Air Services Amendment Bill 2018

No. , 2018

(Senator Rice)

A Bill for an Act to amend the law in relation to air services, and for related purposes
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A Bill for an Act to amend the law in relation to air services, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the Air Services Amendment Act 2018.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
## Commencement information

<table>
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<td>1. The whole of this Act</td>
<td>The day after this Act receives the Royal Assent.</td>
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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments

Air Services Act 1995

1 Subsection 3(1)

Insert:

Aircraft Noise Ombudsman means the Aircraft Noise Ombudsman established under section 73A.

2 Paragraph 8(1)(d)

Omit “the environment”, substitute “the human and natural environment, community amenity and residential areas”.

3 Subsection 9(2)

Omit “the environment is”, substitute “the human and natural environment, community amenity and residential areas are”.

4 Section 10

Repeal the section, substitute:

AA must consult and cooperate

(1) In the performance of its functions and the exercise of its powers, AA must, where appropriate, consult with government, commercial, industrial, consumer, aircraft noise, community and other relevant bodies and organisations (including ICAO and bodies representing the aviation industry).

(2) During consultations, AA must advise other parties of how they can make a complaint about AA’s conduct, if they so wish, including to the Aircraft Noise Ombudsman.

(3) AA must establish community consultation groups that represent communities affected by aircraft operations (whether those operations involve existing, new, or changing flight paths), including:

(a) communities directly impacted by take-off and landing of aircraft; and
(b) communities subjected to noise, including new or intensifying noise, from air traffic flyover impact.

(4) AA must consult relevant community consultation groups about all significant changes proposed to existing flight plan routes and all new flight plan routes.

(5) If detrimental impacts are identified through consultation with community consultation groups, AA must take such steps as it considers appropriate to minimise those impacts.

(6) AA must publish on its website:
   (a) details about when its consultations with community consultation groups are to occur and the nature of the proposed consultations; and
   (b) details about the results of those consultations, including details about any steps taken by AA.

10A Consulting with communities

Where AA has decided to propose changes in the management of flight paths or airspace which would have, or be likely to have, any impact on the human and natural environment, community amenity or residential areas, AA must:
   (a) arrange for consultations on the proposal under section 10; and
   (b) advise the Minister responsible for the *Environment Protection and Biodiversity Conservation Act 1999* of the consultations; and
   (c) request that Minister to appoint a Community Aviation Advocate to represent the affected parts of the community during the consultations.

10B Melbourne flightpaths

(1) As soon as practicable after the commencement of this section, AA must:
   (a) prepare a plan for the management of flight paths and air space within 5 kilometres of central Melbourne; and
(b) arrange for consultations on the plan under section 10, and
take the steps mentioned in paragraphs 10A(b) and (c) in
relation to those consultations; and
(c) make any changes to the plan that AA considers appropriate
as a result of consultation; and
(d) give effect to the resulting plan.

(2) A plan proposed under subsection (1) must:
(a) prohibit helicopters and fixed wing aircraft from flying at less
than 2,000 metres above sea level over residential areas; and
(b) contain exemptions for the following:
(i) emergency services aircraft;
(ii) defence aircraft;
(iii) aircraft flying to or from a hospital;
(iv) other aircraft that it is in the public interest to exempt.

10C Review of flight paths created or changed on or after 1 January 2012

(1) A person may request AA to review a new flight path route, or a
change to an existing flight path route, made on or after 1 January
2012 as a result of AA’s management of flight paths if:
(a) the person is directly impacted by take-off and landing of
aircraft because of the flight path; or
(b) the person is subjected to high intensity air traffic from
flyover impact because of the flight path.

(2) If requested to do so under subsection (1), AA must:
(a) review the flight path route; and
(b) arrange for consultations under section 10 for the purposes of
the review, and take the steps mentioned in paragraphs
10A(b) and (c) in relation to those consultations; and
(c) take such steps as AA considers appropriate as a result of the
review.

