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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AIRPORTS AMENDMENT BILL 2010

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Infrastructure and Transport
the Honourable Anthony Albanese, MP)

AIRPORTS AMENDMENT BILL 2010

OUTLINE

The *Airports Act 1996* (the Airports Act) establishes a comprehensive framework for the regulation of Commonwealth-owned airports which have been leased for 50 years (with a further 49-year option) to private companies. These are the 21 airports previously operated by the Federal Airports Corporation, a Commonwealth statutory authority.

As the airports remain Commonwealth places, the Australian Government has applied a national regulatory regime on these airports. The regulatory arrangements are set out in the Airports Act and its implementing regulations, namely the:

- Airports Regulations 1997;
- Airports (Building Control) Regulations 1996;
- Airports (Control of On-Airport Activities) Regulations 1997
- Airports (Ownership - Interests in Shares) Regulations 1996; and
- Airports (Environment Protection) Regulations 1997.

On 16 December 2009, the Government released the National Aviation Policy White Paper *Flight Path to the Future* (the White Paper) which outlines the policy settings on aviation and airports and the long-term approach the Government has taken, or will take, to achieve these policy objectives.

The Airports Amendment Bill 2010 (the Bill) amends the Airports Act to give effect to the legislative reforms announced in the White Paper, in particular, to improve the planning regulatory framework drawing on from the lessons of the past 14 years.

The key areas in which the Bill amends the Act are as follows:

- 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.

The new requirements will commence operation on the day after Royal Assent.

FINANCIAL IMPACT STATEMENT

There will be no impact on Commonwealth expenditure; therefore, a financial impact statement is not required.

REGULATION IMPACT STATEMENT

Background

Planning and development on leased federal airport sites operate under Commonwealth law, and are not subject to State, Territory or local government planning laws.

The planning regulatory arrangements currently apply to 19 airports: Adelaide, Alice Springs, Archerfield, Bankstown, Brisbane, Camden, Canberra, Darwin, Essendon, Gold Coast, Hobart, Jandakot, Launceston, Melbourne (Tullamarine), Moorabbin, Parafield, Perth, Sydney (Kingsford-Smith) and Townsville.

Under the Airports Act, these airports are required to develop and seek approval for long-term strategic master plans, as well as major development plans for individual development proposals significant enough to warrant specific assessment. An overview of the planning framework is shown below.

Overview of the current planning framework for leased federal airports

	Master Plans	Major Development Plans	Building approvals
Purpose	20-year strategic vision for airport site, including future land uses, types of permitted development, environmental and noise impacts.	Approval process for every 'major airport development' specified in section 89 of the Airports Act and in the regulations.	Approval process for every building activity (including construction and demolition).
Decision maker	Minister	Minister	Airport Building Controller
Public consultation	60 business days	60 business days	None required
Assessment timeframe	50 business days	50 business days	28 calendar days

Current airport planning framework

The Commonwealth's oversight of the operation of the leased federal airports is set out in the Airports Act and its implementing regulations, in the (head) leases for the airport sites and in the sales agreements with the airport-lessee companies. The Airports Act ensures that the airports continue to be subject, among others, to planning approvals, controls relating to ownership issues, leasing and management of airports, environmental management, access and demand management, certain on-airport activities, financial reports and quality of service monitoring. All airports are also subject to the safety requirements under the civil aviation legislation administered by the Civil Aviation Safety Authority (CASA). They are also subject to security controls under the aviation transport security legislation.

Each airport is leased for 50 years (with a 49-year option to renew the lease). Majority Australian ownership is required under the legislation and there are limits on airline ownership of airports and cross-airport ownership.

As noted, planning and development on airport sites continue to operate under Commonwealth law and are not subject to State, Territory or local government planning laws. The Airports Act requires each airport-operator to prepare and obtain approval from the Minister for a master plan. The master plan sets out the strategic planning framework for the airport for a 20-year period, as well as addressing noise, environmental and land use issues. The master plan requires updating every five years or earlier, if requested by the Minister, and is a subject to a public comment period.

The purpose of master plans is to:

- establish the strategic direction for efficient and economic development at the airport;
- provide for the development of additional uses of the airport site;
- indicate to the public the intended uses of the airport site;
- reduce potential conflicts between uses of the airport site; and
- ensure that uses of the airport site are compatible with the areas surrounding the airport.

An airport developing a master plan is required under the Airports Act to directly inform the relevant State or Territory and local governments, publish the draft master plan and invite comment from the public for a period of 60 business days. The airport is further required to provide information about public comments received when submitting the master plan to the Minister for approval.

The Airports Act acknowledges the distinction between long-term plans and firm development proposals. It therefore establishes a separate planning process, known as major development plans, to allow for public consultation and Ministerial assessment of specific major airport development proposals on leased federal airport sites. The provisions of the Airports Act relating to major development plans are intended to promote the orderly development of leased federal airports and to ensure that major airport developments are consistent with the terms of airport leases and master plans. The existing major development plan framework is also intended to ensure that the operational, safety, noise, environmental and community impacts of such developments can be assessed.

In general terms, the requirement for a major development plan is triggered if the development involves any of the developments listed in section 89 of the Airports Act and this list includes:

- any new runway capacity;
- specified new passenger terminal capacity;
- new taxiway, railway or road capacity, where such an upgrade significantly increases

the capacity of the airport; or

- significant environmental impact.

Section 89 of the Airports Act also captures non-aeronautical developments if the construction of the new building, which is not wholly or principally for use as a passenger terminal, costs more than $20 million.

As is the case for master plans, an airport developing a major development plan is required to directly inform the relevant State or Territory and local governments, publish the draft plan, and invite comment from the public for a period of 60 business days. The airport is further required to provide information about public comments received when submitting the draft major development plan to the Minister for approval.

Airports are not required to invite public comment on building activities (including constructions and works) that do not trigger a major development plan.

Problems and issues with the current airport planning framework

The White Paper identified a number of issues with the current airport planning framework.

Investment and development on airport sites have on occasion generated controversy, especially when people affected by developments feel that their interests have not been adequately considered. Australia's modern airports are large and complex operations that now support a wide range of aeronautical and non-aeronautical activities. These activities can have significant impacts on communities.

Airports play a significant role in the transport networks of the cities in which they are located and are responsible for generating a significant number of vehicle movements. Airport developments that significantly increase the number of airport users can have a substantial impact on connecting transport infrastructure, increasing urban congestion and vehicle emissions and reducing the efficiency of the surrounding transport network.

Australia's cities are coming under increasing pressure from population growth, higher densities, water scarcity and climate change. Airport development is one aspect of an increasingly complex metropolitan planning challenge. The current airport planning system is not properly integrated with the off-airport transport planning system. This is contributing to an uncoordinated transport system that is impacting cities' broader productive capacity and imposing unnecessary social and economic costs.

The current planning framework has not always provided communities with the opportunity to comment on airport developments that affect them, their homes, their workplaces and their suburban amenity. This is because some developments on airport sites are not canvassed in detail in master plans and fall outside the trigger criteria for major development plans. Under the current planning framework, such developments do not require broader community consultation, as may have been the case if they had occurred outside the airport boundary.

Also, there is currently no general requirement for airports to consult regularly and widely with communities and State, Territory and local planning authorities. There is a view that this has led to excessive use of land on airport sites for developments not directly related to aviation operations and not consistent with the interests of surrounding communities.

The planning framework that applies to leased federal airports is not sufficiently integrated with the planning laws applying to neighbouring communities and surrounding regions. Considerations relating to local and regional planning, including community consultative requirements, appropriate land uses, the economic impact of commercial facilities and suitable connecting ground transport infrastructure, are not applicable to developments taking place on the Commonwealth land occupied by airports operating under federal leases. This has resulted in disjointed development outcomes and negative community impacts, with both economic and social costs.

