



Airports Amendment Bill 2006

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Airports Amendment Bill 2006

Date introduced: 30 November 2006

House: House of Representatives

Portfolio: Transport and Regional Services

Commencement: Sections 1 to 3 commence on Royal Assent. The operative provisions (Schedule 1) commence 28 days after Royal Assent.

Purpose

To amend the *Airports Act 1996* to:

- loosen restrictions on airlines owning smaller airports
- make various changes to airport land use, planning and building controls and environment management provisions, and
- make changes confirming the ACCC's ability to monitor and evaluate quality of airport services and facilities.

Background

The *Airports Act 1996* (the Act) was originally introduced into Federal Parliament in September 1995 by the then ALP Government. Its introduction followed a decision to sell the leasehold interests in 22 airports that were operated by the Federal Airport Commission. The (then) Bill was extensively debated in both the House and the Senate, but Parliament was prorogued before Senate amendments could be considered.

The Bill was reintroduced in May 1996 by the new Coalition Government with some changes to the 1995 version. Further background can be found in the relevant [Bills Digest](#). The 1996 Bill was the subject of [report](#) by the Senate Rural and Regional Affairs and Transport Committee and some further changes were made to the Bill during its passage, including in respect to cross-ownership and land use, planning and environmental matters.

The Act is divided into a number of discrete parts that deal with key issues. Amongst the main issues are:

- Part 2 – leasing and management of airports
- Part 3 – restrictions on the ownership of airport-operator companies
- Part 5 – land use, planning and building controls

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- Part 6 - environment management
- Part 7 – accounts and financial reporting
- Part 8 – quality of service monitoring and reporting
- Part 11 – control of certain on-airport activities
- Part 13 – access to airports and demand management at airports

The first phase of airport lease sales (Brisbane, Melbourne and Perth) took place in 1997. Others have taken place since then (notably Sydney (Kingsford-Smith) in 2002), with the most recent sale being the Sydney Basin Airports (Bankstown, Camden and Hoxton Park) which were sold as a package in 2003.

Probably the most controversial issues since the passage of the Act and the sale of the leases have been:

- the fees charged by airport lease owners for airport users
- expansion of non-aviation uses (large retail developments and commercial offices) on airport sites, and
- aircraft noise resulting from expanded or varied aircraft operations.

In respect to the fees charged by airport lease owners for airport users, a review was conducted by the Productivity Commission. Following its [2002 report](#), the price caps applying at some of the larger metropolitan airports were discontinued to be replaced by five years of mandatory price monitoring arrangements. The Productivity Commission completed a [follow-up report](#) in December 2006 looking at these arrangements, but the report has not yet been tabled in Parliament. The Australian Competition and Consumer Commission (ACCC) also issues regular reports on airports [price monitoring and financial reporting](#) and [quality of service](#) at various airports.

The second and third dot points arose partly because under Part 5 of the Act, State and Territory planning and development laws do not apply to the metropolitan¹ and larger regional airports.

The expansion of non-aviation uses such as large retail developments and commercial offices on airport sites has been particularly contentious. In some cases, these have been opposed by relevant local councils and competing business interests because of the economic effect on established businesses and increased traffic congestion or other infrastructure issues. Such parties have sometimes contended that the exemption from developing and planning laws that apply outside the airport creates an uneven playing field² and that local council, business and community views have not been sufficiently taken account by both the airport owners in development proposals and the Commonwealth Transport Minister in considering whether to approve the proposals under the Act. Airport owners³ and the Commonwealth⁴ generally consider these concerns have

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been overstated. Nonetheless, in December 2006 the Commonwealth issued non-binding [Airport Development Consultation Guidelines](#) to improve consultation approaches.

In November 2002, the Government announced it would review the Act. The report of the review was not publicly released. The 'outcomes' of the review, and the Government's response to them, were [released](#) in November 2005. In its response, the Government committed to:

