BILLS DIGEST

Nos. 96 - 97.1995

Aircraft Noise Levy Bill 1995
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Aircraft Noise Levy Bill 1995

Date Introduced: 11 May 1995
House: House of Representatives
Portfolio: Transport
Commencement: On Royal Assent or 1 July 1995, whichever is the later.

Purpose

To impose a levy on aircraft noise at designated State and internal Territory airports.

Background

Aircraft Noise

Noise pollution, like air and water pollution, is a by-product of an industrialised society. Unlike water and air pollution, noise pollution cannot readily be given a value beyond which impacts are undesirable. This is because noise perception is a subjective, personal experience which varies widely between individuals.

The three main recognised effects of noise on people are:

- health effects such as increased blood pressure, heart rate, breathing and stress;
- direct effects on activities such as sleep disturbance and communication interference; and
- psychological effects such as disturbance, annoyance, loss of amenity.¹

While the issue of aircraft noise pollution has received increased attention in recent times, complaints about the nuisance inflicted on Australian communities by aircraft noise date from as early as 1957.² Successive governments have addressed the issue to varying degrees.

In September 1985, the House of Representatives Select Committee on Aircraft Noise (HORSCAN), tabled a report titled Aircraft Operations and the Australian Community. The Committee’s terms of reference included reporting on:
the impact of aircraft noise on the health and welfare of people, institutions and communities;

the effectiveness of existing noise reduction regulations and administrative procedures; and

the effect of aircraft emissions on people and property.

HORSCAN recommended that:

- the then Commonwealth Department of Health, in consultation with State and local governments, complete a study to determine the effects of aircraft noise on health and mortality;

- the then Commonwealth Department of Communications survey the extent of aircraft interference with television (TV) reception and investigate alleviating measures;

- compensation be paid to property owners who because of land acquisition for a new airport or redevelopment of an existing airport, suffer a reduction in value of their land not acquired for those purposes;

- the Commonwealth, in consultation with State and local governments, introduce a scheme for acquiring residences within high noise zones surrounding military and civil airports; and

- legislation establishing the Federal Airports Corporation (FAC) include consideration of environmental matters in the functioning of the FAC.5

The Federal Government's response to HORSCAN in September 1990 was that:

- the Commonwealth Department of Community Services and Health had indicated that overseas studies had not yet produced any conclusive findings on the health effects of noise;

- the costs of such a study would be substantial and, that on the available evidence, aircraft noise and health could not be considered a high public health priority;

- the Commonwealth Department of Transport and Communications had advised that there was no practical remedy for aircraft-induced TV picture flutter on VHF channels and that this was apparently accepted by the public and no further action was proposed by the Government;

- the Government would not take up the recommendation relating to compensation for reduced land value resulting from land acquisition for a new airport, due to:
  - the complexities of calculating the extent of compensation;
  - the uncertain but possibly extensive cost across the whole range of infrastructure provision; and
  - the possibility of windfall gains to those compensated;
• the Government proposed legislation giving FAC the flexibility to acquire properties at current market value for noise abatement reasons. The proposed legislation would not entitle householders to demand purchase within a specific time frame and would be limited by the funds available to FAC and the Department of Defence; and

• the Government would amend the legislation in relation to FAC and the Civil Aviation Authority (CAA) to require those organisations to take account of the environmental effects of aircraft operations.  

The Civil Aviation Act 1988 and the Federal Airports Corporations Act 1986 were subsequently amended to:

• make CAA responsible for protecting the environment from the effects of civil aircraft operation and use;

• require CAA to perform its functions (other than its regulatory functions) to ensure, as far as is practicable, that the environment is protected from the effects of civil aircraft operation and use;

• make FAC responsible for protecting the environment from the effects of civil aircraft operation and use at Federal airports; and

• require FAC to perform its functions to ensure, as far as is practicable, that the environment is protected from the effects of civil aircraft operation and use at Federal airports.

The Third Runway at Sydney Airport

In April 1988 the then Minister for Transport and Communications, Senator the Hon Gareth Evans, QC, the Premier of NSW, the Hon Nick Greiner, MP, agreed to establish a Joint Commonwealth/New South Wales (NSW) Government Task Force to consider the airport needs of the Sydney Basin. Following extensive consultation a three-pronged strategy addressing short-term, medium-term and long-term airport needs was developed.