The 2009 White Paper process identified specific problems in the current regulatory framework, including the following:

- There is insufficient, or lack of, consultation and coordination between leased federal airports and planning authorities for neighbouring communities and regions, particularly on integration of planning strategies, including coordination of connecting ground transport infrastructure.

- There are insufficient or inconsistently applied mechanisms for leased federal airports to develop a consultative dialogue with neighbouring communities.

- There is insufficient provision for airport master plans to address key issues such as strategic planning of ground transport investment and reasons for inconsistencies between on- and off-airport planning.

- Major development plan triggers fail to capture some non-aeronautical developments on airport sites that potentially have significant community impacts, are not core aviation business and may have no, or sometimes negative, impact on airport operations.

- There is no general requirement for interested parties to be notified of airport development plans falling outside master plan and major development plan processes.

- Airport environment strategies, while currently a requirement, are approved under a separate process to master plans, rather than incorporated as an integral part of master plans.

<u>Infrastructure investment issues</u>

During consultations with the Commonwealth, airports have reinforced the importance of continued investment in federal airports as national economic infrastructure. Specific problems identified through the White Paper process in the current regulatory framework in

relation to facilitating investment are as follows:

- Major development plan triggers as currently framed may unnecessarily capture some aeronautical developments that have little community impact, represent core aviation business and are of significant value to the wider economy in the form of infrastructure capacity upgrades. There is no mechanism for an airport-lessee company to seek an exemption from the major development plan process for these types of aeronautical-related developments.

- Major development plan requirements sometimes result in an unnecessary duplication of consultation processes where effective consultation could have occurred had there been sufficient detail in the airport master plan.

- Airport environment strategies are currently developed, consulted upon, and approved in a process entirely separate from master plans, creating unnecessary complexity and duplication of effort for airports, communities and State and local governments.

The challenge is to create a more transparent aviation infrastructure regulatory framework that will balance the interests of communities with the need for ongoing infrastructure investment. This 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 legitimate interests of communities for more consultation and transparency around airport developments with the equally legitimate expectation of airports and their users for a regulatory environment that is conducive to increased infrastructure investment.

Objectives

The objective for the airport planning framework identified in the White Paper is:

> Improved planning at Australia's airports to facilitate better integration and coordination with off-airport planning and continued investment in Australia's airport infrastructure and land transport links.

Options

In the December 2008 National Aviation Policy Green Paper, which preceded the White Paper, the Commonwealth indicated that it would work with State and Territory governments and industry on improved arrangements for planning and development on airports, subject to some key principles:

- The Commonwealth Minister will retain final decision-making authority for land use planning and development at federal airports.

- Arrangements for assessing plans and development proposals on federal airports and their supporting consultative procedures should be designed to encourage investor

certainty and community confidence.

- Cooperative arrangements will be developed with the States and Territories to better integrate airport planning, development and regulatory oversight with local, State and Territory planning and regulatory arrangements, whilst ensuring reasonable provision for the protection and development of federal airports.

Successive governments have maintained a clear policy that planning authority for the leased federal airports will remain with the Commonwealth. This policy position:

- underpinned the airport privatisation process;
- was affirmed with the passage of the Airports Act through the Commonwealth Parliament; and
- has been a presumption of subsequent amendments, subordinate legislation, and planning decisions cleared by successive Commonwealth Parliaments.

As such, the Green Paper explicitly reflected the key principle that final decision-making authority for land use planning and development at leased federal airports will continue to remain with the Commonwealth Minister. The options in this Regulation Impact Statement have been framed in accordance with this principle.

Option A: Status quo

Key elements of the current planning framework have been illustrated above. This framework is characterised by broadly equivalent controls on aeronautical and non-aeronautical developments on leased federal airports, despite the potentially different priorities and impacts for these development categories and the changing profile of development at airport sites.

There is no formal mechanism facilitating constructive engagement between airport planners and planning authorities for adjacent communities outside the master plan and major development plan processes. There is also no formal mechanism requiring airports to consult with communities themselves outside the master plan and major development plan processes.

While comprehensive in most respects, master plans are neither required to include detailed ground transport plans nor to address variances between on- and off-airport planning in an analytical way. There is no flexibility for consultation on development plans undertaken in a master plan process to relax a corresponding requirement for further consultation on the same issues in subsequent major development plan processes.

There is also no general requirement for airports to notify interested parties of proposed developments that are undertaken once the master plan has been approved.

Option B: Tighter regulation of planning and development on leased federal airports to facilitate better integration of on-airport and off-airport planning

Option B would consist of all of the elements of the current regime, augmented by additional requirements to fulfil planning integration objectives.

A formal mechanism, through a Planning Coordination Forum, requiring airports to facilitate consultation and coordination with relevant State, Territory and local government authorities on planning matters would be applied. A requirement for airports to convene a regular Community Aviation Consultation Groups would also be implemented.

The Planning Coordination Forum would provide a high level forum that would meet a number of times a year to discuss planning issues on and off airport that affect the airport. This would provide State, Territory and local governments with the opportunity to influence airport planning decisions outside of the master plan and major development plan processes. It would also ensure that planning decisions taken by airports are better integrated with planning objectives of State, Territory and local governments and better integrate off-airport planning with future airport development. All capital city regular passenger transport airports would be required to establish and maintain Planning Coordination Forums.

Airports would also have to provide greater detail in master plans on ground transport strategies and justifications for variances between on- and off-airport planning.

Major development plan triggers would also be amended to capture a wider range of non-aeronautical developments on airports via a significant community impact test. Developments with a significant community impact would have to go through a major development plan process, regardless of development scale or cost.

A range of development types regarded as incompatible with airport operations, such as hospitals, school, aged-care and residential housing, would be prohibited.

Finally, airports would be required to notify interested parties of all planned developments, regardless of type or value.

Option C: A balanced approach involving regulatory change to facilitate investment in aeronautical infrastructure and better integration of on-airport and off-airport planning

Option C would encompass the measures for improved regulatory oversight in Option B, but would provide for the Planning Coordination Forums and the Community Aviation Consultation Groups to be established non-legislatively.

The specific details of the changes to the legislation would be as follows.

Airport-lessee companies will be required to provide detailed information in relation to the first five years of the master plan including:

- a ground transport plan on the landside of the airport;
- the likely effect of the proposed developments set out in the master plans on employment at the airport and on the local and regional economy and community. including an analysis of how the proposed developments fit within the planning schemes for commercial and retail development in the area adjacent to the airport; and
- detailed information on the proposed use of precincts at the airport that are to be used for purposes not related to airport services.

As airport environment strategies are better articulated in a strategic planning sense with airport master plans, the airport environment strategy will be incorporated into the master plan. This will allow airports to undertake only one approval process, thereby lowering compliance costs. The cycle for updating and renewing the environment strategy will be aligned with the master planning process.

The current major development plan triggers will be improved to more effectively address developments that will have significant impact on the local or regional community. Proposed developments with significant community impact, regardless of size or cost, will be subject to the optimal level of public comment to enable members of the community and other stakeholders to have input into the proposed developments that may be contentious or may cause concern within the local area.

There will be mechanisms for the airport-lessee company to seek exemption from the major development plan process for aeronautical-related developments.

Further, the airport-lessee companies may be able to seek a reduction in the public consultation period to not less than 15 business days, if the draft major development plan aligns with the details of the proposed development set out in the final master plan and the proposed development does not raise additional issues that would have a significant impact on the local or regional *community*.