- i) amending Part 3 of the Airports Act (Restrictions on ownership of airport-operator companies) to ensure that airline ownership provisions apply only to airport-lessee companies of core regulated airports and provide for the ability, via the regulations, to reimpose airline ownership limits on non-core regulated airports;
- ii) amending Part 5 (Land use, planning and building controls) to:
 - a) clarify the purpose and expectation of airport master plans and the relationship between master plans and major development plans;
 - b) streamline the public comment and assessment periods for master plans and major development plans;
 - c) provide for the Minister to seek additional information from an airport-lessee company when assessing a draft plan, with the time-lapse between the request and supply of information not being part of the assessment period (i.e. stop the clock provisions); and
 - d) provide for the utilisation of master plan specific Australian Noise Exposure Forecasts (ANEFs), developed by the airport-lessee company in concert with local planning authorities, while also clarifying the role of ANEFs as a way of describing aircraft noise exposure;
- iii) amending Part 6 (Environment management) to:
 - a) make explicit the central role Airport Environment Strategies (AESs) play in implementing airport environment outcomes;
 - b) provide for the Minister to seek additional information from an airport-lessee company when assessing an AES or minor variation, with 'stop the clock' provisions; and
 - c) streamline the public comment and assessment periods for AESs and minor variations;
- iv) amending section 32 (Airport-operator company must not carry on non-airport business) in order to reinforce the intended application of that section, which is that the types of activities permitted are to be consistent with an airport's final master plan approved by the Minister;

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v) amending Parts 7 and 8 of the Act and the Airports Regulations 1997 (Accounts and reports of airport-operator companies & Quality of service monitoring) to:

a) more closely align the definition of “aeronautical services” with the *Trade Practices Act 1974*;

b) streamline the quality of service monitoring regime so it is more targeted and flexible; and

c) exempt those leased airports no longer subject to price monitoring; and

vi) amending Part 11 of the Act and Regulations (Control of certain on-airport activities) with regard to updating airside vehicle control handbooks and Part 14 of the Act (Air traffic services and rescue fire fighting services) concerning the provision of aerodrome rescue and fire fighting services.

Senate Inquiry

On 7 December 2006, the Senate referred the Bill to the Senate Rural and Regional Affairs and Transport Committee for inquiry and report by 26 February 2007. The over 60 [Submissions](#) to the Committee can be accessed via the Committee’s website. A public hearing was held on January 30, and [transcripts](#) are available.

Financial implications

The Explanatory Memorandum states the Bill has no financial impact.

Main provisions

Existing section 44 of the Act prohibits airlines from owning more than 5% of a company that owns the leasehold interest of an airport or manages the airport (such companies are termed airport-operator companies in the Act). **Item 21** provides for the making of regulations that will allow airports specified in the regulations to be exempt from this prohibition, or exempt in particular circumstances. However, ‘core-regulated airports’ cannot be so exempted. Core regulated airports are listed in section 7 of the Act and in regulations – essentially these are the major metropolitan airports and a number of regional airports such as Townsville, Alice Springs and Launceston. The second reading speech to the Bill says that this change is to ‘improve the pool of available investment funds’ for relevant airports.⁵ The Government has not indicated whether they intend to impose an upper limit of ownership via the future regulations.

Existing section 32 of the Act prohibits the airport-operator company from carrying on ‘substantial trading or financial business’ that are unrelated to the operation or

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development of the airport. In *Westfield Management Ltd v Brisbane Airport Corporation Ltd* [2005] FCA 32 and *Direct Factory Outlets Pty Ltd v Westfield Management Ltd* [2005] FCA 34, the Federal Court decided that non-aeronautical development that was permitted by the lease agreement between the Commonwealth and the airport-lessee company was not prohibited by section 32. **Item 16** explicitly incorporates this interpretation into section 32 and adds that substantial trading or financial business must also be consistent with the relevant airport Master Plan.

Item 23 will add **new subsection 70(2)** which sets out the purposes of airport master plans as being:

- a) to establish the strategic direction for efficient and economic development at the airport over the planning period of the plan; and
- (b) to provide for the development of additional uses of the airport site; and
- (c) to indicate to the public the intended uses of the airport site; and
- (d) to reduce potential conflicts between uses of the airport site, and to ensure that uses of the airport site are compatible with the areas surrounding the airport.

The 2000 [report](#) of the Senate Rural and Regional Affairs and Transport Committee into the Brisbane Airport Master Plan recommended both an objects and a purpose statement for Master Plans. There was no specific language suggested for these in the report. The 2002 Government [response](#) to the report agreed to amend the Act to include a purpose statement.

Items 24-34 deal with the content of Master Plans. In particular, **item 26** deals with aircraft noise. Currently, the Master Plan must contain ‘forecasts relating to noise exposure levels’: **paragraph 71(2)(d)**. **Item 26** amends this to ‘an Australian Noise Exposure Forecast.’ [and]...flight paths...in accordance with any regulations, if any, made for the purpose of paragraph 71(2)(d)’. It would be useful if at least drafts of these regulations were available to assist Parliament in assessing exactly what obligations **new item 26** will impose.