In March 1989, as part of the medium-term strategy, the Hawke Government announced its intention to develop a third runway at Kingsford-Smith Airport, subject to the satisfactory completion of normal environmental assessment processes. Following this decision, FAC engaged Kinhill Engineers Pty Ltd to conduct an environmental impact study (EIS) on the third runway.

Kinhill’s 700 page draft EIS was completed in September 1990. It recommended the development of a third runway, citing compelling cost and economic advantages.

In 1990, Kingsford-Smith Airport was almost at capacity and total congestion was expected by 1995. The construction of an extra runway was essentially a measure to buy time and ease airport congestion for a couple of years. Pro-third runway exponents argued that tourism was Australia’s greatest foreign income earner and that if tourists were turned away because of air traffic congestion the country would certainly go into a recession. They also suggested that if the runway were not built, there would be enormous pressures on Kingsford-Smith to have its curfew lifted and operate on a 24 hour basis like other international airports.
Kinhill's report also claimed that a third runway would cut the number of Sydney households exposed to property-devaluing serious aircraft noise. The post-construction aircraft noise exposure forecast (ANEF) estimated a 50 per cent overall reduction in the number of people affected by aircraft noise, mainly in those suburbs to the east and west of the airport. This would mean that in total approximately 100,000 fewer people would be affected by aircraft noise if the third runway opened. This forecast included a further 27,000 people to the north of the airport who would be affected by aircraft noise for the first time.

These figures were questioned by the Second Airport Coalition (SAC) - a resident's group opposed to the third runway and vying for a second airport. The SAC suggested that:

- the designers of the residential noise assessment criteria used in the Kinhill EIS believed the criteria had been applied incorrectly;
- as many as 600,000 (and not 27,000) people would in fact be affected by aircraft noise for the first time (this figure was reportedly obtained from the FAC);
- an extra runway would only buy time in easing air traffic congestion if Kinhill's forecast 2 per cent increase in aviation was realised - the 2 percent figure was questioned in light of the estimated 6 percent growth in world aviation and the 9 percent growth in the Asia/Pacific region; and
- the real issue was not either a new airport at Badgery's Creek or a third runway but:
  - a new airport; or
  - a new airport and a third runway.

David Taylor, Chief Executive of the NSW Chamber of Commerce, and then spokesperson for the Kingsford-Smith Airport Task Force, a private lobby group, agreed that it was Badgery's Creek and the third runway:

When the Government makes the decision next year, two sods of dirt have to be turned at the same time - one at Kingsford-Smith to build the third runway, and one at Badgery's Creek to build that over 15 to 20 years.

In November 1991, the Government granted FAC approval to proceed with the construction of the third runway at Kingsford-Smith Airport. This decision was made on the basis that FAC would adopt a number of environmental recommendations including:

- asking CAA to prepare an official ANEF for a third runway;
- investigating ways of improving the noise insulation of new buildings;
- considering a noise insulation scheme for existing education and health care facilities and residences;
- considering the acquisition of certain noise-affected buildings and residential land;
- consideration of rezoning for non-residential use any noise-effected land acquired;
- acquiring funds based on "polluter-pays" and "user pays" principles;
• recommending any necessary legislation to allow the collection and management of such funds; and

• considering different noise charges based on whether aircraft met recognised noise emission requirements.  

When Kingsford Smith's third runway was opened on 4 November 1994, the intensified noise levels to the north and south caused a high level of public reaction. The Commonwealth Environment Protection Authority (EPA) has since conducted noise monitoring to determine the extent of noise problems inside and outside residences and schools under the current flight paths. The results indicate that both the inside and outside amenity (e.g. teaching, study, relaxing, sleeping, and normal domestic and outdoor activities) of residences and schools is greatly affected by aircraft noise.

