



## Airports Amendment Bill 2010

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## Airports Amendment Bill 2010

**Date introduced:** 30 September 2010

**House:** House of Representatives

**Portfolio:** Infrastructure and Transport

**Commencement:** Sections 1 to 3 on Royal Assent. Schedules 1 and 2 on the day after Royal Assent.

**Links:** The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills home page, or through <http://www.aph.gov.au/bills/>. When bills have been passed they can be found at the ComLaw website, which is at <http://www.comlaw.gov.au/>.

**This Bill lapsed on the proroguing of Parliament in July 2010. It has been re-introduced without any significant changes.**

### Purpose

The purpose of the Airports Amendment Bill 2010 is to amend the *Airports Act 1996* (the Act) to implement certain of the Government's policies contained in the National Aviation Policy White Paper, *Flight path to the future*.<sup>1</sup>

### Background

#### Basis of policy commitment

The Airports Amendment Bill 2010 gives effect to airport planning policies announced in the National Aviation White Paper. Anthony Albanese, the then Minister for Infrastructure and Transport stated in June that:

It is vital for airports and for the amenity of surrounding communities that airport development plans be properly integrated with land use planning around airports. The Government is strongly

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1. Australian Government, *Flight Path to the Future: National Aviation Policy White Paper*, Department of Infrastructure, Transport, Regional Development and Local Government, viewed 13 October 2010, [http://www.infrastructure.gov.au/aviation/nap/white\\_chapters.aspx](http://www.infrastructure.gov.au/aviation/nap/white_chapters.aspx)

committed to better urban planning and that includes improving the planning framework for airports.<sup>2</sup>

## Flight Path to the Future: National Aviation Policy White Paper

The National Aviation White paper underpins the amendments contained in Airports Amendment Bill 2010. The intention of the Aviation White paper was to bring the various strands of aviation policy into one clear statement and “to move away from an ad hoc approach to policy and planning for the aviation industry to a more coherent strategic approach.”<sup>3</sup>

The National Aviation White paper was released on 16 December 2009. The relevant departmental website comments as follows:

This represents the first ever comprehensive aviation policy statement issued by an Australian government, bringing together all strands of aviation policy into a single, forward-looking document providing planning, regulatory and investment certainty for the aviation industry out to 2020 and beyond.

The White Paper sets out the Government's commitment to a continuation of Australia's excellent aviation safety record and to strengthen aviation security systems, while providing a policy framework for the development of the aviation industry at all levels - international, domestic, regional and general aviation including through skills and productivity improvements. It sets out initiatives to ensure better planning and integrated development on and around airports and to lessen the adverse effects of aviation activity on the environment and communities.<sup>4</sup>

The White paper sets out the history of the governance of the federal airports. Australia's federal airports were privatised between 1997 and 2003 ‘by selling long-term leases over the airport sites to private sector operators.’<sup>5</sup> The *Airports Act 1996* (Cth) regulates the leased federal airports. Airports are sited on Commonwealth land and planning and development matters on the sites come under the Commonwealth law. They are not subject to state and local government planning laws.<sup>6</sup>

The White paper notes that concerns have been raised that the framework governing planning does not always provide communities with the opportunity for consultation where airport developments will ‘affect them their homes, their workplaces and their suburban amenity’.<sup>7</sup> The White paper

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2. A Albanese (Minister for Infrastructure, Transport, Regional Development and Local Government), *Address to TTF Summit: Leadership 2010*, 23 June 2010, viewed 18 October 2010, [http://www.minister.infrastructure.gov.au/aa/speeches/2010/AS14\\_2010.htm](http://www.minister.infrastructure.gov.au/aa/speeches/2010/AS14_2010.htm)
  3. op. cit., *Flight Path to the Future*, p.6.
  4. Department of Infrastructure and Transport, *A National Aviation Policy Statement-the Aviation White Paper*, viewed 18 October, <http://www.infrastructure.gov.au/aviation/nap/>
  5. op. cit., *Flight Path to the Future*, p. 154.
  6. Ibid., p.154.
  7. Ibid., p.156.

