review mechanism for Defence.⁴

4.4 The purpose of the ANO is set out in the Aircraft Noise Ombudsman Charter:

1. The Aircraft Noise Ombudsman (ANO) is an independent administrative office that:
 - a) reviews the handling of complaints or enquiries made to Airservices Australia (Airservices) or the Department of Defence (Defence) about Aircraft Noise;
 - b) monitors and reports on the effectiveness of community consultation processes relating to Aircraft Noise undertaken by Airservices and Defence;
 - c) monitors and reports on the effectiveness of the presentation and distribution of Aircraft Noise-related information; and

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

2 Airservices Australia, *Noise Complaints and Information Service, Complaints Management*, http://www.airservicesaustralia.com/wp-content/uploads/11-147FAC_Complaints_management_WEB.pdf (accessed 6 June 2018).

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

4 Australian Airports Association, *Submission 10*, p. 4.

d) provides targeted reviews of specific aspects of Aircraft Noise management as requested by Airservices and Defence.

2. The ANO may make recommendations to the Board or the Chief of Air Force for improvements relating to these matters.⁵

4.5 ANO reviews have considered aircraft noise operations, procedures and practices that assist Airservices with its work to 'continuously refine and improve the way [it engages] with the community'.⁶

4.6 The ANO is independent of both 'Airservices and Defence executive management structure, and reports directly to the Airservices Board and Chief of Air Force as appropriate'.⁷

4.7 The current ANO, Ms Narelle Bell, outlined her role and the process for the management of complaints to the committee. With regard to the existing complaint management process, Ms Bell explained that if an individual complaint is made, the ANO's Charter provides that the complainant is first directed to Airservices.⁸ If an issue remains, the ANO then investigates and looks into the response provided by Airservices. Thereafter:

If we think that there is more to it we will ask questions and obtain additional information. We look to see whether thorough and logical reasons have been provided for whatever decision or response has been made. If we have a run of complaints in relation to an issue, we can deal with those altogether, as we did with the Hobart investigation, so that our review can be more broadly based. That's how we respond to individual complainants.⁹

Awareness and understanding of the ANO's role

4.8 It became clear to the committee during the inquiry that there are misconceptions about the ANO, highlighted by the fact the bill largely seeks to replicate the role.

4.9 The Hume Residents Airport Action Group questioned the ANO's role, expressing the view that it is restricted to the 'review of the administration process of noise complaints' and should be broadened.¹⁰

5 Aircraft Noise Ombudsman, *Aircraft Noise Ombudsman Charter*, November 2016, p. 3, http://www.ano.gov.au/about/docs/ANO_charter_2016.pdf (accessed 2 August 2018).

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

7 Aircraft Noise Ombudsman, *About Us*, 16 March 2017, <http://www.ano.gov.au/about/> (accessed 23 July 2018).

8 Ms Narelle Bell, Aircraft Noise Ombudsman, *Proof Hansard*, 22 June 2018, p. 43.

9 Ms Narelle Bell, Aircraft Noise Ombudsman, *Proof Hansard*, 22 June 2018, p. 43.

10 Mr Frank Rivoli, Hume Residents Airport Action Group, *Proof Hansard*, 22 June 2018, p. 2.

4.10 MARA noted that it had previously thought the ANO's role was to assist the community with aircraft noise issues.¹¹ It made the point that more needed to be done to inform the public about the role of the ANO. Miss Karen Hastings explained:

I think it's quite important that the purpose of this office be made clearer to the public due to the misconception that the office plays a role in managing actual noise complaints when its true role is actually handling the process of the complaints.¹²

4.11 The fact that the existing ANO was established to conduct independent administrative reviews of Airservices and the manner in which it handles aircraft noise-related activities, such as the handling of complaints as well as community consultation processes, was not well understood amongst many submitters to the inquiry. It would appear that some of them supported the provisions for a new ANO without a thorough appreciation for the role of the existing ANO.

