ARCHERFIELD CHAMBER OF COMMERCE INC.

POSTAL: GPO BOX 2511 BRISBANE. QLD 4001
PRESIDENT: MR LINDSAY SNELL – [redacted]

29 November 2023

Director, Aviation White Paper Project Office
Aviation White Paper
Department of Infrastructure, Transport, Regional Development,
Communications and the Arts
GPO Box 594
CANBERRA. ACT 2601

Dear sir/madam,

Please accept this email as another submission by the AACCI to Government regarding the abject failure of privatisation and successive Governments abandonment of their responsibilities as an uninformed regulator and protector of the public interest.

I have attached several of the multitude of submissions made by our Chamber over recent years. The information is detailed and clear. None of the issues have changed so the information is still very relevant.
We need technocrats to sort out technical issues - not bureaucrats!

An example:-

I made an email enquiry to the department as the President of the Archerfield Airport Chamber of Commerce seeking an update on progress of the current Archerfield pDMP.

My email was addressed to [redacted] He was on leave and followed up with a phone call. Never anything in writing.

He told me that AAC, the leasing company of Archerfield Airport had been given an extension of several months to complete their consultation with stakeholders. He was expecting some sort of response by the end of July 2023.

Our chamber has to date only received an email acknowledgement of our submission made back in January but has not been approached or contacted by AAC. This is standard practice by AAC as we pose the uncomfortable questions they don't want to answer. Our Chamber has made submissions to all the AAC Master Plans.

[redacted] made it quite clear during our phone conversation that the Department has no intention communicating with our Chamber or other stakeholders as that is the leasing company's responsibility.

He stated the Department is not interested in any of the leasing company's breaches or the detailed information that our Chamber possesses to help the Minister make an informed decision to save the airport.

We as a Chamber have been at this for nearly twenty years with a huge amount of time and resources expended having meetings with many facets of Local, State and Federal Governments to no avail.

This disaster applies to all the ex-secondary airports across Australia without exception. Decades of aviation assets are being steadily eroded into industrial estates while the stakeholder's businesses and assets have been stolen.

Yours faithfully
Archerfield Airport Chamber of Commerce Inc.
Lindsay Snell
President

SUMMIT RESOLUTIONS

GENERAL AVIATION SUMMIT 2018

UPDATE TO THE CIVIL AVIATION ACT 1988

Monday 9th & Tuesday 10th July, Wagga Wagga NSW.

17th July 2018

Mr Michael McCormack MP
Deputy Prime Minister
Minister for Infrastructure and Transport
Leader of The Nationals
PO Box 6022, House of Representatives
Parliament House
CANBERRA ACT 2600, Australia

GENERAL AVIATION SUMMIT 2018

Deputy Prime Minister,

On behalf of the 100 delegates of the 34 general aviation associations who attended the General Aviation Summit on 9 – 10 July, I express our sincere appreciation for your attendance, address and for your willingness to listen and have regard to the views and concerns of the general aviation industry. The delegates were very pleased to hear of your willingness to adopt a bi-partisan approach to the consideration of necessary changes to the Civil Aviation Act widening its applicability to have regard to matters in addition to solely safety.

The Summit was a major success. Many have said it was a most significant gathering of aviation associations who have worked together in harmony to provide an agreed approach to regulatory reform. Industry consensus such as this must provide Government with a clear approach for the future.

I have great pleasure in providing the Summit's Findings and Recommendations as set out in the attached document.

Australia is in a unique position for our industry to benefit substantially from the huge demand for pilot and engineer training not only for our aviation industry but also for our neighbours in Asia and the world. The Australian economy and community benefits from a healthy general aviation sector and we must not let these opportunities pass because of impractical and overly burdensome regulation.

The Summit delegates were very clear. No one wishes to see our world class safety record and performance diminish. What is needed is practical, outcome-based regulation designed to foster and develop our industry while maintaining our high level of safety as demanded by the community.

The consensus on immediate changes to the Civil Aviation Act will provide direction for the regulator to move forward. A full review of the Act and subsequent regulations over the coming few years will build on this reform.

On behalf of the delegates, I urge you to accept the Findings and Recommendations and work with your Parliamentary colleagues, including the Opposition, minor parties and Independents to enact the consensus changes and allow the industry to move forward and achieve the best possible outcome for Australia.

With kind regards,

GEOFF BREUST
General Aviation Summit 2018 - Chairman
PO BOX 26, Georges Hall NSW 2198, Australia

RESOLUTIONS

GENERAL AVIATION SUMMIT 2018

The General Aviation Summit has agreed to pass two resolutions which (1) set out the principal findings of the summit with regard to the regulation of general aviation in Australia and (2) commits the industry to providing appropriate information and to make recommendations for action on reform as follows.