The EPA's December 1994 Report on the Noise Impact of the Third Runway at Sydney (Kingsford-Smith) Airport recommended that:

• the Government pursue the development of Badgery's Creek Airport to a level capable of handling international jet aircraft as a matter of the highest priority;

• the 1985 Badgery's Creek EIS be revised to address noise and air and water quality so as to minimise environmental impact; and

• the combined operator/regulator role of both the FAC and CAA be examined. The maximum level of environmental protection will be afforded where the roles of operator and regulator are handled by independent agencies.

Noise Amelioration Measures at Kingsford-Smith Airport

Coinciding with the opening of the third runway in November 1994, Federal Cabinet approved a $183.4 million package over the next ten years aimed at reducing the impact of aircraft noise on residents living around Sydney Airport. The package included an extra $8.4 million for the voluntary acquisition of 112 houses, the insulation of 3,500 houses and more insulation in public buildings. In summary, the proposed noise amelioration measures are as follows:

(a) Remedial Measures

• voluntary sound insulation for existing residences in areas between the 30-40 ANEF contours (year 2010 contours) - see Appendix 1;

• voluntary sound insulation for existing schools, colleges, hospitals, churches, child care centres and health care centres in areas between the 40 ANEF and 25 ANEF (ultimate capacity) contour;

• voluntary acquisition of residences and churches in the highest noise zone (40 Australian Noise Exposure Forecast (ANEF) year 2010 contour);

• review to be conducted after three years to further assess the impact of aircraft noise arising from the level and type of operations occurring at that time and the application of remedial measures to residential properties below the 30 ANEF contour;
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• remedial measures to be financed by aviation users charges based on aircraft noise certification levels;

• a pilot study to identify most effective insulation measures for residences to proceed as soon as possible;

• establishment of broad based committee to monitor implementation of remedial measures and a disputes resolution panel to examine specific problems;

• airport noise from possible extensions to domestic terminal to be reduced by an earth mound or similar attenuation measure;

(b) Operational Noise Controls

• no take-offs to the north from the new runway;

• use of the east-west runway only when weather conditions preclude the use of the other runways for safety reasons;

• strict enforcement of airport curfew (this currently restricts aircraft movements between 11.00pm and 6.00am);

• operations to involve maximisation of take-offs in a southerly direction;

• use of standard flight paths to confine fly-overs to specified areas; and

• existing controls on times and locations of ground running operations (the operation of aircraft engines prior to clearance for take-off) to be retained;

(c) Monitoring and Community Consultation

• upgraded procedures and resources for complaint response;

• upgraded reporting of ground running operations;

• addition of four new local-area noise monitoring terminals;

• annual reporting on implementation, including reporting on aircraft operations and on the progress of remedial measures;

• annual production of an Australian Noise Exposure Index (noise exposure contours plotted for existing conditions) showing noise exposure for the previous year; and

• the Sydney Airport Environment Sub-Committee will monitor airport activities, examine issues of public concern and provide an avenue for regular reporting of airport environmental activities.

Badgery's Creek - Sydney's Second Airport

The draft EIS into a second Sydney Airport was released by the then Department of Aviation in June 1985 and in December 1985 the Federal Government announced that Badgery's Creek was the selected site.
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Initial planning for Badgery's Creek was for a general aviation 1,800 metre runway to be developed by 1995, and for the airport come fully on-stream by 2015. In May 1994 the Government announced the accelerated development of a 2,900 metre runway (in place of the 1,800 metre one) capable of handling wide-bodied jet aircraft take-offs and landings to be commissioned in 1998-99.12

In November 1994 the Social Security Minister, Hon. Peter Baldwin MP, began a push to fast-track the construction of Badgery's Creek to combat problems caused by aircraft noise in the inner city. He argued for bringing forward $120 million funding included in the forward estimates for 1996-97 and 97-98 to order to get the Badgerys Creek airport up and running within three years in order to:

- protect the curfew on Kingsford-Smith (Badgery's Creek has been designed as a curfew-free airport) by diverting jet traffic to Badgery's Creek, and

- ease Kingsford-Smith's environmental impact on people in the inner city.13

The May 1995 Federal budget contains a commitment to provide $610 million additional funding for the accelerated development of Badgery's Creek Airport (Sydney West Airport), by 1999. This means a total funding commitment of $762 million for site development and associated infrastructure. The additional funding will ensure that a second Sydney airport capable of handling all domestic services and 94 percent of flights to international destinations is operational for the 2000 Olympics.