4.12 The EM effectively outlines what is the existing role of the ANO. It states that the purpose of the proposed new ANO under the bill is to:

...review the handling of complaints and enquiries; report to relevant agencies or Ministers; monitor and report on the effectiveness of community consultations and other matters relating to aircraft noise; and make recommendations.¹³

4.13 For this reason, Airservices argued that the bill outlines a function that 'already broadly exists'.¹⁴ Similarly, the AAA noted that the ANO already carries out many of the key functions proposed in the bill.¹⁵

Governance considerations

4.14 The bill proposes to establish a regulatory requirement for an independent, government-funded ANO reporting to the Minister for Transport.

4.15 DIRDC expressed the view that the proposed amendment was:

...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.¹⁶

4.16 DIRDC also asserted the view that the current governance arrangement is 'very effective' because the ANO reports directly to the Airservices Board, rather than

11 Mr Giuseppe (Joe) Biviano, Moorabbin Airport Resident Association, *Proof Hansard*, 22 June 2018, p. 16.

12 Miss Karen Hastings, Moorabbin Airport Residents Association, *Proof Hansard*, 22 June 2018, p. 11.

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

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

15 Australian Airports Association, *Submission 10*, p. 4.

16 Department of Infrastructure, Regional Development and Cities, *Submission 11*, p. 1.

the management team.¹⁷ This engagement with the Airservices Board ensures that 'issues are put before the highest level of governance arrangements in Airservices' as it is the Board that makes decisions about how to respond to ANO recommendations. DIRDC observed that, on the whole, the Airservices Board responds 'very positively to those reports'.¹⁸

4.17 Furthermore, DIRDC made the point that available evidence indicates that the ANO is acting independently, as exemplified by the production of significant reports with regard to a number of airports containing recommendations 'all of which the Airservices board has implemented'. Mr Jim Wolfe of DIRDC noted the response of the Airservices Board to ANO recommendations:

As I understand it, they have implemented every one of the recommendations made by the ombudsman. So I think it's a bit unfair on the ombudsman to suggest that somehow they're in some sort of constrained environment or their independence is being challenged. Of course, if there were evidence to the contrary of that, it would be a different consideration. But, as it stands now, to be honest, I think we get pretty positive feedback from both sides of the fence about the role of the Aircraft Noise Ombudsman.¹⁹

4.18 It was suggested to DIRDC that in fact, 'most ombudsman...do not report to the board of the main organisation that they are responsible to investigate'.²⁰ In response, DIRDC stated that it would depend on 'whether it's a Commonwealth statutory ombudsman or whether it's an industry ombudsman' and that the:

...concern would be if we believed that the Airservices board were not having regard to what the ombudsman's work and recommendations were. At the moment, we don't have any evidence of that.²¹

4.19 DIRDC added that the prospect of the ANO reporting to the Minister for Transport could reasonably raise concerns regarding the potential politicisation of the role.²²

4.20 However, a number of submitters raised concern with the current arrangements and in particular, the extent to which the ANO is independent. AMAC suggested that while the current role and responsibility of the ANO as well as the

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

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

19 Mr Jim Wolfe, Department of Infrastructure, Regional Development and Cities, *Proof Hansard*, 22 June 2018, p. 51.

20 Senator Janet Rice, *Proof Hansard*, 22 June 2018, p. 51.

21 Mr Jim Wolfe, Department of Infrastructure, Regional Development and Cities, *Proof Hansard*, 22 June 2018, p. 51.

22 Mr Brendan McRandle and Mr Jim Wolfe, Department of Infrastructure, Regional Development and Cities, *Proof Hansard*, 22 June 2018, p. 51.

establishment of the position itself provides a mechanism for process review, it raised concern about the 'direct role' that Airservices and Defence have in 'both the selection of the ANO and in identifying the resources that will be made available to the ANO'. The AMAC continued:

Since actions taken and decisions made by those two agencies are at the centre of the ANO's review function, it is only proper that decisions regarding the appointment, resourcing and reporting by the ANO should not be tied to those same agencies whose actions are most often the subject of review.