Under Option C a range of development types regarded as incompatible with airport operations, such as long-term residential development, residential aged or community care facilities, nursing homes, hospitals and schools would be prohibited. However, airports would have the opportunity to demonstrate the existence of exceptional circumstances to the Minister to seek the Minister's approval to proceed with the development.

Finally, to increase the transparency of airport developments, the Government made regulations requiring airports to notify the community of building applications by publishing them on the airports' websites.

Option D: Accredit State/Territory Government planning laws to apply to airports but allow the Commonwealth Minister to exercise decision making power

Option D would involve the Commonwealth Government negotiating and signing bilateral agreements with the eight State and Territory governments to accredit relevant State and Territory planning assessments under the Airports Act. Under this option, planning issues that would require the Commonwealth Minister to make a decision would be assessed under the relevant State or Territory planning process and the relevant agencies would provide a recommendation to the Commonwealth Minister. State and Territory agencies would make their recommendations on the basis of the relevant State or Territory legislation. The Commonwealth Minister would retain the option of accepting or rejecting any recommendation.

Impacts and cost/benefit analysis:

Option A

Under the status quo, airports have relatively wide scope to undertake non-aeronautical developments without the consultation and regulatory scrutiny that a Major Development Plan would require. These developments potentially have a significant impact on neighbouring communities and add little value to the airport's core aviation business.

The current lack of provision for effective consultation and coordination by airports and planning authorities on certain matters (such as ground transport plan and improvements to the road network) has resulted in negative impacts on neighbouring communities. For example, commercial developments on airports undertaken without appropriate planning for connecting roads has, on occasion, caused acute traffic congestion at roads outside the airport leading to the airport site.

The current framework does not provide for effective coordination of planning matters such as development of connecting ground transport infrastructure. The consequence of this is that airport users may experience interruptions in the transport chain, with flow-on effects to the wider economy.

The current framework does not compel leased federal airports to engage in consultation and coordination activity with State, Territory and local governments. Such governments may therefore have few opportunities to invest resources into coordination activities with airports. Furthermore, the most significant cost for State, Territory and local governments in the current regulatory framework is likely to be the lack of, or incomplete, information about strategic airport growth, leading to poorly coordinated investments in amenities such as connecting roads.

Option B

Option B involves an increase in oversight and control of development on airports generally, and non-aeronautical developments in particular, which may increase the airport's compliance costs. A more rigorous assessment process for commercial developments in the form of a wider category of developments requiring major development plans would lead to higher development costs and reduced investment certainty.

Similarly, new (legislatively-based) requirements to consult on planning matters with the relevant State, Territory and local government authorities and with the general community through the establishment of Planning Coordination Forums would involve increased costs for airports.

The continued close regulatory oversight of low impact, high priority aeronautical developments also entails substantial costs for little marginal benefit.

However, formal consultations with stakeholders (through the Planning Coordination Forums) and members of the community (through the Community Aviation Consultations Groups) would benefit the airports as these consultations would result in improved community goodwill.

Measures in option B would assist in addressing urban amenity issues such as poorly coordinated investment in ground transport infrastructure. This would result in benefits for neighbouring communities in the form of more efficient, less congested ground transport.

Measures to better integrate airport development with planning for neighbouring communities and regions, leading to better coordinated road infrastructure, would provide for improved ground access to airports for airport users. This equates to a more seamless transport chain, with flow-on benefits to the wider economy.

The most significant benefit for State and local governments under option B would likely be in improved and more comprehensive information about strategic airport growth, leading to better targeted and coordinated investments in amenities such as connecting roads. Substantial efficiencies could result.

Option C

Option C involves an increase in some elements of the oversight and control of development on airports, particularly for developments of a non-aeronautical nature. A more rigorous assessment process for commercial developments in the form of a wider category of developments requiring major development plans may lead to higher development costs and reduced investment certainty.

Under Option C, there is scope to relax the compliance framework for aeronautical-related developments by allowing the airports to seek exemption from the major development process. There would also be an opportunity to seek a reduction in the consultation period

for non-aeronautical developments sufficiently canvassed in a master plan and raises no issues of significant impact on the local or regional community. These streamlining of regulatory requirements may reduce business costs.

A streamlined framework for investment in aeronautical infrastructure would have corresponding efficiency benefits and service improvements for airport users, flowing on to the wider economy. Improved integration of ground access to airports would result in a more seamless transport chain, with flow-on benefits for the wider economy.

Measures in option C would assist in addressing urban amenity issues such as poorly coordinated investment in ground transport infrastructure. This would result in benefits for neighbouring communities in the form of more efficient, less congested ground transport.

Under Option C, the Planning Coordination Forums and Community Aviation Consultation Groups will be established administratively. Airports' engagement and consultation with relevant State, Territory and local government authorities and with other members of the community will be assured. However, there will be flexibility in the consultation arrangements allowing changes to be implemented within a reasonable time to respond to circumstances of the relevant airport and stakeholders.

The most significant benefit for State, Territory and local governments under option C would likely be in improved and more comprehensive information about strategic airport growth, leading to better targeted and coordinated investments in amenities such as connecting roads. It is anticipated this will promote substantial efficiencies among airports as they would be able to canvass support for their developments at these planning forums and consultative group meetings.

Option D

Option D would impose additional compliance costs on airports. Airports would need to deal with at least two different sets of bureaucracy and two separate planning laws for airport development. Airports would deal with the Commonwealth on day-to-day operational matters but with state and territory jurisdictions on significant planning matters such as airport master plans and airport major development plans.

Option D would not guarantee that the Government's proposal to streamline the construction of aviation infrastructure, which would significantly benefit airports, would occur as this need to be reflected in relevant State and Territory legislation.

Option D will have little effect on neighbouring communities. Communities will continue to have an engagement in the planning process through a formal public consultation process.

Option D would significantly increase administrative costs for both the Commonwealth and State/Territory Governments. Both levels of Government would incur substantial costs around the negotiation of bilateral agreements that would accredit State and Territory legislation.

Option D would also deliver higher ongoing administrative costs for State Governments in conducting additional assessments for airport development under relevant State and Territory jurisdictions. Similarly, the Commonwealth would incur additional costs in engaging and liaising with State and Territory Governments to ensure that the Commonwealth Minister is properly apprised of sensitivities around individual assessments.

No State or Territory government supported Option D.

Consultation

In April 2008, the Commonwealth released the Aviation Issues Paper *Towards a National Aviation Policy Statement* which formed the basis for consultation and engagement with aviation stakeholders and other members of the community to provide input to assist the Government's development of a National Aviation Policy Statement. Issues to address future airport needs were raised in the Issues Paper

In December 2008, the Commonwealth released the *National Aviation Policy Green Paper*, which among other things canvassed a range of proposed reforms to the planning and development framework for federal airports. The proposals had been developed subsequent to stakeholder feedback on an earlier discussion paper. The Commonwealth received 232 submissions in response to the Green Paper, of which more than 90 addressed airport planning issues.

Between April and May 2009, officers from the Department of Infrastructure and Transport undertook targeted, face-to-face consultations on airport planning issues with 36 key stakeholders, including federal airports, State and Territory governments, local governments, airlines and industry organisations. Further direct consultations with airports and state and territory governments took place in between June and August 2009.

Feedback on proposals has been received from leased federal airports, businesses and individuals from communities neighbouring airports, airport users and all levels of government, including across planning, environment and transport portfolio responsibilities.

Most airports disputed the need for increased involvement of State, Territory and local government planning authorities and independent expert planning advisers in airport planning processes, as well as proposed requirements for more detailed analysis in Master Plans of inconsistencies in on-airport and off-airport planning.