The Federal Government has stated a commitment to:

- work with State and local government authorities to ensure that land use around Badgery’s Creek is compatible with airport development;

- fund supplementary environmental studies to develop accurate ANEFs to ensure that environmental problems associated with Kingsford Smith are not imposed upon those living near the new airport;

- reduce the aircraft noise burden on Sydney's inner city residents by allocating $260m for a noise insulation program and by bringing forward the development of the second Sydney airport.14

The Government's additional funding commitment reportedly arose from a belief that Sydney’s aviation infrastructure had suffered for too long from short-term planning and a lack of integration causing major capacity problems and placing an enormous burden upon Sydney’s inner-city residents.15

When announcing the November 1994 Kingsford-Smith noise amelioration package, the Minister for Transport, Mr Brereton, said it was the Government’s view was that the airline industry should pay for the measures and would introduce legislation to give effect to this decision in early 1995.16

This legislation gives effect to that decision.
Main Provisions

Landing Levy

Subclause 5(1) will impose a levy ("the landing levy") on all jet aircraft landings (JALs), other than those excluded by subclause 5(2), at designated airports around the country.

Subclause 5(2) provides that the landing levy will not apply to:

- Defence aircraft or aircraft commanded by Defence personnel in the course of their duties (unless the aircraft is registered in Australia by the Civil Aviation Authority)
- aircraft used in the military, customs or police services of a foreign country
- aircraft with an effected perceived noise level (EPNL - see Appendix 2) of less than 265 decibels
- emergency services landings as prescribed by the regulations
- landings for charitable purposes as prescribed by the regulations.

The Airport Levy Collection Bill 1995 outlines the criteria an airport must meet before it qualifies for declaration as a "leviable airport" (that is, an airport at which JALs attract a levy). While Sydney's Kingsford Smith Airport is the only Australian airport which currently meets the specified criteria, other airports may qualify in the future.

An airport will meet the criteria of "qualifying airport" if, at the time there is a:

- a public building such as a
  - hospital,
  - nursing home,
  - educational facility,
  - aged-care residence,
  - child-care centre, or
  - religious services building

located within a 25-unit contour of the airport (as shown on an existing ANEF - see Appendix 1); or

- a residence located within a 30-unit contour of the airport (as shown on an existing ANEF); and

- the Commonwealth has taken steps to compensate and/or reduce the impact of the aircraft noise on the occupants of those buildings or residences (i.e. has or is implementing a "noise amelioration program").

Where an airport is, or becomes, a qualifying airport, the Minister is required to publish as soon as possible, an irrevocable and non-amendable Gazette notice to that effect. This done, the Minister may then:
• declare the qualifying airport to be a leviable airport for a specified period;
• change the period for which an airport is a leviable airport; or
• revoke a declaration.

Levy Liability

The effect of Clause 7 will be to make the jet aircraft operator (JAO) liable for payment of the levy. The JAO (determined with reference to Clause 4 of the Airport Levy Collection Bill 1995) will be the person:

• holding the Air Operator’s Certificate (AOC) and operating the aircraft (regardless of whether there is any other operating authority);
• granted permission under section 27A of the Civil Aviation Act 1988 (the CA Act 1988) and operating the aircraft (regardless of whether there is any other authority for operating the aircraft);
• holding the international licence issued under the Air Navigation Regulations or operating the aircraft under an agreement with a licensee approved by the Secretary under subsection 12(1B) of the Air Navigation Act 1920 (but not a permission under section 27A of the CA Act 1988 or an AOC);
• granted permission under subsection 25(2), 25(3) or 26(1) of the CA Act 1988 (but not a permission under section 27A of the CA Act 1988 or an AOC); or
• where none of the above apply, the holder of the aircraft registration certificate (whether the aircraft was registered in Australia or a foreign country).

Amount of Landing Levy

The landing levy will not be a fixed amount applied to all JALs. The amount of landing levy applied to a given JAL will relate to a pre-determined assessment of that aircraft’s landing noise. Essentially, the louder the landing, the higher the levy.