Similarly it would not be appropriate for the office of the ANO to be attached to the Department responsible for the aviation portfolio since decisions made there may also become the subject of review.²³

4.21 The AMAC further argued that the ANO's capacity to delegate functions should not be restricted to government agency employees. It suggested that the way in which the Commonwealth and some state ombudsman are appointed should provide a basis for the administrative and reporting framework most appropriate for the ANO.²⁴

4.22 Airservices acknowledged that the governance arrangements in place with regard to the ANO are not consistent with those of other Commonwealth or state Ombudsmen and 'potentially raise questions about independence or at least could create a perception that independence is questionable'. In recognising that this can 'create mistrust and cynicism within the community which detracts from the ANO's investigative work and analysis', Airservices indicated that it was open to considering other governance models or arrangements that could 'enhance the ANO's independence and effectiveness'.²⁵ However, DIRDC asserted that an ombudsman funded by the airline industry, via Airservices, 'is a fairly normal way of ombudspersons being funded'.²⁶

23 Australian Mayoral Aviation Council, *Submission 28*, p. 1.

24 Australian Mayoral Aviation Council, *Submission 28*, p. 2.

25 Airservices Australia, *Submission 9*, pp. 4–5.

26 Mr Brendan McRandle, Department of Infrastructure, Regional Development and Cities, *Proof Hansard*, 22 June 2018, p. 51.

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.¹

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'.²

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.³

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.

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.⁴ 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.⁵

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.⁶

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.⁷

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.⁸ 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.⁹ CASA concluded that the principles that underpinned the bill were inconsistent with current legislation for this reason.¹⁰

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:

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.¹¹

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.¹²

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.¹³ 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.¹⁴

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.¹⁵

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'.¹⁶

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'.¹⁷ 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'.¹⁸

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'.¹⁹

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.²⁰

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

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'.²¹

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.²²

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.²³

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.²⁴

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:

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.²⁵

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.²⁶

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'.²⁷

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.²⁸ 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.²⁹

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.³⁰ 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.³¹

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'.³² 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'.³³

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.³⁴

5.35 Mr Brendan McRandle, Executive Director of the Aviation and Airports Division, DIRDC, questioned the appropriateness of additional positions on the Airservices Board.³⁵ 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.³⁶ 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.³⁷

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.³⁸

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.³⁹

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

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.

Chapter 6

Committee view

6.1 A considerable number of submissions to the inquiry supported the overall aim of the bill in relation to greater community consultation with regard to aircraft noise. However, many of these submissions did not elaborate on how the specific provisions of the bill will contribute to achieving this aim.

6.2 Some supporters of the bill argued that it establishes a more formalised consultation process by imposing requirements upon Airservices and providing for a CCA and ANO in legislation. They argued that this formalised approach is needed to ensure that community concerns regarding aircraft noise are taken into account as current consultation and complaint mechanisms have proven inadequate and ineffectual.

6.3 However, Airservices, DIRDC, CASA and the AAA argued the point that the bill will not address its supporters' concerns. They held the view that the bill will fail to achieve its objectives and will only duplicate pre-existing complaint and community consultation mechanisms. Further, they made the point that if enacted, the bill will potentially jeopardise air safety, increase costs and have adverse environmental and economic impacts.

Melbourne flight paths and air space

6.4 Advocates of the bill supported provisions that address issues concerning flight paths in and out of Melbourne, and enact restrictions on aircraft activities operating over residential areas, excluding operations in the public interest. Community groups also supported the proposed provision to enable affected individuals to request retrospective reviews of flight paths created or changed on or after 1 January 2012.

6.5 However, Airservices, DIRDC, CASA and the AAA specified a number of issues and limitations with the bill in this regard. As a starting point, they raised concern that the bill incorrectly attributes Airservices as the responsible agency for administering flight paths, whereas CASA, under the Airspace Act, is the agency responsible.