Items 33 and **39** also deal with aircraft noise issues. Currently, subsection 71(4) allows for regulations to provide that the various forecasts contained in Master Plans may relate to either the entire 20 year life of the plan or discrete five year periods within it. **Item 33** amends this to allow regulations to allow them to relate to a period beyond the 20 year mark. The Explanatory Memorandum comments:

Primarily, it is envisaged this amendment will allow for a draft or final master plan to include Australian Noise Exposure Forecast information that extends beyond the 20 year planning period, enabling State and Territory land use planning agencies to implement long-term planning goals that are compatible with an airport’s proposed long term aeronautical operations.

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Item 39 inserts **new subsection 78(2A)**, which requires that a new Master Plan be developed if a new Australian Noise Exposure Forecast (ANEF) is endorsed ‘in the manner approved by the Minister’ for the relevant airport. Responsibility for endorsing the technical accuracy of ANEFs currently lies with the Airspace and Environment Regulatory Unit of Airservices Australia. It is unclear what is meant in **item 39** by endorsing an ANEF ‘in the manner approved by the Minister’. However, if an ANEF is so endorsed, a draft of the new (replacement) master plan must be given to the Minister for approval within 180 days of endorsement, although the Minister may grant a longer time. The changes proposed by **item 39** were described as placing ‘onerous and highly expensive constraints on airports’ by representatives of the Australian Airports Association.⁶

The Bill also reduces the time allowed for public comment on drafts of Master Plans,⁷ Major Development Plans⁸ and environment strategies.⁹ It is currently 90 (calendar) days and this is being reduced to 45 business days. Disregarding any allowance for any public holidays, this represents a reduction from approximately 13 weeks to 9 weeks for comment. In introducing the Bill, Mrs De-Anne Kelly stated:

The bill proposes to reduce the statutory public comment and assessment periods for airport master plans, major development plans and environment strategies, bringing them more into line with state and territory planning regimes. It also requires airport lessee companies to make their planning and development documents readily available in an electronic format free of charge. This not only provides for timely public access to these important documents but facilitates distribution between interested parties and assists in their analysis for example by allowing the use of electronic search tools to locate particular words and phrases in what are often substantial documents.¹⁰

The changes to the public consultation periods are consistent with the government’s commitment to reduce regulatory burdens on business, mirror the streamlining processes embraced by other jurisdictions and recognise the maturing of both the airports in preparing these documents and the public in assessing them

The Bill requires that draft Master Plans, Major Development Plans and environmental strategies be freely available on the relevant airport websites and that any newspaper notices make persons aware of this.

The public comment period for minor variations of Master Plans, Major Development Plans¹¹ and environment strategies has been reduced from 30 calendar days to 15 business days.

The time period in which the Minister has to consider whether to approve draft Master Plans, Major Development Plans and environmental strategies, or variations to the same, has been reduced by the Bill from 90 calendar days to 50 business days. The Bill does not alter the current provision in the Act that if the Minister has not made a decision at that time, he or she is taken to have approved the relevant draft Plan or strategy. Note that where the Minister believes that a draft Plan or strategy, or variations to the same, does not

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include enough information for a decision to be made, the Minister may require additional information from the airport-lessee company. The provision also contains a standard ‘stop clock’ clause whilst the Minister awaits the requested information.

In providing a draft Master Plan, Major Development Plan or environmental strategy to the Minister for approval, the airport-lessee company currently is required to include a certificate ‘stating’ that it has ‘had due regard’ to public comments in revising the original. The Bill will increase the companies obligations by requiring this certificate to ‘demonstrate’ how the company has had due regard. Presumably this will require the airport-lessee company to, for example, provide detailed reasons why it rejects suggestions made by the public with respect to a development etc. For reference, the existing sections dealing with the matters that the Minister must consider in deciding whether to approve a draft Master Plan, Major Development Plan or environmental strategy are set out in Attachment A. The Bill makes only one reasonably substantial change to those matters – so for example, in case of a Master plan, **item 50** requires that the Minister must have regard to ‘the extent to which the plan achieves the purposes of a final Master Plan’. For a further discussion on the approach of the Commonwealth and the Minister in giving consideration whether to approve Master Plans etc, see pp 67-77 of the Senate Inquiry [transcripts](#).