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considers that there is not enough detailed information in master plans and that many developments fall outside the criteria that would instigate a master development plan to be undertaken.<sup>8</sup>

States, territory and local governments have voiced concerns that the planning framework that applies to leased federal airports is also not sufficiently integrated with the planning laws applying to neighbouring communities and surrounding regions...<sup>9</sup>

The challenge is to create a more transparent regulatory framework for aviation infrastructure which will balance the interests of communities with the need for ongoing infrastructure investment. Meeting this challenge will ensure that development at leased federal airports will be better integrated with surrounding communities, whilst continuing to boost capacity in national airport infrastructure to meet growing demand.

Planning reforms should seek to balance the interests of communities for more consultation and transparency around airport developments with the expectation of airports and their users for a regulatory environment that is conducive to investment and the continued development of the airport.

Better integrated airport planning will ensure airport development is undertaken on the basis of wider community consultation, and increased collaboration between planning agencies to ensure it is more compatible with surrounding communities. It will also assist with planning for the connecting infrastructure needed by airports to support growing demand.<sup>10</sup>

## Master Plans

The White paper stated that a recurring theme in stakeholder consultations were the benefits of strengthening Master Plan requirements.<sup>11</sup>

The Airport Master Planning process is not only an essential element of an airport planning cycle, but also provides the key opportunity for state and local government planning agencies and the community to influence airport planning. It also provides the opportunity for the airport and state and territory and local government authorities to work through the likely off-airport impacts of future airport developments with the community and government agencies...

More detailed Master Plans will enable both communities and state, territory and local governments to better articulate the economic and social impact of the proposed airport development on surrounding neighbourhoods.<sup>12</sup>

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8. Ibid., p. 156.

9. Ibid., p. 156.

10. Ibid., p. 158.

11. Ibid., p. 159.

12. Ibid., p. 159.

The White paper proposed that airport environment strategies be made part of the Master planning process. The Bill proposes to bring that process within the Master plan process.

## Incompatible Developments

In the Green paper, it was stated that the “Australian Government’s view is that there are a range of activities that are likely to be incompatible with the long-term operation of an airport as an airport. These activities included long-term residential development, residential aged or community care facilities, nursing homes, hospitals and schools.”<sup>13</sup> The Green paper was the Government’s first response to submissions received as a result of an issues paper that was released in April 2008. The Green paper states that it mapped out the proposed policy directions, settings and reforms.<sup>14</sup>

In 2009, the Airports Legislation Amendment Regulations 2009 No. 231 were made. The Explanatory Statement notes that the Regulations provided that developments considered as incompatible developments with the operation of the airport as an airport would constitute ‘major airport development.’ These developments could only be carried out where they have been subject to a public consultation process and approved by the Minister.<sup>15</sup>

In the current Bill, these provisions relating to incompatible developments have now been transferred to the principal Act and have been strengthened. Proposed section 89A provides that a person is prohibited from carrying out any incompatible development relating to an airport, unless the Minister gives approval for the preparation of a draft major development plan for the incompatible development. If a person contravenes the requirements of proposed subsection 89A(1), they commit an offence that carries a penalty of 400 penalty units or \$44,000. If an airport-lessee company is convicted of the offence, a court may impose a fine of not more than 5 times the penalty.<sup>16</sup>

## Committee consideration

The Senate Selection of Bills Committee on 30 September 2010 resolved that the provisions of the Airports Amendment Bill 2010 be referred immediately to the Rural Affairs and Transport Legislation Committee for inquiry and report by 16 November 2010.<sup>17</sup>

The Airports Amendment Bill 2010 was referred to the Senate Standing Committee of Rural Affairs and Transport and the Committee is due to report on 16 November 2010. No submissions have been posted on the Committee’s website as yet.<sup>18</sup>

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13. Ibid., p. 163.