6.6 Airspace regulators and business operators also expressed concern with the proposal to prohibit helicopters and fixed wing aircraft from flying at less than 2,000 metres above sea level over residential areas in Melbourne. They made the point that if enforced, the 2,000 meter threshold would implement an approximate 6,500 feet requirement, which would have significant adverse consequences for airport operations in and around Melbourne.

Community consultation and transparency

6.7 The committee recognises that many communities located within close proximity to air transport infrastructure are suffering. It appreciates that these communities feel that their concerns are not being listened to and that their suggestions for co-existence and ideas for collaboration are ignored. The committee

acknowledges, moreover, that many submissions to the inquiry from affected communities support the bill on the basis that it seeks to provide a formal consultation mechanism which would require Airservices to engage with local groups.

6.8 While the committee acknowledges the concerns raised by community groups and affected individuals with regard to aircraft noise, it takes the view that the aspiration for greater and more effective consultation will not be realised by the passage of this bill. The committee is concerned that some of the proposed provisions will effectively duplicate legislated requirements and practices already in place, thereby inadvertently making an already complex process more multi-layered, opaque and difficult to understand.

6.9 However, it is clear to the committee that there are significant noise impacts that affected communities are facing which are not being considered, let alone addressed, within the existing consultation framework. It is also clear that current processes, including the CACGs, are not operating as originally intended. Noting that the government previously described the proposal for a CAA position as a 'duplicate' of the role intended for community representatives within CACGs, the committee recognises the need for a significant change to the way in which Airservices consults with, and takes into account, the views of involved communities both within and outside of the CACG process.¹

6.10 Airservices has acknowledged on a number of occasions that improvements can, and should be made to the way in which it engages with affected communities. The 2018 ANO investigation into amended flight paths at Hobart Airport has thrown into sharp relief the inadequacy of Airservices' current consultation framework. The concerns raised by the ANO were echoed in evidence throughout the course of the inquiry. In fact, most submitters raised concerns regarding the nature, quality and effectiveness of consultations undertaken, the level of transparency and quality of information provided to the public, the handling of community complaints and action taken by Airservices in response to community concerns.

6.11 The committee is cognisant that many of the concerns raised with regard the current consultation processes were considered by the References Committee in its 2010 inquiry. However, it would appear that the same concerns with regard to the lack of adequate community consultation still remain. To this end, the committee endorses the References Committee recommendation that Airservices serve as a permanent member of all federal airport CACGs. Notwithstanding this, however, the committee also supports the ANO's April 2018 findings in relation to Hobart Airport regarding the need for Airservices to conduct its own community consultation program and for Airservices to prioritise transparency towards communities impacted by aircraft noise.²

1 Australian Government, *Government response to Senate Rural and Regional Affairs and Transport References Committee Inquiry Report on the effectiveness of Airservices Australia's Management of Aircraft Noise*, February 2011.

2 Aircraft Noise Ombudsman, *Investigation into complaints about the introduction of new flight paths in Hobart*, April 2018, pp. 2 and 21.

6.12 The committee recognises that CACGs are only one forum through which community concerns can be raised and considered. While Airservices should engage on CACGs, it should not be the only mechanism that it utilises to conduct consultation and engage with the wider community. As noted by the ANO in relation to the Hobart Airport flight path changes, 'CACGs cannot offer reach to all residents potentially affected by Airservices' initiated changes'.³ Moreover, Airservices own Community Consultation Protocol recognises the need for 'different forms of communication and consultation activities' in accordance with the level of change and likely impact.⁴

6.13 The committee supports the ANO's April 2018 recommendations including that Airservices access expertise in community consultation which can inform the development of a comprehensive Airservices community consultation strategy.⁵ The committee takes the view that implementation of the ANO's recommendations, coupled with full compliance by Airservices of its own protocols and operating standards will go a considerable way towards achieving the key objectives contained in the bill.⁶