Clause 6 provides that landing levy will be calculated in accordance with the formula:

\[ \text{levy unit} \times 2^{(\text{assessed noise} - 265)/15} \]

where the "levy unit" is an amount derived in accordance with the regulations and "assessed noise" is the number equal to the EPNL in decibels of the aircraft concerned).

The levy unit must not exceed:

• for any landings made from the date the Act commences until 30 June 1996 - $180; or
• for any landings made in a later financial year - 110% of the maximum amount applying to landings in the previous financial year (this will have the effect of increasing the levy unit ceiling by 10% every financial year).
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Clause 6 also provides that a single levy unit amount will apply to all JALs at leviable airports in a particular period, i.e. the levy unit amount will not change from landing to landing or aircraft to aircraft.

Clause 8 allows the Governor-General to make regulations for the purposes of imposing the levy and determining the applicable amount of landing levy.

**Endnotes**


Aircraft Noise Levy Bill 1995

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30 May 1995

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Figure 22.5
A.N.E.F. NOISE EXPOSURE CONTOURS FOR THE SHORT-TERM SCENARIO

Source: Vipac Engineers and Scientists Ltd 1990.
Appendix C

AUSTRALIAN NOISE EXPOSURE FORECAST (A.N.E.F.)
FORMULATION

The ANEF combines both noise level and frequency of operations in a complex formulation that is described below together with the relevant mathematical expressions (CAA 1988; Bishop et al. 1967).

Noise of evening/night-time operations of aircraft (defined as those between 7.00 p.m. and 7.00 a.m. in the ANEF system) are weighted to account for the increased sensitivity of communities to noise during periods of relaxation or sleep. The actual aircraft noise level measurement used in the ANEF formulation is the complex Effective Perceived Noise Level (EPNL) which takes into account all known annoying aspects in the temporal and frequency domain. (The EPNL unit is also used internationally for the noise certification of new aircraft.) Its calculation is complex but its principles are basic.

The three basic physical properties of noise are measured: level, frequency distribution and time variation. Specifically, the instantaneous sound pressure level in each of twenty-four one-third octave bands of the noise is gathered for each one-half second increment of time during the aircraft flyover. The following steps are then computed:

- the instantaneous one-third octave levels are converted to perceived noisiness by reference to a subjective annoyance table (NOY Table) (PNL);
- a tone correction factor is calculated to account for spectral irregularities (F);
- a duration correction factor is calculated, (D);
- the EPNL is the algebraic addition of the maximum tone-corrected perceived noise level during the aircraft movement and the duration correction. These data are measured and stored in the Integrated Noise Model data base for all certified aircraft.

The above is expressed mathematically in equation [1] as follows:

\[
\text{EPNL} = PNL + D + F
\]

where

- \(\text{EPNL}\) = Effective Perceived Noise Level, \(\text{dB}\)
- \(\text{PNL}\) = Maximum Perceived Noise Level at any instant in time
- \(D\) = \(10 \log \frac{t}{15}\) where \(t\) is the time interval in seconds during which the noise level is within 10 dB of the maximum PNL
- \(F\) = Correction for presence of discrete tones.

Noise levels of most civil passenger aircraft, military aircraft and a representative sampling of light aircraft operating in Australia, are known with a reasonable degree of accuracy. These data have been collected or checked over the years from the aircraft noise monitoring system at Sydney Airport, and from measurements of light aircraft and military aircraft noise. In addition, aircraft manufacturers in the USA and Europe provide accurate noise definitions of the existing and new aircraft. This information, together with the profiles describing each aircraft's take-off and landing operations, is stored in data arrays in the Integrated Noise Model Computer Program.
If the flight path of an aircraft is known, the average noise level at any point along and to the side of the flight path can be determined with accuracy. If the aircraft flies an operation on the same flight path Nday times in daytime hours and Nnite times in evening/night-time hours, the partial ANEF value due to that aircraft type on the particular flight path can be calculated from equation (2) to be as follows:

\[ \text{ANEF}_{ij} = \text{EPNL}_{ij} + 10 \log (N_{\text{day}} + 4 N_{\text{nite}}) - 88 \]  

where \( \text{ANEF}_{ij} \) = noise exposure due to aircraft type \( i \) on flight path \( j \)

\( \text{EPNL}_{ij} \) = noise level of aircraft type \( i \) on flight path \( j \)

\( N_{\text{day}}, N_{\text{nite}} \) = number of flights during the day and night, respectively, of aircraft type \( i \) on flight path \( j \).