However, airports were supportive of the concept of a forum for airports and off-airport planning authorities that is consultative in nature, rather than furnishing a formal advisory or decision-making role. Airports also saw such a forum as an opportunity to provide feedback to relevant State, Territory and local government planning authorities on off-airport developments, particularly where they could negatively impact airport operations. Airports were supportive of any mechanism for the provision of expert advice not delaying approval processes and of the independence of expert advice from off-airport planning and

development interests.

Airports generally accepted the notion of a requirement for regular consultation with the wider community and expressed a desire for operational flexibility in implementing the proposal.

Airports welcomed the introduction of mechanisms to seek reduction in the consultation period required for a major development plan and the ability to be able to get exemption from undertaking a major development plan for specific aeronautical-related developments.

While detailed feedback from communities neighbouring airports on specific airport planning proposals was limited, there was general support for improved integration of airport planning in the interests of reducing negative impacts on communities and suburban amenity.

Business users supported proposed requirements for improved ground transport planning by airports.

State, Territory and local governments generally supported increased regulatory oversight of airport planning, particularly in relation to non-aeronautical developments on airport lands. This included support for stricter requirements for airports to address and justify variances between airport planning strategies and planning frameworks for neighbouring communities and regions, and to develop comprehensive ground transport plans.

While expressing a preference for a formal decision-making role in airport planning, State, Territory and local governments welcomed the concept of a forum in which airports and planning authorities could consult on and better coordinate strategic planning. State, Territory and local governments were supportive of the notion of airports being required to undertake regular consultation with the wider community and did not express opposition to a relaxation of regulatory requirements on aeronautical developments. They were also generally supportive of stricter control of developments on airport sites that are potentially incompatible with airport operations.

No State or Territory government lobbied for State or Territory planning processes to be accredited under the Airports Act. Other governments accepted that the Commonwealth Minister would retain decision making power and that recommendations to the Minister would be made by the Commonwealth public service in accordance with the terms and provisions of the Airports Act.

The Commonwealth has used this consultation process to refine proposals for improved oversight and integration of airport planning, and to augment these measures with an easing of compliance requirements where they achieve little marginal public policy benefit.

Recommendation

Option C represents the greatest net benefit.

Both options B and C would provide for better integration of airport planning into the planning frameworks that apply to surrounding communities and regions. This would not only improve suburban amenity, but would further embed airports in strategic planning of urban centres as economic hubs. Better planning of ground transport links in particular will have major flow-on benefits across all sectors of Australia's economy, which rely directly or indirectly on efficient linkages along transport and supply chains.

Option C alone, however, will also promote additional investment in airport infrastructure by streamlining regulatory requirements in relation to high priority aeronautical infrastructure developments at airport sites.

Option C also satisfies the 'one in, one out' principle, in that it involves a relaxation of certain regulatory requirements in relation to major development plans in the current legislative framework. This offsets new proposed regulatory requirements in respect of master plans and some non-aeronautical developments.

Option D would represent a significant departure from existing practice and was not advanced by any of the stakeholders during the consultation process.

Implementation

In developing a package of legislation and other measures to implement the proposed reforms, the Commonwealth has engaged in further consultation on implementation with key stakeholders, including dialogue with airports, governments and user groups.

AIRPORTS AMENDMENT BILL 2010

NOTES ON CLAUSES

Clause 1: Short Title

1. Clause 1 is a formal provision specifying the short title of the Act.

Clause 2: Commencement

2. Clause 2 specifies the commencement of the Act. Clauses 1 to 3 and anything in this Act not covered by the table in clause 2 commence on the day this Act receives the Royal Assent.

3. Schedules 1 and 2 of the Act commence on the day after this Act receives the Royal Assent.

Clause 3: Schedules

4. This provision provides for amendments to the Act as set out in the Schedules.

Schedule 1 – Amendment of the Airports Act 1996

Part 1 – Master plan amendments

Item 1 – Paragraph 71(2)(h)

5. Subsection 71(2) sets out what a draft or final master plan must contain for airports other than joint-user airports. Existing paragraph 71(2)(h) is repealed. New paragraphs (ga), (gb), (gc) and a revised paragraph (h) are inserted.

6. In addition to the items listed in existing subsection 71(2), a master plan is required to contain, in relation to the first five years of the master plan, the following:

- a ground transport plan on the landside of the airport;
- detailed information on proposed developments (set out in the master plan) that are to be used for commercial, community, office or retail purposes or for any other purpose not related to airport services. The developments contemplated in this paragraph include construction of retail outlets, supermarkets and the like, buildings and other facilities for recreation or sporting events, theatre halls for cultural performances, construction of business parks and other types of offices not related to carrying out aviation business. These examples are non-exhaustive. A draft or final master plan is required to provide detailed information on these types of proposed developments;
- the likely effect of the proposed developments set out in the master plan on employment levels at the airport and on the local and regional economy and community including an analysis of how the proposed developments fit within the planning schemes for commercial and retail development in the area adjacent to the airport.

7. Paragraph (ga) provides that a ground transport plan on the landside of the airport should provide details on the following:

- road network plan; and
- facilities for moving people (including passengers, employees and other airport users) and freight at the airport (these facilities include the airport's road infrastructure, road connections and car parking facilities in addition to transport vehicles); and
- linkages between those facilities [mentioned in paragraph (ii)], the road network and public transport system at the airport and the road network and public transport system outside the airport; and
- the arrangements for working with State or local authorities or other bodies responsible for the road network and ground transport system ('Other bodies' may include private companies operating public transport services connecting the airport to off-airport transport system); and
- the capacity of the ground transport system to support airport operations and other airport activities; and
- the likely effect of the proposed developments set out in the master plan on the ground transport system and traffic flows at and surrounding the airport.

8. In relation to paragraph (ga), if the airport-lessee company is intending to build a commercial or retail outlet on the airport site, it must provide information, among others, on how its current road network and transport system will support the increased number of people expected to use the commercial or retail outlet. If its current road network is not sufficient to service the proposed development, it must include details of its planned development of the road network to support the current and future operational requirements of the airport. It must also include the airport's arrangements for working with relevant State or local authorities to ensure its proposed on-airport developments do not cause traffic congestion on off-airport roads surrounding the airport. These additional requirements are in response to concerns raised by State, Territory and local planning authorities that some non-aeronautical developments at the airport have been built without providing for adequate road facilities to service the increased traffic resulting from the new development.

9. Paragraph (h) provides for the inclusion of the airport environment strategy in a draft or final master plan. The airport environment strategy should detail the items enumerated in (i) to (ix) of paragraph (h). These items are taken from the existing section 116 (contents of draft or final environment strategy) which is now being repealed in view of the annexure of an environment strategy in the master plan.

Items 2 and 3 – Paragraph 71(3)(d) and paragraph 71(3)(da)

10. Subjection 71(3) refers to the contents of a draft or final master plan for a joint-user airport.

11. Paragraph 71(3)(d) is amended so that it now reads as 'an Australian Noise Exposure Forecast for the areas surrounding the airport'. The qualifying phrase "(in relation to civil

uses of the airport and in accordance with regulations, if any, made for the purpose of this paragraph)" is deleted.

12. In paragraph 71(3)(da), the word 'civil' which qualifies 'flight paths' is removed.

13. The amendments to paragraphs (d) and (da) remove the inconsistency between the legislative requirements which allow a joint-user airport to proceed with a civil-only Australian Noise Exposure Forecast and the manner of endorsement for Australian Noise Exposure Forecasts by Airservices Australia which makes no distinction between civil or military aircraft movements.