6.14 The committee recognises that the review of the Airservices Communication and Consultation Protocol provides the prime opportunity to address many of the concerns raised with regard to community engagement and consultation during this inquiry. The committee highlights the point made by the ANO that as part of reviewing its protocol and National Operating Standard, Airservices must now develop a 'more detailed community engagement strategy'.⁷

6.15 The committee also supports the ANO's recommendations which are designed to strengthen Airservices complaint management process and ensure that the concerns of affected residents are effectively managed. The committee recognises that the implementation of these recommendations by Airservices should provide the necessary transparency and timely information required by affected communities. Moreover, as suggested by the ANO, effective complaint handling can benefit Airservices by providing an early warning system, uncovering errors or oversights and enabling an 'early and appropriate management response'.⁸

3 Aircraft Noise Ombudsman, *Investigation into complaints about the introduction of new flight paths in Hobart*, April 2018, p. 22.

4 Airservices Australia, *Communication and Consultation Protocol*, July 2016.

5 Aircraft Noise Ombudsman, *Investigation into complaints about the introduction of new flight paths in Hobart*, April 2018, Recommendations 5 and 6, pp. 58–59.

6 The ANO found that Airservices Australia did not comply with its own protocols and operating standards with regard to the Hobart flight path changes. Aircraft Noise Ombudsman, *Investigation into complaints about the introduction of new flight paths in Hobart*, April 2018, p. 24.

7 Aircraft Noise Ombudsman, *Investigation into complaints about the introduction of new flight paths in Hobart*, April 2018, p. 24.

8 Aircraft Noise Ombudsman, *Investigation into complaints about the introduction of new flight paths in Hobart*, April 2018, Recommendations 11, 12 and 13, p. 56.

6.16 Noting that the ANO will report on Airservices' progress against the recommendations through regular published quarterly reports, the committee will monitor Airservices progress in implementing these important recommendations.

Co-existence and collaboration

6.17 The committee heard a number of proposals to address aircraft noise issues and ways to improve the existing consultation and complaint framework from community groups. These include:

- establishing Airservices as a permanent member of CACGs;
- improving the transparency of CACGs and its engagement with communities;
- conducting periodic reviews of Fly Neighbourly Agreements;
- implementing curfews and restricting flights at training aerodromes, particularly for circular movements;
- moving training airports to regional areas and away from residential density;
- reviewing the governance arrangements with regard to the ANO to enhance its independence and effectiveness;
- raising awareness of the role of the ANO;
- reviewing urban flight paths for aircraft operating at 1500 feet, and establishing designated flight paths that largely operate over non-residential areas.

6.18 While an examination of these suggestions is outside the scope of this inquiry, they could be considered by involved stakeholders within the existing legislative framework.

6.19 The committee the committee strongly encourages Airservices to reform its consultation approach and processes to take into account community views as well as suggestions for collaboration and co-existence.

6.20 The committee will continue to monitor the effectiveness with which Airservices engages with affected communities on aircraft noise and is more transparent with regard to proposed changes.

6.21 While the committee recognises that there is significant scope for improvement in the way in which Airservices engages with affected communities, it takes the view that the bill before it will not provide the effective consultation mechanism as envisaged. Therefore, the committee does not support the passage of this bill.

Senator Barry O'Sullivan

Chair

Dissenting Report from the Australian Greens

1.1 The Australian Greens disagree with the Committee's view and recommendation in its report on the Air Services Amendment Bill 2018.

Community consultation, representation and advocacy

1.2 Aircraft noise continues to be a major problem for many communities, and their experience of noise is compounded by their experience of feeling unheard, poorly consulted and ignored by airport management, aviation companies and the aviation regulators.

1.3 We note the committee view that 'it is clear to the committee that there are significant noise impacts that affected communities are facing which are not being considered, let alone addressed, within the consultation framework'. However we reject that the 'aspiration for greater and more effective consultation will not be realised by the passage of this bill'.