It can be seen from the above formula that if there is only one aircraft flight in daytime hours, then the partial ANEF value is directly proportional to the noise level of the aircraft. Also, it is clear that the ANEF increases as the logarithm of the number of operations increases. The noise levels of typical aircraft used in Australia are shown in Figure C1.

The total ANEF at any point on the ground around an airport is composed of all individual noise exposures (summed logarithmically) produced by each aircraft type operating on each flight path over the period of one day, using equation [3], viz.:

\[ \text{ANEF} = 10 \log \sum_{i=1}^{I} \sum_{j=1}^{J} \text{antilog \left( \frac{\text{ANEF}_{ij}}{10} \right)} \]  

where \( I \) = total number of aircraft types

\( J \) = total number of flight paths

\( \text{ANEF} \) = total noise exposure forecast.

The EPNL loudness units used in the ANEF formulation are difficult to measure directly. However, data relating to another form of measurement, Sound Exposure Level (SEL), are available for most aircraft used in Australia. SEL is the sound level that, over a one-second duration, would have equivalent energy to the real event over its total duration (\( t \), seconds) and can be related to \( L_{\text{eq}} \) by equation [4]:

\[ \text{SEL} = L_{\text{eq}} + 10 \log t \]  

Both SEL and \( L_{\text{eq}} \) can be readily measured using modern sound level meters. Figure C1 shows typical noise exposure contours, represented by a noise exposure level of SEL 95 dBA for ten aircraft movements, for a range of aircraft using Sydney Airport. It can be seen from this figure that, for similar weather conditions and trip length, older generation aircraft such as a B727-Q15 and a DC9-30 have considerably broader noise exposure level contours than do newer generation aircraft of similar size such as a B737-3B2 and a A300.

The effect of weather conditions and trip length on the noise exposure contours for a B747-200 aircraft are shown in Figure C2. From this figure it can be seen that the trip length, which governs the amount of fuel carried and hence the aircraft weight at take-off, has the most significant effect on the extent of the contours. Trip length is one of the input variables required to run the Integrated Noise Model Computer Program.
Figure C.1
TYPICAL AIRCRAFT NOISE EXPOSURE CONTOURS

Notes:
1. Contours show SEL 95 dBA noise exposure level for 10 aircraft movements during average temperature conditions and no wind.
2. Trip length less than 500 nautical miles assumed for all aircraft.
3. Refer to Pilots C.2 for contours for B747-200 aircraft.
4. Aircraft landing from left, take-off to right.

Source: Vicat Engineers and Scientists Ltd 1990
TRIP LENGTH LESS THAN 500 NAUTICAL MILES

- 10 knot headwind
- 5 knot tailwind

TRIP LENGTH LESS THAN 500 NAUTICAL MILES

- Air temperature -5°C
- Air temperature +40°C

AVERAGE AIR TEMPERATURE AND NO WIND

- Trip length less than 500 nautical miles
- Trip length between 2500 and 3500 nautical miles
- Trip length greater than 4500 nautical miles

Figure C.2
NOISE EXPOSURE CONTOURS FOR B747-200 FOR VARIOUS WEATHER CONDITIONS AND TRIP LENGTHS

Notes:
1. Contours show SEL 95 dBA noise exposure for 10 aircraft movements.
2. Aircraft landing from left, take-off to right.

Source: Vipad Engineers and Scientists Ltd 1998.
Aircraft Noise Levy Collection Bill 1995

Date Introduced: 11 May 1995  
House: House of Representatives  
Portfolio: Transport  
Commencement: On the same day as the Airport Noise Levy Act 1995 which will be either Royal Assent or 1 July 1995, whichever is the later.

Purpose

To collect a levy on aircraft noise at designated airports in the States, the Northern Territory and the Australian Capital Territory.