14. Australian Government, *Flight Path to the future: National Aviation Policy Green Paper*, December 2008, viewed 19 October 2010, [http://www.infrastructure.gov.au/aviation/nap/green\\_paper.aspx](http://www.infrastructure.gov.au/aviation/nap/green_paper.aspx)

15. Explanatory Statement, Airports Legislation Amendment Regulations 2009 (No.2), p. 1.

16. Proposed subsection 89A(2), Airports Amendment Bill 2010, p. 16.

17. Senate Selection of Bills Committee, [Report No.11 of 2010](#), 30 September 2010, p. 1.

## Financial implications

The Explanatory Memorandum states that there will be no impact on Commonwealth expenditure.<sup>19</sup>

## Main issues

The main issues are summarised in the Explanatory Memorandum:

- strengthening the requirements for airport master plans and major development plans to support more effective airport planning and better alignment with State, Territory and local planning;
- in relation to the first five years of a master plan, requiring additional information such as a ground transport plan and detailed information on proposed developments to be used for purposes not related to airport services (e.g. commercial, community, office or retail purposes);
- restructuring the triggers for major development plans including capturing proposed developments with a significant community impact;
- prohibiting specified types of development which are incompatible with the operation of an airport site as an airport. However, an airport-lessee company will have the opportunity to demonstrate to the Minister that such a development could proceed through a major development process because of exceptional circumstances;
- integrating the airport environment strategy into the master plan requiring only one public comment period for the combined document recognising that an airport environment strategy is better articulated in the context of the airport's master plan. Transitional provisions are included to address how the expiry dates of environment strategies will be aligned with the expiry dates of master plans; and
- clarifying ambiguous provisions and making housekeeping amendments to update certain provisions of the Airports Act.<sup>20</sup>

## Key provisions

### Schedule 1—Amendments

#### Master plan amendments

Section 71 of the *Airports Act 1996* specifies the matters to be set out in draft or final master plans. **Item 1 repeals paragraph 71(2)(h) and substitutes the paragraph with proposed paragraphs 71(ga)**

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18. Senate Standing Committee on Rural Affairs and Transport, *Inquiry into the Airports Amendment Bill 2010*, viewed 18 October 2010.

19. Explanatory memorandum, Airports Amendment Bill 2010, p. 2.

20. *Ibid.*, p. 1.

**to (gc) and 71(2)(h).** Proposed paragraph 71(2)(ga) requires that, for the first five years of operation of the master plan, it incorporates a ground transport system plan, including the following:

- road network plan
- facilities for moving people freight around the airport
- links between the road network and public transport system in and outside the airport
- arrangements with state or local authorities in relation to these networks
- capacity of the ground transport system to support the operations and activities of the airport
- effect of proposed developments on the transport system and traffic flows.

**Proposed paragraph 71(2)(gb)** requires information in the master plan just for a five year period, on proposed developments for purposes not related to airport services such as commercial, community, office or retail purposes. **Proposed paragraph 71(2)(gc)** requires information in the master plan just for a five year period, on the effect proposed developments will have on employment levels and the local and regional community and its economy and how it fits in with planning schemes for commercial and retail development near the airport.

Repealed paragraph 71(2)(h) only required the date of approval of a draft environment strategy.