1.4 Evidence from community groups makes clear that consultation via Community Aviation Consultation Groups (CACG's), Fly Neighbourly Agreements and the existing consultation requirement for Master Airport Plans and Major Development Plans is not working.¹

1.5 As noted in the report, a number of witnesses pointed to how a more formalised consultation role for Airservices Australia, including the requirement to create Community Aviation Advocates, an autonomous Air Noise Ombudsman, a definition of 'environment' that explicitly includes community and an expansion of the Airservices Australia board, would provide more robust consultation, representation and advocacy than the status quo.

1.6 We note the concerns of Airservices Australia, CASA and the Department of Infrastructure, Regional Development and Cities about potentially confusing duplication in community consultation. These concerns are able to be overcome by conducting cross-agency reviews after the new formal consultation requirement for Airservices Australia has been implemented.

1.7 Additionally, multiple submissions identified that the existing consultation process is already confusing², and therefore the Greens see this as no barrier to attempting to formalise the consultation process, which would in time minimise confusion.

1 East Melbourne Group (*Submission 5*), Hume Residents Airport Action Group (*Submission 19*)

2 Moorabbin Airports Residents Association (*Submission 42*)

Recommendation 1

1.8 That if the Bill passes the parliament, a comprehensive review of the adequacy of air noise related consultation, advocacy and the operation of the Air Noise Ombudsman begin 12 months after the date of Royal Assent.

Melbourne Airspace and Flight paths

1.9 We note the concerns from Airservices Australia, DIRDC and CASA that the changes intended by subsections 10B and 10C would be better achieved by amending the Airspace Act rather than the Air Service Act, and that this modification would be more appropriately dealt with in delegated regulation.

1.10 We acknowledge that these changes will require some adaptation by existing aviation operators, however given the intent of this change is to mitigate the air noise impact of aviation services and operations around central Melbourne, change is both necessary and inevitable.

1.11 However air noise in the City of Melbourne is a critical issue and something must be done as soon as possible. The proposal to create a 2000m controlled air space has significant precedent, with other major global cities (such as Paris) having similar aviation restrictions above their urban cores.

Summary

1.12 While the Greens agree with the findings of the committee that the existing consultation process for air noise is not operating as intended, we believe that piecemeal reform is insufficient to deal with these problems.

1.13 The Greens believe that this Bill is the right pathway forward for ensuring a proper autonomous consultative process across all aviation and air noise impacted communities and resolving specific issues in highly air noise impacted areas, and encourage the other committee members to revisit their opposition.

Recommendation 2

1.14 That the *Air Services Amendment Bill 2018* be passed.

Senator Janet Rice

Greens Spokesperson for Infrastructure and Transport

Appendix 1

Submissions received

Submission Number	Submitter
1	Civil Aviation Safety Authority
2	Northern Territory Department of Infrastructure, Planning and Logistics
3	Residents Against Western Sydney Airport Inc
4	Mr Stephen Fortescue
5	East Melbourne Group
6	East Melbourne Community Garden Association Inc.
7	Mr Terry Henderson
8	Ms Elizabeth Cam
9	Airservices Australia
10	Australian Airports Association
11	Department of Infrastructure, Regional Development and Cities
12	Department of the Environment
13	East Melbourne Neighbour Network
14	Coalition of Resident & Business Associations
15	Dr. Fiona Sofra
16	Ms Sylvia Black
17	Mr Robert Hayes
18	Mr John Clarke
19	Hume Residents Airport Action Group
20	Ms Stefanie Faubel
21	Mr Graham Sussex
22	Dr Catherine Streeton
23	Cynthia Rapisarda and Pamela Kalkandis
24	Ms Ellen Sandell MP
25	Sutherland Shire Council
26	Ms Karen Boscarato
27	Blue Mountains City Council
28	Australian Mayoral Aviation Council
29	Ms Shelley Faubel OAM
30	Mr Matt Faubel
31	City of Belmont
32	Mr Bretan Clifford
33	Dr Kenneth Tregonning