(3) In conducting the review, AA must consider whether the new flight
path, or the change to the existing flight path, has had, or is likely
to have, any impact on the human and natural environment,
community amenity or residential areas.
Schedule 1  Amendments

5 After paragraph 13(a)
   Insert:
       (ab) the need to minimise the impact of aircraft operations on the
            human and natural environment, community amenity and
            residential areas;

6 Paragraph 22(1)(d)
   Repeal the paragraph, substitute:
       (d) between 6 and 8 other members.

7 After subsection 22(5)
   Insert:
       (6) The Board must include an expert in environmental management
            and a representative of an aircraft noise or related community
            group.

8 After Part 5
   Insert:

Part 5A—Aircraft Noise Ombudsman

Division 1—Establishment and functions

73A Establishment
   There is to be an Aircraft Noise Ombudsman.

73B Functions of the Aircraft Noise Ombudsman
   The functions of the Aircraft Noise Ombudsman are the following:
       (a) reviewing the handling of complaints or enquiries made to
           AA, CASA or the Department of Defence about aircraft
           noise, whether on application by a complainant, at the
           Aircraft Noise Ombudsman’s own initiative or at the request
           of AA, the Department of Defence or the Minister;
       (b) reporting to AA, CASA or the Department of Defence (as the
           case requires), and the Minister (as the Aircraft Noise
Ombudsman considers appropriate), about reviews undertaken as mentioned in paragraph (a);

(c) monitoring and reporting on the effectiveness of community consultation processes about aircraft noise that are undertaken by AA, CASA or the Department of Defence;

(d) monitoring and reporting on the effectiveness of the presentation and distribution of information about aircraft noise;

(e) reviewing other matters relating to the management of aircraft noise by AA or the Department of Defence, on request by AA or the Department of Defence (as the case requires);

(f) making recommendations to the Minister, AA, CASA or the Department of Defence for improvements in the management of aircraft noise;

(g) any other functions the Minister considers appropriate.

73C General policy guidelines

In performing the Aircraft Noise Ombudsman’s functions, the Aircraft Noise Ombudsman must:

(a) perform the functions in the most convenient and effective way possible; and

(b) avoid duplicating the operations of any other agency of the Commonwealth, a State or a Territory that performs a function that wholly or partly overlaps with a function of the Aircraft Noise Ombudsman; and

(c) work cooperatively, as far as is possible, with other agencies of the Commonwealth, the States and the Territories; and

(d) comply with all other laws of the Commonwealth.

73D Flexibility and range of working methods in performance of functions

(1) The Aircraft Noise Ombudsman is not required to act in a formal manner in the performance of the Aircraft Noise Ombudsman’s functions, unless otherwise required to do so under this Act, or any other Act or legislative instrument.
(2) In the performance of the Aircraft Noise Ombudsman’s functions, the Aircraft Noise Ombudsman may:

(a) inform himself or herself on any matter in any way the Aircraft Noise Ombudsman thinks fit; and

(b) consult with anyone the Aircraft Noise Ombudsman thinks fit; and

(c) receive written or oral information or submissions.

73E Aircraft Noise Ombudsman’s powers

The Aircraft Noise Ombudsman has power to do all things necessary or convenient to be done for or in connection with the performance of the Aircraft Noise Ombudsman’s functions.

Note: The Secretary may enter into contracts and other arrangements on behalf of the Commonwealth to assist the Aircraft Noise Ombudsman in performing the Aircraft Noise Ombudsman’s functions. See section 23 of the Public Governance, Performance and Accountability Act 2013.

73F Delegation by the Aircraft Noise Ombudsman

(1) The Aircraft Noise Ombudsman may, by written instrument, delegate the functions and powers of the Aircraft Noise Ombudsman to:

(a) an SES employee, or acting SES employee, in the Department; or

(b) an APS employee who holds or performs the duties of an Executive Level 1 or 2 position, or an equivalent position, in the Department.

(2) In exercising powers or performing functions under a delegation, the delegate must comply with any written directions by the Aircraft Noise Ombudsman.