The definition of a major airport development is set out in subsection 79(1). In general, if the development will cost over \$10 million, it will fall within this definition and thus require for a major development plan.¹² **Item 72** raises this from \$10 million to \$20 million. The Explanatory Memorandum comments:

The rise in the dollar threshold acknowledges the increase in building costs since the Act came into effect....[it] also reinforces the focus of the Act on ‘major developments’

A related amendment is **item 74**. In cases where there are ‘consecutive or concurrent projects or extensions to existing buildings’, the Minister may determine that the combined cost of all the projects or extensions be used to determine whether the cost exceeds the (new) \$20 million threshold for determining whether a major development plan may be required. The Explanatory Memorandum gives the rationale for this as being:

...to avoid a situation where the need for a major development approval can be avoided by dividing a major project into parts which each come under the threshold, even though the total value exceeds the threshold.

Item 75 sets out a purpose statement for Major Development Plans. It implies that developments under such plans must be consistent with the airport lease and Master Plan. However, it is notable that both **new paragraph 91(1)(ca)** and existing paragraph 91(1)(d) provide that the plan must include information ‘whether or not the development is consistent’ with the lease and Master plan. Arguably, preferable drafting for these

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paragraphs would be something like ‘[the plan must set out]...reasons why the development is considered consistent with the airport lease and master plan’.

Item 77 adds a **new paragraph 91(1)(ea)** which provides that if a proposed major airport development could affect flight paths, the plan must set out what the effect would be. However, it does not specify how the effect must be shown - more clarity on this point would be useful.

Currently, Canberra Airport is also subject to planning and development under the *Australian Capital Territory (Planning and Land Management) Act 1988*, a piece of Commonwealth legislation. That Act enables the Commonwealth to exert control and influence over parts of Canberra through the National Capital Plan, in line with the identity of Canberra as Australia’s capital, and hence of special importance to the Commonwealth. This provides an additional layer of planning and development control that the other major Australian airports do not have. **Item 120** inserts **new section 112A** which provides that Part 5 of the Act (which includes the provisions on Master Plans and Major Development Plans) effectively overrides the National Capital Plan. This change is opposed by the ACT Government.¹³ State and Territory development and planing laws are already overridden by existing section 112.

Item 122 sets out a purpose statement of a final environment strategy are: The purposes are to:

- ensure that all operations at the airport are undertaken in accordance with relevant environmental legislation and standards;
- establish a framework for assessing compliance at the airport with relevant environmental legislation and standards; and
- promote the continual improvement of environmental management at the airport.

Currently, Part 7 of the Act obliges core-regulated airports to prepare audited accounts and give these to the ACCC. However, **item 149** will effectively only impose this obligation on airports specified in regulations. The ACCC’s public reporting on Part 7 matters will also now be restricted to airports specified in regulations.

Similarly, Part 8 of the Act obliges core-regulated airports to provide quality-of-service information to the ACCC. However, **item 152** will effectively only impose this obligation on airports specified in regulations. The ACCC’s public reporting on Part 8 matters will also now be restricted to airports specified in regulations.

The Airports (Control of On-Airport Activities) Regulations 1997 generally prohibits gambling activities on airports unless a permission has been granted under the regulations. **Item 159** broadens the definition of a gambling activity, including by providing that regulations may be made to further define such activity.

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Existing section 216 provides that air traffic services and rescue and fire fighting services must be provided by, or approved by Airservices Australia.¹⁴ **Item 162** will allow them now to be provided by any person approved by CASA, or alternatively, the Australian Defence Force.

Items 171-175 set out how the various processes to develop, approve or amend Master Plans, Major Development Plans or environmental strategies are affected if these processes are incomplete when the amendments come into force

Concluding comments

The Airports Amendment Bill 2006 makes only fairly modest changes to the *Airports Act 1996*. Notwithstanding the reduction of public comment periods regarding draft Master Plans, Major Development Plans and environmental strategies, on balance the Bill does improve some aspects of Part 5 of the Act in particular, although readers attention is drawn to comments in the main provisions section of this Digest with respect to items 26, 75 and 77.