Item 4 – Paragraph 71(3)(h)

14. Subsection 71(3) deals with the contents of a draft or final master plan for a joint-user airport. Existing paragraph 71(3)(h) is deleted. New paragraphs (ga), (gb), (gc) and a revised paragraph (h) are inserted. The inserted paragraphs require the inclusion of additional items in a draft or final master plan for a joint-user airport in relation to the first five years of the master plan. These additional items are the same as those discussed in item 1 above.

Item 5 – Subsection 71(6)

15. Existing subsection 71(6) provides that, in specifying an objective or proposal covered by specified paragraphs in subsections 71(2) and 71(3), a draft or final master plan must address the extent (if any) of consistency with the planning schemes in force under a law of the State or Territory in which the airport is located. Existing subsection 71(6) is amended to include another paragraph which provides that if the draft or final master plan is not consistent with those planning schemes, the draft or final master plan must contain justification for the inconsistencies.

Item 6 – At the end of section 71

16. A definition for 'airport service' is provided.

Item 7 – Application provision – master plans

17. Section 71, as amended, applies to a draft or final master plan, if this Schedule commences operation before an airport-lessee company complies with the requirement in subsection 79(1A). This means that a preliminary version of a draft master plan that was given to any of the persons listed in subsection 79(1A) before the commencement of these amendments contained in Schedule 1 will not be required to comply with the new requirements.

Part 2 – Other amendments

Item 8 – Section 4 (paragraph relating to an airport service)

18. Section 4 which provides for a simplified outline of the Act is amended to remove the

sentence “An airport service will be a declared service for the purposes of the access regime set out in Part IIIA of the *Trade Practices Act 1974* unless an access undertaking is given within 12 months after responsibility for the airport is transferred to the private sector”. This sentence referred to the former section 192 which was repealed in 2003.

Item 9 – Section 4 (last paragraph)

19. The last dot point in section 4 is amended to insert “aerodrome” before “rescue and fire fighting services”. This is consequential to the amendments made to Part 14 of the Airports Act.

Item 10 – Section 5

20. This is a technical amendment.

Item 11 – Section 5 (definition of *business day*)

21. The definition of ‘business day’ is amended to make it clear that a public holiday in either the place where the airport is located or in the Australian Capital Territory is not a ‘business day’.

Items 12 to 14 – Section 5 (definition of *environment strategy*)

22. The definitions of ‘draft environment strategy’ and ‘final environment strategy’ are removed and a new definition of ‘environment strategy’ is inserted. This is consequential to the amendment requiring an environment strategy to be part of a master plan.

Item 15 – Section 5

23. A definition of ‘incompatible development’ is inserted. It has the same meaning given in section 71A.

Item 16 – Section 5

24. The term ‘State’ is defined in the Act to include the Australian Capital Territory and the Northern Territory.

Item 17 – At the end of section 5

25. Paragraph (2) is inserted to provide that for purposes of the definition of ‘airport site’ in paragraph (a) of section 5, if the identification number for a certificate of title for a leased federal airport is changed in the relevant State or Territory Land Titles Office, without the boundaries of the airport being changed, a reference in this Act or the regulations to the identification number includes a reference to the identification number as changed.

Items 18 to 20 – Hobart Airport and Darwin Airport

26. These are technical amendments to reflect the correct names of these airports.

Items 21 and 22 – Section 7C

27. These are consequential amendments resulting from the amendments which require an environment strategy to be a part of a master plan and no longer a standalone document.

Item 23 – Subsection 8(1)

28. This is a consequential amendment resulting from the revised definition of 'State'.

Item 24 – Paragraph 12(1)(a)

29. This is a technical amendment to make it clear that under subsection 12(1), Part 2 of the Airports Act applies to both a core-regulated airport and an airport specified in the regulations.

Item 25 – Subsection 68(1)

30. This is a technical amendment to make it clear that under subsection 68(1), Part 5 of the Airports Act applies to both a core-regulated airport (if there is an airport lease for the airport) and an airport specified in the regulations (if there is an airport lease for the airport).

Item 26 – At the end of subsection 70(2)

31. Subsection 70(2) provides for the purposes of a final master plan for an airport.

32. Because an environment strategy is now part of a master plan, the purposes of a final master plan are being amended to include objectives relevant to environmental issues. Paragraphs (e), (f) and (g) are inserted which were taken from existing subsection 115(2) which deals with the purposes of a final environment strategy. Subsection 115(2) is now being repealed.

Item 27 – After section 71

71A Draft or final master plan must identify proposed incompatible developments

33. By way of background, the Green Paper released by the Government in December 2008 flagged that the Government would identify the categories of development likely to be incompatible with the operation of an airport as an airport and would consider options to prohibit or otherwise restrict any such new developments on the leased federal airport sites. As an interim measure, pending the release of the Government's final policy position on this issue in the White Paper, the Government made regulations in September 2009 to make provisions in relation to developments identified as incompatible.

34. Specifically, the Airports Regulations 1997 were amended to provide that certain developments of the type, which the Government considers would normally be incompatible

with the operation of an airport as an airport, would constitute 'major airport developments'. As a result, such developments could only be carried out where they have been subject to a public consultation process and a major development plan is approved by the Minister under the Act.

35. In the White Paper released in December 2009, the Government indicated it would "reinforce this action by introducing legislation to set up a *prima facie* prohibition of such developments on federal airport sites. Where, in the airport's view, exceptional circumstances exist, the airport will have the opportunity to demonstrate to the Australian Government Minister, through a major development plan process, that such a development could proceed without posing unacceptable impacts. Particular regard will be paid to whether the development would restrict the future use of the site for aviation-related purposes, raise significant ground traffic issues, or present risks in terms of safety, security or environmental aspects".

36. New section 71A dealing with incompatible developments is inserted into the Act. Under subsection 71A(1), an airport-lessee company intending to develop an incompatible development on the airport must identify any proposed incompatible development in the master plan.

37. An 'incompatible development' is defined to be a development of any of the following facilities

- a residential dwelling (except accommodation for students studying at an aviation education facility at the airport);
- a community care facility;
- a pre-school;
- a primary, secondary, tertiary or other educational institution (except an aviation educational facility);
- a hospital (except a facility with the primary purpose of providing emergency medical treatment to persons at the airport and which does not have in-patient facilities).

38. A redevelopment of any of the facilities listed above, if the redevelopment increases the capacity of the facility, is also an incompatible development. A redevelopment of a facility existing prior to the commencement of this Act, if the redevelopment increases the capacity of the facility, is also an incompatible development (see item 75, application provision on incompatible developments in Part 3 on transitional provisions).

39. The reference to a pre-school and educational institution is not intended to capture childcare facilities.

40. The development of an aviation educational facility as defined in the Act is not an

incompatible development. A residential dwelling or accommodation for students studying at an aviation educational facility at the airport is not an incompatible development as well.

41. The reference to a primary, secondary, tertiary or other educational institution is not intended to capture training or other facilities for the purpose of providing training to staff employed by organisations on the airport. That is, training provided to assist staff fulfil their duties during the course of their employment.

Items 28 and 29 – Section 72

42. These are consequential amendments resulting from the annexure of an environment strategy into a master plan.

Item 30 – Subsection 76(1)

43. Subsection 76(1) is amended to make it clear that an airport-lessee company is required to give the Minister, in writing, a draft master plan:

(a) no later than five years after its current final master plan came into force; or

(b) a longer period that the Minister specified in a written notice to the airport-lessee company.