73G Directions from the Minister

(1) The Minister may, by legislative instrument, give written directions to the Aircraft Noise Ombudsman about the performance of the Aircraft Noise Ombudsman’s functions.

Note 1: Section 42 (disallowance) of the Legislation Act 2003 does not apply to the direction: see regulations made for the purposes of paragraph 44(2)(b) of that Act.
Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the direction: see regulations made for the purposes of paragraph 54(2)(b) of that Act.

(2) The direction must be of a general nature only.

(3) The Aircraft Noise Ombudsman must comply with the direction.

**73H Minister may require reports**

(1) The Minister may, in writing, direct the Aircraft Noise Ombudsman to give the Minister specified reports relating to the Aircraft Noise Ombudsman’s functions.

(2) The Aircraft Noise Ombudsman must comply with the direction.

(3) The direction, or the report (if made in writing), is not a legislative instrument.

**73I Aircraft Noise Ombudsman is an official for the purposes of the finance law**

The Aircraft Noise Ombudsman is an *official* of the Department for the purposes of the finance law (as defined for the purposes of the *Public Governance, Performance and Accountability Act 2013*).

Note: The Aircraft Noise Ombudsman’s responsibilities as an official under the *Public Governance, Performance and Accountability Act 2013* include duties in relation to exercising due care and diligence, acting in good faith and for a proper purpose, not improperly using information or position and disclosing material interests (see Division 3 of Part 2-2 of that Act).

**73J Annual report**

The regulations may prescribe additional matters to be included in the annual report prepared by the Department and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period.
Division 2—Appointment and terms and conditions of the Aircraft Noise Ombudsman

73K Appointment

(1) The Aircraft Noise Ombudsman is to be appointed by the Governor-General by written instrument.

(2) Before the Governor-General appoints a person as the Aircraft Noise Ombudsman, the Minister must be satisfied that the person:
   (a) has suitable qualifications or experience; and
   (b) is of good character.

(3) The Aircraft Noise Ombudsman holds office on a full-time basis.

(4) The Aircraft Noise Ombudsman holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The Aircraft Noise Ombudsman may be reappointed: see section 33AA of the Acts Interpretation Act 1901.

73L Terms and conditions of appointment

(1) The regulations may make provision for the following:
   (a) the appointment of the Aircraft Noise Ombudsman by the Minister;
   (b) the remuneration, and other terms and conditions of appointment, of the Aircraft Noise Ombudsman;
   (c) the appointment of a person to act as the Aircraft Noise Ombudsman in particular circumstances;
   (d) the Aircraft Noise Ombudsman’s resignation and the termination of the Aircraft Noise Ombudsman’s appointment by the Minister for reasons prescribed in the regulations;
   (e) immunity of the Aircraft Noise Ombudsman from civil proceedings.

(2) The salary and associated costs of the Aircraft Noise Ombudsman are to be funded out of money appropriated by the Parliament for the purposes of such payments.
Division 3—Persons assisting the Aircraft Noise Ombudsman

73M  Staff
The staff necessary to assist the Aircraft Noise Ombudsman are to be persons engaged under the *Public Service Act 1999* and made available for the purpose by the Secretary of the Department.

73N  Consultants
The Secretary may, on behalf of the Commonwealth, engage consultants to assist in the performance of the Aircraft Noise Ombudsman’s functions.

Division 3A—Complaints

73NA  Complaints
The regulations may make provision for the following:

(a) the circumstances in which the Aircraft Noise Ombudsman may refuse to review or investigate a complaint or any other matter;

(b) the circumstances in which the Aircraft Noise Ombudsman may transfer a complaint to another person or body, including AA, CASA or the Department of Defence.