34	Mr Samuel Daniell
35	Ms Sabina Faubel
36	Department of Defence
37	ACT Environment, Planning and Sustainable Development Directorate
38	Mr David and Ms Fiona Woodward
39	Microflite Helicopter Services
40	Save Kempsey Airport Action Group Inc.
41	Dingley Village Community Association
42	Moorabbin Airport Residents Association
43	South East Coast Lifestyle Association
44	City of Salisbury
45	Mrs Marilyn Riedy
46	Mrs Luisa Savio
47	City of Melbourne
48	Mr Ivan and Ms Wendy Neaves

Additional information received

FORM LETTERS RECEIVED

- Form letter 1 was received from 270 individuals
- Form letter 2 was received from 187 individuals
- Form letter 3 was received from 25 individuals
- Form letter 4 was received from 8 individuals

ADDITIONAL INFORMATION

- Received on 25 June 2018, from Shelley Faubel. Additional information;
- Received on 25 June 2018, from the Dingley Village Community Association and Moorabbin Airport Residents Association. Answers to Questions taken on Notice at a public hearing in Melbourne on 22 June 2018;
- Received on 13 July 2018, from Airservices Australia. Answers to Questions taken on Notice at a public hearing in Melbourne on 22 June 2018;
- Received on 13 July 2018, from the Department of Infrastructure, Regional Development and Cities. Answers to Questions taken on Notice at a public hearing in Melbourne on 22 June 2018;

TABLED DOCUMENTS

- Tabled by East Melbourne Group in Melbourne on 22 June 2018. Maps of training circuits in East Melbourne;
- Tabled by East Melbourne Group in Melbourne on Friday 22 June 2018. Letter from Essendon Airport regarding CACG membership;
- Tabled by East Melbourne Group in Melbourne on Friday 22 June 2018. Map of regulation of airspace in East Melbourne;
- Tabled by Microflite Helicopter Services in Melbourne on Friday 22 June 2018. Letters of support for Microflite;
- Tabled by Airservices Australia in Melbourne on Friday 22 June 2018. Maps of aircraft movements over Melbourne;

Appendix 2

Public hearings and witnesses

Friday, 22 June 2018, Melbourne, VIC

- ALECK, Dr Jonathan, A/g Director of Aviation Safety, Civil Aviation Safety Authority
- BELL, Ms Narelle, Aircraft Noise Ombudsman
- BIVIANO, Mr Joe, Moorabbin Airport Residents Association
- BOOTH, Mr Jonathan, Microflite Helicopter Services
- CINCOTTA, Mr John, Dingley Village Community Association
- FRANKS, Ms Helen, Hume Residents Airport Action Group
- FAUBEL OAM, Ms Shelley, Committee member, East Melbourne Neighbour Network
- GREENHILL OAM, Cr Mark, Mayor, Blue Mountains City Council
- HARFIELD, Mr Jason, Chief Executive Officer, Airservices Australia
- HASTINGS, Ms Karen, President, Moorabbin Airport Residents Association
- HIGGINS, Mr Rodney, Microflite Helicopter Services
- KENNEDY, Mr Michael, Chair, Coalition of Resident and Business Associations
- MACAINSH, Mrs Donna, Member, East Melbourne
- MCRANDLE, Mr Brendan, Executive Director, Department of Infrastructure, Regional Development and Cities
- MITCHELL, Mr Ian, President, East Melbourne Group
- NEAL, Mr Trevor, Secretary, Residents Against Western Sydney Airport Inc
- RIVOLI, Mr Frank, Secretary, Hume Residents Airport Action Group
- WOLFE, Mr Jim, General Manager, Department of Infrastructure, Regional Development and Cities
- WOODWARD, Mr David, Sub-committee member, East Melbourne Group