44. This provision makes it clear that an airport-lessee company is required to give the Minister in writing a draft master plan no later than five years after the original pan came into force. An airport-lessee company that is in breach of this requirement is liable to commit an offence.

45. This provision also allows the Minister to extend the period of submission of a draft master plan. An airport-lessee company that fails to submit a draft master plan within this longer period is liable to commit an offence.

Item 31 – At the end of section 76

46. A new subsection 76(4) is inserted to make it clear that a company commits an offence under subsection 76(2) even if because of subsection 77(1), the original plan remains in force for longer than five years after the original plan came into force.

Item 32 – At the end of section 78

47. A new subsection 78(5) is inserted to make it clear that a company commits an offence under subsection 78(3) even if because of subsection 77(1), the original plan remains in force for longer than five years after the original plan came into force.

Item 33 – Subsection 81(5)

48. Section 81 deals with the approval of a draft master plan by the Minister. Under

subsection 81(5), the Minister has a period of 50 business days to either approve or refuse a draft master plan. If the Minister neither approves nor refuses to approve a draft master plan within 50 business days, the Minister is taken to have approved the plan at the end of the 50-business-day period.

49. Subsection 81(5) is amended to allow the Minister to make a decision within a period longer than 50 business days, but not exceeding 60 business days. If the Minister neither approves nor refuses to approve a draft master plan within this longer period, the Minister is taken to have approved the plan at the end of that period.

50. A new subsection 81(5A) is inserted which provides that the Minister's written notice under subsection 81(5) is not a legislative instrument within the meaning of that term under the *Legislative Instruments Act 2003*.

Item 34 – At the end of section 81

51. A new subsection 81(10) is inserted to provide that the Minister's approval of a draft master plan that contains an incompatible development does not stop the Minister from refusing to approve, under Division 4, a major development plan for the incompatible development.

52. A master plan may foreshadow an incompatible development with a clear statement of the prohibition and that a subsequent approval process will be undertaken. Information about a incompatible development could also be included in a minor variation to a master plan.

53. The Minister may approve a master plan foreshadowing an incompatible development without in any way pre-empting a decision about whether exceptional circumstances apply to the proposed development.

Item 35 – After section 83

83A Compliance with environment strategy in final master plan

54. New section 83A is inserted. This amendment is consequential to the new requirement that an environment strategy becomes part of a master plan. The contents of section 83A are derived from section 130 which is now being repealed.

Item 36 – Subsection 84(3)

55. Section 84 deals with the minor variation of a final master plan. Under subsection 84(3), the Minister has a period of 50 business days to either approve or refuse a variation to a final master plan. If the Minister neither approves nor refuses to approve a variation to a master plan within 50 business days, the Minister is taken to have approved the variation at the end of the 50-business-day period.

56. Subsection 84(3) is amended to allow the Minister to make a decision within a period

longer than 50 business days, but not exceeding 60 business days. If the Minister neither approves nor refuses to approve the variation within this longer period, the Minister is taken to have approved the variation at the end of that period.

57. A new subsection 84(3A) is inserted which provides that the Minister's written notice under subsection 84(3) is not a legislative instrument within the meaning of that term under the *Legislative Instruments Act 2003*.

Item 37 – After section 86

86A Transitional - expiry of standalone environment strategies

58. A new section 86A is inserted in the Airports Act.

59. The transitional provisions apply to an airport environment strategy that is not contained in the master plan for the airport under paragraph 71(2)(h) or 71(3)(h).

60. If the environment strategy is due to expire before the master plan expires, the airport-lessee company may apply to the Minister to extend the expiry date of the environment strategy to the date when the replacement master plan is approved. For example, if the environment strategy of the airport expires on 10 October 2013 and its master plan expires on 10 December 2013, the airport-lessee company may apply to the Minister to extend the expiry date of its environment strategy until the date when the new master plan commences. The draft master plan, that the airport is due to submit to the Minister in December 2013, must contain an environment strategy.

61. The Minister is required to give the airport-lessee company a written notice of the Minister's decision.

62. If the environment strategy is due to expire after the master plan expires, the environment strategy expires on the date when the replacement master plan is approved. For example, if the environment strategy of the airport expires on 10 December 2015 and its master plan expires on 10 October 2015, the airport-lessee company is required to incorporate a new environment strategy in its draft master plan that it is required to submit to the Minister in October 2015. The final airport environment strategy that is due to expire on 10 December 2015 will expire on the date the new master plan is approved.

Item 38 – Before section 88

Subdivision A – Introduction

63. "Subdivision A – Introduction" is inserted before section 88.

Item 39 – At the end of section 88

64. Section 88 provides for the simplified outline of Division 4. Another sentence is included dealing with incompatible developments.

Item 40 – After paragraph 89(1)(b)

65. Section 89 provides for the meaning of a 'major airport development'. A proposed development that consists of any of the developments listed in section 89 requires a major development plan. New paragraph 89(1)(ba) is inserted to provide that altering a runway, including altering a runway in any way that changes flight paths or the patterns or levels of aircraft noise, is a major airport development requiring a major development plan.

66. The reference to altering a runway, including altering a runway in any way that changes flight paths or the patterns or levels of aircraft noise in paragraph 89(1)(b) is not intended to capture routine maintenance works, for example patch, repair of runways, taxiways, aprons, crack sealing, runway resurfacing, line marking, jet blast protection and the repair, maintenance and upgrade of aviation navigation aids.

Item 41 – Paragraph 89(1)(n)

67. This amendment is consequential to the new requirement that an environment strategy becomes part of a master plan.

Item 42 – After paragraph 89(1)(n)

68. New paragraph 89(1)(na) is inserted which provides that a development of a kind that is likely to have a significant impact on the local or regional community is a major airport development. As is currently the case with the existing major development plan trigger on significant environmental or ecological impact, proposed developments with significant community impact, regardless of size or cost, will be subject to the optimal level of public comment to enable members of the community and other stakeholders to have input into the proposed developments that may be contentious within the local area. In determining whether the proposed development is likely to have a significant impact on the local or regional community, the following are examples of issues that may be considered:

- Will the proposed development impact on the amenity of the local or regional community?
- Will the proposed development increase traffic in the immediate surrounds of the airport?
- Will the proposed development likely create increased noise in the area?
- Will the proposed development create areas of risk for individuals within, or adjacent to, the airport?
- Will the proposed development likely cause significant concern by the local or regional community?

69. Administrative guidelines on what may constitute ‘significant impact on the local or regional community’ will be provided to relevant industry stakeholders.

70. A new paragraph 89(1)(nb) is inserted. If the Minister has given approval to the airport-lessee company to undertake a major development plan in relation to an incompatible development (in accordance with new section 89A), that proposed development becomes a major airport development that will require a major development plan.

Item 43 – Subsection 89(2)

71. This is a consequential amendment in view of the inclusion of new paragraphs in subsection 89(2).

Item 44 – Subsection 89(4)

72. Existing subsection 89(4) is amended to make it clear that the Minister may determine in writing that specified developments that are proposed to be carried out at an airport site together constitute a ‘major airport development’ if the conditions provided for in paragraphs (a) and (b) are fulfilled.

Item 45 – Subsection 89(5)

73. Existing subsection 89(5) is repealed and replaced with a new subsection 89(5).

74. New subsection 89(5) enables an airport-lessee company to request the Minister in writing that the following developments specified in subsection 89(1) be exempt from the requirement of a major development plan:

- (c) constructing a new building wholly or principally for use as a passenger terminal, where the building’s gross floor space is greater than 500 square metres;

- (d) extending a building that is wholly or principally for use as a passenger terminal, where the extension increases the building’s gross floor space by more than 10%;

- (f) constructing a new taxiway, where: (i) the construction significantly increases the capacity of the airport to handle movements of passengers, freight or aircraft; and (ii) the cost of construction exceeds $20 million or such higher amount as is prescribed;

- (g) extending a taxiway, where: (i) the extension significantly increases the capacity of the airport to handle movements of passengers, freight or aircraft; and (ii) the cost of construction exceeds $20 million or such higher amount as is prescribed.