The fact that the Act continues to exclude the operation of State and Territory planning and development laws with respect to the metropolitan¹⁵ and larger regional airports is likely to remain a source of tension. The extent to which the new non-binding [Airport Development Consultation Guidelines](#) referred to earlier mitigates this is yet to be seen. Presumably the issue of planning and development regulation, particularly with respect to matters such as non-aviation developments and infrastructure issues (eg traffic flows near airports), will receive attention in the report into the Bill by the Senate Rural and Regional Affairs and Transport Committee. The report is due to be tabled on 26 February 2007.

Endnotes

1. Including the smaller 'suburban' general aviation airports such as Archerfield in Brisbane and Bankstown in Sydney.
2. See for example evidence of Mr Milton Cockburn at the public hearing of 30 January 2007, Senate Rural and Regional Affairs and Transport Committee for inquiry into the Airports Amendment Bill 2006.
3. See for example evidence of Mr Mark Willey at the public hearing of 30 January 2007, Senate Rural and Regional Affairs and Transport Committee for inquiry into the Airports Amendment Bill 2006.

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4. See for example evidence of Mr Michael Mrdak at the public hearing of 30 January 2007, Senate Rural and Regional Affairs and Transport Committee for inquiry into the Airports Amendment Bill 2006.
5. De-Anne Kelly MP, House of Representatives, *Debates*, 30 November p. 3.
6. Evidence of Mr John McArdle at the public hearing of 30 January 2007, Senate Rural and Regional Affairs and Transport Committee for inquiry into the Airports Amendment Bill 2006.
7. See **items 42-45**.
8. See **items 80-83**.
9. See **items 127-130**.
10. De-Anne Kelly MP, House of Representatives, *Debates*, 30 November p. 2.
11. See **items 80-83**.
12. A development that is likely to have a significant environment impact would also be a major airport development. This, and the other non-monetary ‘triggers’ by which a development may be deemed to be a major development are not affected by the Bill.
13. Evidence of Mr Simon Corbell, ACT Planning Minister, at the public hearing of 30 January 2007, Senate Rural and Regional Affairs and Transport Committee for inquiry into the Airports Amendment Bill 2006
14. Fire-fighting services may be provided by parties other than Airservices Australia under approved Ministerial arrangements.
15. Including the smaller ‘suburban’ general aviation airports such as Archerfield in Brisbane and Bankstown in Sydney.

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Attachment A

Existing subsections 81(3)-(4) Airport Master Plans

(3) In deciding whether to approve the plan, the Minister must have regard to the following matters:

(a) the extent to which carrying out the plan would meet present and future requirements of civil aviation users of the airport, and other users of the airport, for services and facilities relating to the airport concerned;

(b) the effect that carrying out the plan would be likely to have on the use of land:

(i) within the airport site concerned; and

(ii) in areas surrounding the airport;

(c) the consultations undertaken in preparing the plan (including the outcome of the consultations);

(d) the views of the Civil Aviation Safety Authority and Airservices Australia, in so far as they relate to safety aspects and operational aspects of the plan.

(4) Subsection (3) does not, by implication, limit the matters to which the Minister may have regard.

Existing subsections 94(3)-(4) Major development Plans

(3) In deciding whether to approve the plan, the Minister must have regard to the following matters:

(a) the extent to which carrying out the plan would meet the future needs of civil aviation users of the airport, and other users of the airport, for services and facilities relating to the airport;

(b) the effect that carrying out the plan would be likely to have on the future operating capacity of the airport;

(c) the impact that carrying out the plan would be likely to have on the environment;

(d) the consultations undertaken in preparing the plan (including the outcome of the consultations);

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(e) the views of the Civil Aviation Safety Authority and Airservices Australia, in so far as they relate to safety aspects and operational aspects of the plan.

(4) Subsection (3) does not, by implication, limit the matters to which the Minister may have regard.

Existing subsections 126(3)-(4) Environment strategies

(3) In deciding whether to approve the strategy, the Minister must have regard to the following matters:

(a) the effect that carrying out the strategy would be likely to have on the standard of air quality, water quality and soil quality;

(b) the effect that the carrying out of the strategy would be likely to have on:

(i) biota or habitat; or

(ii) natural or heritage values; or

(iii) sites of significance to Aboriginal or Torres Strait Islander people;

(c) the effect that carrying out the strategy would be likely to have on noise exposure levels;

(d) details of the consultations undertaken in preparing the strategy (including the outcome of the consultations).

(4) Subsection (3) does not, by implication, limit the matters to which the Minister may have regard.

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