The General Aviation Summit concluded:

1. the General Aviation sector wants to maintain or improve Australia's aviation safety outcomes;

2. the General Aviation sector is of vital importance to Australia especially regional and rural Australia not only in economic terms but in social and community service provision terms;

3. the General Aviation sector, including the commercial elements of the sector, is overburdened with the complexity and cost flowing from the current Civil Aviation Act, Regulations and other aviation legislation;

4. the current regulatory regime is based on a prescriptive approach to rules and compliance. World best practice is based on Outcome Based regulation which Australia should implement immediately in accordance with DAS Directive 01/2015 and the Minister's CASA Statement of Expectations;

5. the cost and complexity burdens placed on the General Aviation sector are exacerbated by the actions of Airservices and airport operators, both privatised and local government owned, by further cost impositions, operational restrictions and inappropriate infrastructure development;

6. the Australian economy has the opportunity to benefit from pilot and engineering training, aircraft and component maintenance and construction services flowing from the world-wide expansion of air travel and aviation activity – especially in Asia. To achieve this, we must be able to respond effectively and be liberated from over regulation; and

7. the attitude must be to adopt best regulatory practices in parallel with embracing safety and economic benefits of new technologies in Australian aircraft and operations. This will allow Australia to achieve its potential as an aviation leader, aviation service provider and exporter.

In looking to the future, the Summit further resolved to:

1. provide a statement of value of the General Aviation sector in Australia;

2. provide a statement of opportunity for the General Aviation sector in Australia;

3. recommend the Civil Aviation Act and other Acts associated with aviation including aviation infrastructure, be reviewed and amended to ensure implementation of Outcome-Based regulation and industry facilitation during the first term of the next government;

4. in the meantime, to recommend a small number of amendments to the Civil Aviation Act to immediately refocus to an holistic and less prescriptive approach to regulation for bi-partisan passage through the parliament before the next election (see ANNEX 1);

5. recommend the establishment or redefinition of an Office of Aviation Industry in the Department of Infrastructure and Transport to engage and assist industry to further foster and develop aviation both domestically and internationally; and

6. recommend that there are a number of advances in aviation safety and amenity that can be made within the current regulations and responsibilities. The summit seeks to have an established programme to identify, prioritise and implement a programme of these changes with defined timeframes and covering CASA, ASA and Aerodrome Operators (see ANNEX 2)

ANNEX 1: CHANGES TO THE CIVIL AVIATION ACT – STATEMENT OF INTENT

Whereas the current regulatory stance adopted by CASA is out of step with contemporary regulatory practice, as adopted by The International Civil Aviation Organization through the promulgation of Annex 19, Safety Management Systems, and is contributing to the rapid decline of Australia's general aviation industry, and whereas the world is facing a growing shortage of skilled aviation personnel and Australia has the opportunity to contribute to the training of these personnel in a way that can improve safety, the Aviation Summit finds that elements of the current Civil Aviation Act are not fit for purpose.

Specifically, Section 9A, Performance of Functions, imposes upon CASA a limitation that impedes the development of performance-based regulation and the safety benefits that would otherwise be achieved. §9A (1) requires that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration and there is an urgent need to address this anomaly.

1. The Aviation Summit supports a review of the Civil Aviation Act, to include as a minimum, a repeal of Section 9A (1) and a replacement with the following language:

   9A Performance of functions

   (1) In exercising its powers and performing its functions, CASA must seek to achieve a world standard of **safety in air navigation as well as:**

   (a) maintaining an efficient and sustainable Australian aviation industry, including a viable general aviation and training sector;

   (b) creating the conditions for more people to benefit from civil aviation.

2. The Summit delegates support the need to amend, as soon as possible, the Object of the Civil Aviation Act and other aviation related Acts, without reducing the primacy of safety, to include an amended Object to support a sustainable and viable aviation industry;

   The current main objective of the Act is to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation with particular emphasis on preventing aviation accidents and incidents;

   Moving forward, the objects must include;

   i. a strong, efficient and sustainable aviation industry;
   ii. enabling more people and communities to benefit from aviation; and
   iii. emphasis on substantially reducing the administrative and financial burden of regulatory compliance.

3. The inclusion of the government's Red Tape Policy to be permanently inserted into Section 98.

ANNEX 2: PRIORITY LIST OF ACTIONABLE ITEMS (3 Pages)

MINISTER & GOVERNMENT

1. **Update the Civil Aviation Act as prescribed by the Summit in Annex 1**
2. **Change the name of CASA to the Civil Aviation Administration (CAA) to reflect its enhanced responsibilities;**
3. **Establish clear transparency of the CASA Board and require that all meeting agendas and minutes be published publicly via the CASA website;**
4. **Government to assure that CASA conforms with, and reports publicly on its compliance with DAS Directive 01/2015 (existing) and the Minister's Statement of Expectations (existing);**
5. **In recognition that the GA sector has an extensive slate of both Macro and Micro reform concerns, the government establish a joint general aviation industry task force that;**
    a. **identifies industry reform priorities;**
    b. **builds an agreed agenda of action items that assigns clear timelines and accountability for reform completion;**

AVIATION MEDICAL

6. In alignment with its indemnity for Flight Examiners, CASA to confirm inclusion/extension of Indemnity to DAMEs acting pursuant to CASA delegations for the issue of medical certificates;
7. Extend the newly announced Class 2 Basic Medical provisions to include IFR (Command and PIFR) and NVFR for private operations (which are arguably as being of no greater stress level than VFR operations), and on a minimal risk to public basis to include solo Aerobatics;
8. Introduce US FAA regulations for supplemental oxygen use as per FAA 91.211;