**Proposed paragraph 71(2)(h)** provides for the details required in an environment strategy. An environment strategy is now part of a master plan for an airport. As indicated in the Explanatory Memorandum, details to be included in the environment strategy are taken from existing section 116. They include the following:

- airport-lessee's company's objectives for the environmental management of the airport, and
- areas identified by the airport-lessee company within the airport site, in consultation with state and federal bodies as being environmentally significant, and
- sources of environmental impact associated with airport operations, and
- the studies, reviews and monitoring carried out by the airport-lessee company of environmental impact associated with airport operations, and
- timeframes for completion of studies etc or reporting on monitoring, and
- specific measures carried out by airport-lessee company to prevent, control or reduce environmental impact, and
- timeframe for completion of specific measures, and
- details of consultations and their outcomes to prepare the strategy, and
- any other matters prescribed in the regulations.<sup>21</sup>

**Item 61 repeals Division 2 of Part 6 of the Airports Act 1996.** Existing Division 2 of Part 6 of the Act dealt with environment strategies. They are now proposed to be part of the master plan. Sections 114 to 131 are repealed as a result of the repeal of Division 2.

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21. Ibid., paragraph 9, p. 18.

Subsection 71(3) relates to the content of a draft and final master plan for joint-user airports. Joint-user airports are defined in section 7B of the Act.<sup>22</sup> **Item 4 repeals paragraph 71(3)(h) and substitutes proposed paragraphs 71(3)(ga)-(h)** which provides for identical provisions for joint user airports as for proposed paragraphs 71(2)(ga)-(h).

**Item 5 repeals subsection 71(6) and substitutes subsection 71(6)** which includes an additional paragraph and provides that if a draft or final master plan is not consistent with State or Territory planning schemes, the inconsistencies have to be required to be justified.

## Other amendments

**Item 16 amends section 5** to insert a definition of **State** to include the Australian Capital Territory and the Northern Territory. This means that where **State** is referred to in the Act, that it will include the Australian Capital Territory and the Northern Territory. References to the territories have been removed in the Bill.

Section 70 deals with the purposes of a final master plan. **Item 26 proposed paragraphs 70(2)(3)-(g)** contain provisions from repealed subsection 115(2) which relate to the intended purposes of final environment strategies. They have been included in section 70 together with the purposes of final master plans.

**Item 27 proposed section 71A** is inserted after section 71. **Proposed 71A(1)** provides that a draft or final master plan must identify proposed incompatible developments. **Proposed subsection 71A(2)** defines *incompatible developments*. It relates to the development or re-development of facilities such as:

- residential dwelling
- community care facility
- a pre-school
- primary, secondary, tertiary or other educational institution
- a hospital.

Institutions, such as accommodation for students studying at an aviation educational facility or aviation educational facility or a facility for providing medical treatment for persons at the airport are excluded from the definition of incompatible developments. **Proposed subsection 71A(3)** defines *aviation educational facility* and *community care facility*.

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22. For example Darwin International Airport (DIA) is a joint user airport which means that 'DIA shares areas with the Royal Australian Air Force (RAAF). The RAAF owns and occupies a major military base on one side of the airport. The RAAF also owns and maintains the joint user areas which include runways and taxiways.' Productivity Commission, Review of Airport Services, Submission to the Review by Northern Territory Airports, July 2006, viewed 14 October 2010, [http://www.pc.gov.au/data/assets/pdf\\_file/0018/21348/sub037.pdf](http://www.pc.gov.au/data/assets/pdf_file/0018/21348/sub037.pdf)



See items 46 to 49 which deal with incompatible developments.

Section 81 relates to the approval of a draft master plan by the Minister. **Item 33 repeals existing subsection 81(5) and substitutes proposed subsection 81(5)**. An additional period of up to 10 business days is added to the existing 50 business day time limit that the Minister specifies in a written notice to the airport-lessee company. After the expiration of this time, the Minister is taken to have approved the draft master plan if he or she has neither approved or refused to approve the draft master plan. **Item 34 proposed subsection 81(10)** provides that if the Minister approves a draft master plan that contains an incompatible development this does not prevent the Minister from refusing to approve a major development plan for the incompatible development under Division 4 (major development plans).