Division 4—Research and inquiries on Aircraft Noise Ombudsman’s own initiative

73O  Research and inquiries
The Aircraft Noise Ombudsman may, on his or her own initiative, conduct research or make inquiries into the following:

(a) the effect of aircraft noise on communities;

(b) ways in which legislation, policies or practices might be improved to assist communities affected by aircraft noise.
73P Reports to the Minister

(1) The Aircraft Noise Ombudsman must give the Minister a report in relation to each quarter that:

(a) outlines the research conducted and inquiries made during the quarter; and

(b) if the Aircraft Noise Ombudsman reasonably believes that legislation, policies or practices have had, are having or are reasonably likely to have an adverse effect on communities affected by aircraft noise—outlines that fact and the reasons for the Aircraft Noise Ombudsman’s conclusion.

(2) The report must be given within 20 business days after the end of the quarter.

(3) The Aircraft Noise Ombudsman may at any time give the Minister a report in relation to research conducted or inquiries made into any legislation, policies or practices.

(4) A report given to the Minister under this section may include recommendations by the Aircraft Noise Ombudsman in relation to any matter included in the report.

73Q Minister may publish Aircraft Noise Ombudsman’s report

The Minister may publish a report, or any part of a report, given to the Minister under section 73P in any way he or she thinks fit.

73R Information and documents

The regulations may make provision for the Aircraft Noise Ombudsman to require the production of information and documents related to the Ombudsman’s functions.

73RA Limitation on powers

Nothing in this Division allows a power to be exercised to the extent that it would impair the capacity of a State to exercise its constitutional powers.
Division 5—Minister may refer matter to Aircraft Noise Ombudsman for inquiry

73S Minister may refer a matter for inquiry

(1) The Minister may refer the following matters to the Aircraft Noise Ombudsman for inquiry:
   (a) the effect of legislation, policies or practices on communities affected by aircraft noise;
   (b) ways in which legislation, policies or practices might be improved to assist communities affected by aircraft noise.

(2) In referring a matter to the Aircraft Noise Ombudsman for inquiry, the Minister may, for the purpose of ensuring that the inquiry is conducted in the manner appropriate to that inquiry, do any or all of the following:
   (a) require the Aircraft Noise Ombudsman to:
       (i) hold hearings for the purposes of the inquiry; and
       (ii) make a draft report available to the public during an inquiry; and
       (iii) make recommendations in relation to the matter;
   (b) specify a period within which the Aircraft Noise Ombudsman must submit his or her report on the inquiry to the Minister.

(3) The Aircraft Noise Ombudsman must comply with a requirement imposed by the Minister under subsection (2).

73T Notice of inquiry

As soon as practicable after the Aircraft Noise Ombudsman receives a reference to hold an inquiry, the Ombudsman must give reasonable notice in each State and Territory, by advertisement published on a website, of the intention to hold the inquiry.

73U Aircraft Noise Ombudsman must prepare a report on the inquiry

If the Minister refers a matter to the Aircraft Noise Ombudsman for inquiry, the Ombudsman must make a written report to the Minister on the inquiry, unless the Minister withdraws the reference to the Ombudsman.
73V Report of inquiry to be tabled

(1) The Minister must cause a copy of the Aircraft Noise Ombudsman’s report on an inquiry to be tabled in each House of the Parliament:
   (a) within 25 sitting days of that House after the day on which the Minister receives it; or
   (b) if the Ombudsman recommends that the tabling of the report, or part of the report, be delayed for a specified period—within 25 sitting days of that House after the end of that period.

(2) If the publication of information or an opinion in the report would be likely to adversely affect the interests of any person, the Minister must, before tabling the report, direct the Aircraft Noise Ombudsman:
   (a) to notify the person that the information or opinion is contained in the report; and
   (b) to give the person a reasonable period (not exceeding 30 days) to make representations, either orally or in writing, in relation to the information or opinion, and its publication.

(3) Before tabling the report on an inquiry, the Minister:
   (a) may delete any information or opinion from the report if:
      (i) the information or opinion would be likely to adversely affect the interests of any person; and
      (ii) the Minister reasonably believes that it is in the public interest to delete the information or opinion; and
   (b) must delete from the report any confidential information.

(4) In making a decision under subparagraph (3)(a)(ii), the Minister must take into account any representations made by the person in response to a notification under subsection (2).

(5) A direction under subsection (2) (if made in writing) is not a legislative instrument.