Background

When the Government announced a package of aircraft noise amelioration measures in November 1994 it indicated that the airline industry is responsible for meeting the cost of these measures. The proposed Aircraft Noise Levy Bill 1995 "The Principal Bill" (see Bills Digest No.96) will give effect to that decision and the Aircraft Noise Levy Collection Bill 1995 ("The Collection Bill") will provide for the collection of the relevant levies.

Main Provisions

Airports and Landing Levy Liability

The Principal Bill will impose a levy on all jet aircraft landings (JALs) at designated airports with the exception of landings by or for:

- Defence aircraft or aircraft commanded by Defence personnel in the course of their duties (unless the aircraft is registered in Australia by the Civil Aviation Authority);
- aircraft used in the military, customs or police services of a foreign country;
- aircraft with an effected perceived noise level (EPNL) of less than 265 decibels; or for
- prescribed emergency services or charitable purposes.
While the Principal Bill provides for the imposition of landing levies at certain airports it does not list or define such airports. Proposed Clauses 6 and 7 of the Collection Bill addresses this matter.

Clause 6 of the Collection Bill provides that an airport is a "qualifying airport" if there is a:

• a public building such as a
  - hospital,
  - nursing home,
  - educational facility,
  - aged-care residence,
  - child-care centre, or
  - religious services building

located within a 25-unit contour of the airport (as shown on an existing Australian Noise Exposure Forecast (ANEF); or

• a residence located within a 30-unit contour of the airport (as shown on an existing ANEF); and

• the Commonwealth has taken steps to compensate and/or reduce the impact of the aircraft noise on the occupants of those buildings or residences, i.e. the Commonwealth has or is implementing a "noise amelioration program" (NAP).

Although Kingsford Smith Airport in Sydney is the only facility which currently meets these criteria, other airports may do so in the future.

Clause 6 also provides that where an airport is, or becomes, a qualifying airport, the Minister must publish in the Gazette as soon as possible, an irrevocable and non-amendable notice to that effect. Clause 7 provides that once an airport has been identified as a qualifying airport the Minister may by notice in the Gazette:

• declare that a qualifying airport is a leviable airport for a specified period ("a Clause 7 declaration");

• change the period for which an airport is a leviable airport; or

• revoke a Clause 7 declaration.

Subclause 7(3) prevents the application of subsection 33(3) of the Acts Interpretation Act 1901 to subclause 7(2). The intended effect of this provision is that although the Minister will be able to revoke a declaration or change the period for which an airport is a leviable airport, he or she will be otherwise unable to amend or vary, repeal or rescind a declaration made under clause 7.

Subclause 7(4) provides that the Minister must ensure that:
• qualifying airports are declared to be leviable airports as soon as practicable after identification as qualifying airports;

• as far as practicable, the total landing levy minus the collection cost (the "adjusted levy liability" (ALL)) for a given airport, at a given time, does not exceed the Commonwealth’s expenditure on a NAP at that airport; and

• as far as practicable, an airport’s ALL/NAP ratio is ultimately the same for each leviable airport.

Landing Levy Payments and Penalties

Clause 7 of the Principal Bill makes the jet aircraft operator (JAO), as defined in clause 4 of the Collection Bill, liable for payment of the landing levy.

Clause 8 of the Collection Bill provides that landing levies will become due for payment in accordance with the regulations. Clause 9 relates to overdue landing levies and provides that:

• levies not paid by the due date will attract a penalty on the unpaid amount calculated from the due date and will be compounded;

• penalties must not exceed 1.5% of the unpaid levy amount for each month or part of a month for which it is unpaid;

• penalties need not be calculated on a monthly basis;

• a court judgement for payment of a levy, or a levy and penalty, does not of itself cause the levy to cease being an unpaid levy; and

• penalties will be reduced where judgement debts are interest-bearing.

Subclause 10 (1) allows:

• the Secretary of the Department of Transport (the Secretary) or delegate to remit some or all of a late-payment penalty incurred under clause 9 where they are satisfied that:

- the JAO did not contribute to the payment delay and has taken reasonable steps to mitigate its cause(s);

- the JAO did contribute to the payment delay but has taken reasonable steps to mitigate its cause(s) and there are extenuating circumstances surrounding the delay; or

- there are special circumstances.