75. The Minister may determine that a development of a type listed above is not a ‘major airport development’ and therefore does not require a major development plan, if the Minister is satisfied, on reasonable grounds, that the development will not:

(i) increase the operating capacity of the airport; or

(ii) change the flight paths; or

(iii) change the patterns or levels of aircraft noise; or

(iv) unduly increase the noise heard by, or unduly cause a nuisance to, the community adjacent to the airport.

76. New subsection 89(6) is inserted which provides that a determination under subsection (4) and (5) is not a legislative instrument within the meaning of that term under the *Legislative Instruments Act 2003*.

Item 46 – After section 89

Subdivision B – Incompatible developments

89A Incompatible development prohibited except in exceptional circumstances

77. A new Subdivision B is inserted dealing with incompatible developments. New section 89A is added which provides that a person must not carry out, or cause or permit to carry out, an incompatible development unless the Minister gives an approval under section 89A for the airport-lessee company to prepare a major development plan for the incompatible development and the Minister approves the major development plan under section 94. The carrying out of the development should be in accordance with the major development plan approved under the Airports Act.

78. An incompatible development is prohibited (except in exceptional circumstances) on leased federal airports regulated under Part 5 concerning land use, planning and building controls. This includes all leased federal airports except Mount Isa Airport and Tennant Creek Airport.

79. Under subsection 89A(2), a person who contravenes subsection 89A(1) commits an offence punishable by a maximum penalty of 400 penalty units. A note is included to provide that if an airport-lessee company is convicted of the offence, a court may impose a fine not more than five times the penalty provided in subsection 89A(2). This is consistent with subsection 4B(3) of the *Crimes Act 1914*.

80. Subsection 89A(3) provides that the offence under subsection 89A(2) is a strict liability offence.

81. Subsection 89A(4) provides that if an airport-lessee company wants to prepare a draft major development plan (in relation to an incompatible development), the company must first obtain the approval of the Minister before the company commences giving advice to State, Territory and local government authorities under subsection 92(1A).

82. The airport-lessee company's written representation to the Minister to seek the Minister's

approval to prepare a draft major development plan for the incompatible development must detail the exceptional circumstances that the company claims will support the preparation of a draft major development plan. The Minister may give the company approval to undertake a draft major development plan only if the Minister is satisfied that there are exceptional circumstances that support the preparation of the draft major development plan for the incompatible development at the airport.

83. The Minister is required to give the airport-lessee company written notice of the decision and the reasons for the decision.

84. If the Minister gives the approval, the incompatible development is taken to be a major airport development for the purposes of Division 4. General requirements in relation to major airport developments, including the requirement for public consultation then apply. Additional matters that the Minister must have regard to when deciding to approve a draft major development plan that relates to an incompatible development are found in new paragraph 94(3)(f).

85. The Minister's approval for the airport-lessee company to proceed with the draft major development plan does not stop the Minister from refusing to approve the major development plan for the incompatible development.

86. The Minister's power to give an approval under section 89 will not be subject to delegation [see new subsection 244(2)].

Subdivision C – Approval process

87. Before section 90, a new title "Subdivision C – Approval process" is inserted.

Item 47 – After paragraph 91(1)(g)

88. Section 91 provides for the contents of a major development plan. New paragraph (ga) is inserted to require that a major development plan must set out the likely effect of the proposed development on:

(i) traffic flows at the airport and surrounding the airport; and

(ii) employment levels at the airport; and

(iii) the local and regional economy and community, including an analysis of how the proposed developments fit within the local planning schemes for commercial and retail development in the area adjacent to the airport.

Item 48 – Paragraph 91(1)(k)

89. Existing paragraph 91(1)(k), which refers to a draft environment strategy, is deleted. It is replaced by new paragraph 91(1)(k) which requires that if the major development plan relates to an incompatible development, the plan must set out the exceptional circumstances that the

airport-lessee company claims will justify the development of the incompatible development at the airport.

Item 49 – Subsection 91(4)

90. Existing subsection 91(4) provides that a major development plan, or a draft major development plan, must address the extent (if any) of consistency with the planning schemes in force under a law of the State or Territory in which the airport is located. Existing subsection 91(4) is amended to include another paragraph which provides that if the major development plan, or a draft of the plan, is not consistent with those planning schemes, the major development plan or its draft must contain justification for the inconsistencies.

Item 50 – After subparagraph 92(1)(a)(i)

91. This is an amendment consequential to the amendments in subsections 92(2A) and 92(2B).

Item 51 – Subparagraphs 92(1)(a)(ii) and (iiia)

92. This is an amendment consequential to the amendments in subsections 92(2A) and 92(2B).

Item 52 – Subparagraphs 92(1)(a)(iv)

93. This is an amendment consequential to the amendments in subsections 92(2A) and 92(2B).

Item 53 – After subsection 92(1)

94. New subsections 92(2A) and (2B) are inserted into the Act. These provisions allow the Minister to shorten the 60-business-day consultation period to a shorter period of not less than 15 business days.

95. An airport-lessee company or another person with the written consent of the airport-lessee company may request the Minister to shorten the public consultation period. The Minister may, by written notice, approve the request if the Minister is satisfied that:

- the draft major development plan aligns with the details of the proposed development set out in the final master plan; and
- the development proposal does not raise additional issues that have a significant impact on the local or regional community.

96. The Minister's written notice is not a legislative instrument within the meaning of that term in the *Legislative Instruments Act 2003*.

Item 54 – At the end of subsection 94(3)

97. Subsection 94(3) provides for the matters that the Minister must have regard to in deciding whether to approve a draft major development plan. New paragraph (f) is added so that in relation to an incompatible development, the Minister must have regard to paragraphs (f)(i) to (iv) in addition to the matters listed in (aa) to (e).

98. In making a decision whether to approve a draft major development (which relates to an incompatible development), the Minister will have regard to these additional matters:

- Whether the exceptional circumstances which the airport-lessee company claims will justify the development of the incompatible development – The Minister will make a judgment on the existence of 'exceptional circumstances' on a case by case basis. Every proposal for the development of an incompatible development will be considered on its merit based on the exceptional circumstance of every airport.
- The likely effect of the incompatible development on the future use of the airport site for aviation-related purposes – Consistent with the primary object of the Airports Act which is to promote the sound development of civil aviation in Australia, regard will be given as to whether the development (of the incompatible development) will limit the future flexibility in the use of the airport site for aeronautical-related purposes.
- The likely effect of the incompatible development on the ground transport system at, and adjacent to the airport – One of the concerns of the Government in relation to incompatible development is the creation of additional congestion in roads at or near the airport.

Item 55 – Subsection 94(6)

99. Section 94 deals with the approval of a major development plan by the Minister. Under subsection 94(6), the Minister has a period of 50 business days to either approve or refuse a draft major development plan. If the Minister neither approves nor refuses to approve a draft major development plan within 50 business days, the Minister is taken to have approved the plan at the end of the 50-business-day period.

100. Subsection 94(6) is amended to allow the Minister to make a decision within a period longer than 50 business days, but not exceeding 60 business days. If the Minister neither approves nor refuses to approve a draft major development plan within this longer period, the Minister is taken to have approved the plan at the end of that period.