73W Hearings

The regulations may make provision for the following:
(a) notice of, and procedure at, hearings of an inquiry;
(b) notices to persons to provide information or documents relevant to an inquiry;
(c) summons to attending hearings;
(d) allowances to witnesses for appearing at hearings;
(e) any other matters relevant to the conduct of hearings, the production of evidence at hearings or the appearance of witnesses at hearings.

Division 6—Providing advice to the Minister

73X Minister may refer a matter for advice

(1) The Minister may refer the following matters to the Aircraft Noise Ombudsman for advice:
   (a) the effect of legislation, policies or practices on communities affected by aircraft noise;
   (b) ways in which legislation, policies or practices might be improved to assist communities affected by aircraft noise.

(2) If the Minister refers a matter to the Aircraft Noise Ombudsman for advice, the Minister may specify any or all of the following:
   (a) that the advice is to be in writing;
   (b) a period within which the advice is to be given;
   (c) any matter to which the Aircraft Noise Ombudsman is to have regard in giving the advice.

(3) The Aircraft Noise Ombudsman must comply with a requirement imposed by the Minister under subsection (2).

(4) If the Minister refers a matter to the Aircraft Noise Ombudsman for advice, the Aircraft Noise Ombudsman may also advise the Minister on any matters the Aircraft Noise Ombudsman considers relevant to the matter.

73Y Minister may publish Aircraft Noise Ombudsman’s advice

(1) The Minister may publish advice given by the Aircraft Noise Ombudsman under section 73X in any way he or she thinks fit.

(2) If the publication of information or an opinion in the advice would be likely to adversely affect the interests of any person, the
Minister must, before publishing the advice, direct the Aircraft Noise Ombudsman:

(a) to notify the person that the information or opinion is contained in the advice; and
(b) to give the person a reasonable period (not exceeding 30 days) to make representations, either orally or in writing, in relation to the information or opinion, and its publication.

(3) Before publishing the advice, the Minister:

(a) may delete any information or opinion from the advice if:
   (i) the information or opinion would be likely to adversely affect the interests of any person; and
   (ii) the Minister reasonably believes that it is in the public interest to delete the information or opinion; and
(b) must delete from the advice any confidential information.

(4) In making a decision under subparagraph (3)(a)(ii), the Minister must take into account any representations made by the person in response to a notification under subsection (2).

(5) A direction under subsection (2) (if made in writing) is not a legislative instrument.

Division 7—Miscellaneous

73Z Other matters

The regulations may make provision for the following:
(a) the powers of the Aircraft Noise Ombudsman to obtain information and documents from AA, CASA or the Department of Defence for the purpose of performing the Aircraft Noise Ombudsman’s functions;
(b) the circumstances in which information or documents given to the Aircraft Noise Ombudsman may be disclosed;
(c) the powers and functions of the Ombudsman in relation to responding to requests from persons or communities affected by aircraft noise for assistance;
(d) the review of decisions by the Aircraft Noise Ombudsman.
9 After section 74

Insert:

74A Complaints reporting

(1) In its annual report, AA must provide detailed commentary on complaints made in relation to its conduct.

(2) The commentary must cover the efficiency and effectiveness of AA’s handling of complaints.

(3) The commentary must cover the transfer of information and complaints between AA and the Aircraft Noise Ombudsman.

Environment Protection and Biodiversity Conservation Act 1999

10 After section 160

Insert:

160A Community Aviation Advocate

(1) Where the Minister receives advice under section 10A of the Air Services Act 1995 that Airservices Australia is proposing changes in the management of aircraft noise or airspace which would have, or would be likely to have, a significant impact on the human or natural environment, community amenity or residential areas, or forms this opinion through other means, the Minister must appoint a Community Aviation Advocate in relation to these changes.

(2) The role of the Community Aviation Advocate is to assist, inform and advocate on behalf of the parts of the community likely to be affected by the proposed changes in subsection (1).

(3) The Community Aviation Advocate must be independent of aviation interests.