• the JAO to apply to the Administrative Appeals Tribunal for a review of a decision made under subclause 10(1).

Subclause 12 allows the Secretary, on behalf of the Commonwealth to:

• initiate court action to recover unpaid levies and penalties; and
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- delegate to a Commonwealth authority the power to bring such an action.

** Levy Overpayments **

Clause 13 provides that levy and penalty overpayments made by a JAO are to be credited against the JAO's levy or penalty liability. Amounts not credited in this way must be refunded to the JAO.

** Levy Collection **

The Explanatory Memorandum states that it is expected that, at least in the short term, Airservices Australia will collect the levies and penalties payable under clauses 10 and 12. If Airservices Australia has not yet been established, the Civil Aviation Authority will carry out this responsibility.¹

** Powers to Collect Relevant Information and Penalties for Non-Compliance **

Clause 14 allows the Secretary (or their delegate) to authorise a person ("an authorised officer") to require a person to provide in writing:

- specified information on matters relevant to the operation of the Collection Act within a reasonable time; and

- verification of that information by statutory declaration.

Clause 15 provides that:

- it is an offence of strict liability to refuse or fail to provide information that a person is required to give under the Collection Act;

- the penalty for such an offence is 60 penalty units (currently $6,000² - one penalty unit equals $100);

- the fact that information required under clause 14 might tend to incriminate the person is no excuse for not providing it;

- information provided under clause 14 is inadmissible as evidence against the person in:

- criminal proceedings other than those for an offence against this Bill,

- late-payment penalty recovery proceedings; and

- a person who knowingly provides false or misleading information required under the Collection Bill is guilty of an offence punishable by up to 12 months imprisonment.

Clause 15 does not distinguish between the power to seek information for the purpose of:

- collecting a landing levy from a potential levy payer; and

- investigating a breach of the Collection Bill.
Clause 16:

- makes a body corporate (BC) liable for prosecution for the conduct of its directors, servants and agents so far as such conduct is within the actual or apparent scope of their employment or authority;

- deems that a BC knowingly engaged in relevant conduct if it is proved:
  - its directors (or a servant or agent with such a level of work responsibility that their conduct may fairly be assumed to represent BC policy) knowingly engaged in the conduct or somehow authorised or permitted it (unless the BC can prove it exercised due diligence to prevent the conduct);

- makes an individual liable for prosecution for the conduct of servants or agents so far as such conduct is within the scope of their employment or authority;

- deems that an individual knowingly engaged in the relevant conduct if it is proved:
  - a servant or agent with such a level of work responsibility that their conduct may be assumed to represent the individual’s policy, knowingly engaged in the conduct or in some way authorised or permitted it (unless the individual can prove that he or she exercised due diligence to prevent the conduct);

Where an individual is convicted of an section 16 offence [or an offence against section 6, 7, 7A or 86(1) of the Crimes Act 1914 (which deal with accessories, attempts to commit an offence, inciting or urging the commission of an offence and conspiracy) by virtue of being accountable for the behaviour of an agent or servant, the individual will not be punishable by imprisonment.

Miscellaneous Provisions

Clause 17 provides that:

- the Minister for Finance or delegate may enter an agreement to collect or hold monies paid to a Commonwealth authority for landing levies and penalties;

- Section 22 and paragraph 64(1)(b) of the Audit Act 1901 will not apply to section 17 agreements. These parts of the Audit Act 1901 respectively:
  - specify the normal arrangements for dealing with public monies except as otherwise provided; and
  - provide that an accounting officer must not to pay public monies into his or her own private bank account.

Clause 18 allows the Secretary or their delegate to issue a certificate stating:

- when and where a particular jet landed;
- the identity of the JAO;
• the assessed noise of the aircraft; or

• a particular JAL is not exempt.

Such a certificate will be prima facie evidence of the matter it concerns.

Clauses 19, 20, and 21 respectively:

• empower Commonwealth authorities to exercise the powers delegated under the legislation and to enter into and effect section 17 agreements;

• require the preparation of an annual report which includes information on breaches; and

• enable the Governor-General to make regulations for the purposes of the Act.

Endnotes


2. ibid., page 9

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