101. A new subsection 94(6AA) is inserted which provides that the Minister's written under subsection 94(6) is not a legislative instrument within the meaning of that term in the *Legislative Instruments Act 2003*.

Item 56 – Subsection 94(6A)

102. Subsection 94(6A) provides that if the advice of the Minister administering the

Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) is sought under Subdivision A of Division 4 of Part 11 of that Act in relation to a draft major development plan, subsection 94(6) of the Airports Act applies as if it referred to the day on which the advice was given, instead of the day the draft major development plan was received. Pursuant to section 160 of the EPBC Act, the Minister administering the Airports Act must obtain and consider advice from the Minister administering the EPBC Act prior to approving a draft major development plan.

103. There have been qqueries on when the advice is "given" by the Minister administering the EPBC Act for purposes of subsection 94(6A) of the Airports Act. Is it on the day the advice is signed or on the day it is posted, faxed or delivered?

104. To remove the ambiguity in subsection 94(6A), the 'day on which the advice is given' is replaced with the 'day on which the Minister received the advice'. This will make it clear that the decision period starts on the first business day after the day the Minister has received advice from the Minister administering the EPBC Act.

Item 57 – Subsection 95(3)

105. Section 95 deals with the approval of a minor variation of a major development plan by the Minister. Under subsection 95(3), the Minister has a period of 50 business days to either approve or refuse a draft variation. If the Minister neither approves nor refuses to approve a draft variation within 50 business days, the Minister is taken to have approved the variation at the end of the 50-business-day period.

106. Subsection 95(3) is amended to allow the Minister to make a decision within a period longer than 50 business days but not exceeding 60 business days. If the Minister neither approves nor refuses to approve the draft variation within this longer period, the Minister is taken to have approved the variation at the end of that period.

107. A new subsection 95(3A) is inserted which provides that the Minister's written notice under subsection 95(3) is not a legislative instrument within the meaning of that term in the *Legislative Instruments Act 2003*.

Item 58 – Subsection 95(3A)

108. Subsection 95(3A) provides that if the advice of the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is sought under Subdivision A of Division 4 of Part 11 of that Act in relation to a draft variation to a major development plan, subsection 95(3) of the Airports Act applies as if it referred to the day on which the advice was given, instead of the day the draft major development plan was received. Pursuant to section 160 of the EPBC Act, the Minister administering the Airports Act must obtain and consider advice from the Minister administering the EPBC Act prior to approving a draft major development plan.

109. There have been qqueries on when the advice is "given" by the Minister administering

the EPBC Act for purposes of subsection 95(63) of the Airports Act. Is it on the day the advice is signed or on the day it is posted, faxed or delivered?

110. To remove the ambiguity in subsection 95(3A), the 'day on which the advice is given' is replaced with the 'day on which the Minister received the advice'. This will make it clear that the decision period starts on the first business day after the day the Minister has received advice from the Minister administering the EPBC Act.

Item 59 – Subparagraphs 106(1)(d)(i) and (ii) and 4(d)(i) and (ii)

111. These are consequential amendments.

Item 60 – Section 113 (first, second and third paragraphs)

112. Section 113 provides for a simplified outline of Part 6 of the Act. The amendments to section 113 are consequential to the annexure of an airport environment strategy into the airport master plan.

Item 61 – Division 2 of Part 6

113. Division 2 of Part 6 is repealed because of the new requirement that an environment strategy becomes part of a master plan.

Item 62 – Subsection 131A(1)

114. This is a technical amendment to make it clear that under subsection 131A(1), Part 6 of the Airports Act applies to both a core-regulated airport (if there is an airport lease for the airport) and an airport specified in the regulations (if there is an airport lease for the airport).

Item 63 – Subparagraph 131B(1)(a)(i)

115. This is a consequential amendment.

Item 64 – Subsection 168

116. This is a consequential amendment.

Item 65 – Subsection 169(1)

117. This is a technical amendment to make it clear that under subsection 169(1), Part 11 of the Act applies to both a core-regulated airport (if there is an airport lease for the airport) and an airport specified in the regulations (if there is an airport lease for the airport).

Item 66 – Paragraphs 180(1)(a) and (b)

118. This is a technical amendment to make it clear that under subsection 180(1), Part 12 of the Act applies to all three types of airports listed in paragraphs (a) to (c).

Item 67 – Section 191 (first paragraph)

119. Section 191 provides a simplified outline of Part 13 which deals with access to airports and demand management at airports.

120. Section 191 is amended to remove the sentence "An airport service will be a declared service for the purposes of the access regime set out in Part IIIA of the *Trade Practices Act 1974* unless an access undertaking is given within 12 months after responsibility for the airport is transferred to the private sector". This sentence referred to the former section 192 which was repealed in 2003.

Item 68 – Subsection 194(1)

121. This is a technical amendment to make it clear that under subsection 194(1), Divisions 4 to 10 of Part 13 of the Act apply to a core regulated airport, other than Sydney (Kingsford-Smith) Airport,(if there is an airport lease for the airport) and an airport specified in the regulations (if there is an airport lease for the airport).

Items 69 to 71 – Part 14 and sections 215 and 216

122. The word 'aerodrome' is inserted before the words 'rescue and fire fighting services'. These amendments clarify that the types of services covered by these provisions relate to the defined aerodrome rescue and fire fighting services covered under the *Civil Aviation Act 1988* and Civil Aviation Safety Regulations and not to other non-aviation fire fighting services at the airport.

Item 72 – Subsection 224(4)

123. This is a technical amendment.

Item 73 – At the end of section 244

124. A new subsection 244(2) is inserted to provide that the Minister's power to give an approval for an airport-lessee company to undertake a draft major development plan in relation to an incompatible development under section 89A must not be delegated.

Item 74 – Subsection 250(8) (definition of *airport services*)

125. This is a technical amendment. Existing subsection 250(8) provides for a definition of 'airport service'. The definition is slightly changed to conform with drafting practice.

Part 3 – Transitional provisions

Item 75 – Application provision – incompatible developments

126. New section 71A, as inserted by this Schedule, applies to a facility that existed before this Schedule commenced operation and to a facility that is redeveloped, after this Schedule

commences, in a way that increases the capacity of the facility. For example, if there is an existing educational institution at an airport before this Schedule commenced operation, any redevelopment of this facility in a way that increases the capacity of the facility (e.g. increases the number of students) after this Schedule commenced operation, will be taken as an incompatible development.

Item 76 – Application provision –final master plans

127. The amendments made to sections 76 and 78 by this Act apply to a final master plan that is in force when or after this Schedule commences operation.

Item 77 – Application provision – major development plans

128. The amendments made to sections 89, 91, 92, 94 and 95 apply to a draft major development plan if this Schedule commences before the airport-lessee company (or a person other than the airport-lessee company) gives a written advice to the persons listed in subsection 92(1A) which formally starts the consultation period for a draft major development plan. This means that if an airport-lessee company has given written advice to the persons listed in subsection 92(1A) in relation to a draft major development plan before this Schedule commenced operation, the amendments made by this Act in relation to sections 89, 91, 92, 94 and 95 do not apply to such draft major development plan.

Item 78 – Transitional provision – environment strategies

129. A final environment strategy which is in force before the commencement of this Schedule continues to be in force even after this Schedule commences operation.

130. However, a standalone final environment strategy ceases to be in force when the master plan containing an environment strategy is approved. This makes it clear that a leased federal airport cannot have a standalone final environment strategy and at the same time an environment strategy annexed to a master plan.

Schedule 2 – Technical amendment of the Airports Act 1996

Items 1 to 25

131. These are technical and consequential amendments.