**Item 35** inserts **proposed section 83A** which provides for compliance with the environment strategy in the final master plan. **Proposed 83A(2)** provides that the airport-lessee company must take all reasonable steps to comply with the environment strategy in the master plan. Any other person who carries on activities at the airport must likewise take all reasonable steps to comply with the environment strategy as well (**proposed 83A(3)**). A contravention, although not an offence under **proposed subsection 83A(4)** is a ground for an injunction under **proposed 83A(5)** under Part 15.

Section 89 defines a major airport development. **Item 45 repeals existing subsection 89(5) and substitutes proposed subsections 89(5) and (6)**. **Proposed subsection 89(5)** provides that the Minister may determine in writing that specified developments such as :

- constructing a new passenger terminal
- extending a passenger terminal
- constructing a new taxiway that increases the capacity of the airport to handle movements of passengers, freight or aircraft and the cost exceeds \$20 million or a prescribed higher amount
- extending a taxiway that likewise increases the capacity of the airport etc

does not constitute a major airport development. The airport-lessee company may apply to the Minister to consider whether the development constitutes a major development and if the Minister is satisfied on reasonable grounds that the development will not increase the operating capacity of the airport, change flight paths, change patterns or levels of aircraft noise or unduly increase noise or cause nuisance to the adjacent airport community then a major development plan is not necessary.

## Incompatible Developments

**Item 46 inserts Subdivision B – Incompatible developments**. **Proposed section 89A** prohibits incompatible development except in exceptional circumstances. **Proposed 89A(1)** prohibits a person to carry out or cause or permit an incompatible development, to be carried out, unless the Minister approves the preparation of a draft major development plan for the incompatible development. An offence is committed by a person who contravenes proposed subsection 89A(1), the penalty being

400 penalty units (\$44,000 dollars). **Proposed 89A(3)** provides that this is a strict liability offence which means that the defence of reasonable mistake is available.

**Proposed subsection 89A(4)** provides that an airport-lessee company must apply in writing to the Minister if it wants to prepare a draft major development plan for an incompatible development before it advises the State or Territory authorities under subsection 92(1A) (Public comments and advice to State or Territory etc). **Proposed subsection 89A(5)** provides that the application must set out the exceptional circumstances claimed by the airport-lessee company to support the preparation of a draft major development plan for the incompatible development.

**Proposed subsection 89A(6)** provides that the Minister must be satisfied that exceptional circumstances exist. The Minister must provide the airport-lessee company with written notice of the decision and reasons for the decision (**proposed subsection 89A(7)**). **Proposed subsection 89A(8)** provides that even if the Minister approves the preparation of a draft major development plan, it does not prevent the Minister from refusing to approve a major development plan for the incompatible development.

**Item 47 inserts Subdivision C- Approval process.** Section 91 is concerned with the content of a major development plan. **Proposed paragraph 91(1)(ga)** requires details relating to the likely effect of proposed developments on traffic flows in the airport and around the airport, employment levels and the local and regional economy and community as well as an analysis of how the developments fit within local planning schemes for commercial and retail development in the adjacent area.

**Item 48 repeals existing paragraph 91(1)(k)** and substitutes proposed paragraph 91(1)(k) which requires the airport-lessee company to set out the exceptional circumstances that justifies the incompatible development.

**Item 49 repeals subsection 91(4) and substitutes proposed subsection 91(4)** which in addition to maintaining existing provisions requires that if the major development plan is inconsistent with planning schemes under state law, the justification for the inconsistencies be stated.

In section 94, the Minister, when approving a major development plan, must have regard to the matters listed. **Item 54 proposed paragraph 94(3)(f)** inserts provisions relating to an incompatible development:

- Whether the exceptional circumstances justify the development
- The likely effect of the development on the future use of the airport site for aviation purposes
- The likely effect on the ground transport system at and adjacent to the airport.

## Concluding comments

Planning and development procedures in relation to airports are proposed to be broadened. Master Plans will be more detailed and will include an environment strategy. Consultation with state and

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local government planning authorities and with the community generally will help to ensure that development of airports sites is better integrated.

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