FLIGHT TRAINING

9. Require that CASA publish on an ongoing basis via its website a business directory of all current general aviation flight training organisations, which includes;
    a. Company Name and Full Address Information – Including airport location details
    b. Contact Telephone, Email address and website information
    c. Summary of approved services
10. In recognition of the pending closure of many smaller and local training operations, based on their apprehension of Part 141/142, delay final implementation of part 141/142 until either the regulations can be made workable for such operators, or necessary education and familiarisation is completed;
11. Notwithstanding the Part 141/142 provisions for Approval of Individual Instructors, adopt the much simpler US Federal Aviation Regulations in relation to instructor certification and operations which are, where applicable, treated as provision of educational services, not of piloting services;

METEOROLOGY

12. Undertake an immediate post implementation review of 'reduced Terminal Area Forecast services' with a view to re-establishing services in critical locations;
13. Undertake an immediate post implementation review (in conjunction with the General Aviation industry) of the 'introduction of Graphical Area Forecasts and Grid Point Wind and Temperature Forecasts;

AIRPORTS

14. The Federal Government formally acknowledge that all Australian airports including regional and secondary are 'Public National Infrastructure Assets' that are essential to the success of the aviation industry and are being operated as a 'Monopoly' that requires strict federal government management to ensure fair and equitable access by the general aviation sector;
15. The Federal Government, where they are the underlying airport owner, be responsible for ensuring;
    a. that aviation infrastructure be maintained in full, preventing runway closures and/or shortening, along with preserving taxiways, aprons and other essential aviation infrastructure;
    b. GA aircraft users and operators have access to facilities for parking, loading and passenger amenity, at rates/charges that are consistent with the community usage of the facility;
    c. aviation related airport lessees are to be provided with long-term lease conditions in excess of 25 years and be provided with guaranteed lease-renewals, so as to encourage continued investment in their aviation businesses and to satisfy bank lending conditions;
    d. all fees, charges and leases to be subject to review as required;
16. Make it a condition of all Commonwealth and State Government funding provided to any privatised or local government managed airport that an Airport Advisory Committee (AAC) made up of airport users and stakeholders be established and for the AAC to sign off on any airport funding requests before funding can be provided;

AIRCRAFT REGISTRATIONS

17. Require that CASA perform an audit of its aircraft registrations and for it to publish on an ongoing basis via its website up to date information, with respect to the;
    a. Total number of aircraft registrations
    b. Total number of airworthy registrations (aircraft with a valid/current maintenance release)
    c. Total number of non-airworthy registrations

MAINTENANCE, ENGINEERING & LAME

18. Require that CASA publish on an ongoing quarterly basis via its website a directory of all current general aviation maintenance organisations, which includes;
    a. Company Name and Full Address Information – Including airport location details
    b. Contact Telephone, Email address and website information
    c. Summary of Certificate of Approval information
19. Establish the necessary framework to facilitate the sustainable and reasonable operations of small Independent LAMEs without excessive administrative and procedural burdens more appropriate to larger scale and commercial operations;
20. Simplify and increase the efficiency of gaining aircraft engineering/maintenance qualifications for GA Aircraft;
    a. Simplification and clarification of Maintenance Training Requirements;
    b. Encouragement of apprenticeships;
    c. Recognition of prior learning (without high charges);
    d. Reintroduction of Distance Learning LAME training (possibly drawing on existing mothballed materials);
21. Undertake a post implementation review of the Cessna SIDs and impact on industry, with a view to establishing improved forward arrangements for the continuing maintenance of Cessna aircraft.

AVIATION SECURITY

22. The Minister communicate with the Hon Peter Dutton MP, Minister for Home Affairs, requesting an immediate review the ASIC Card procedures and requirements for general aviation, with a view to;
    a. the termination of the programme - failing this;
    b. extending ASIC issue to a minimum 5 years in alignment with the Marine SIC card (MSIC); and
    c. reducing the cost impost on industry;

AIRSPACE

23. Fully implement the national airspace system to reduce complexity and allow more equitable use of airspace;
24. Standardise metro class 2 airport procedures for entry, exit and clearance along with Transponder code pick-up;

In addition to the items above, it is anticipated that a General Aviation Task Force, recommended in item 6, will result in further micro reform items.

ANNEX 3: SUMMIT PARTICIPANTS

SUMMIT CHAIRMAN

Mr Geoff Breust, former Managing Director of Regional Express

INVITED SPECIAL GUESTS

1) The Mayor, City of Wagga Wagga, Councillor Greg Conkey OAM
2) Deputy Prime Minister, The Hon Michael McCormack MP
3) The Hon Anthony Albanese MP, Shadow Minister
4) Member for Mount Isa, The Hon Robert Katter MP
5) Senator for Western Australia, Senator Slade Brockman
6) Senator for Queensland, Senator Fraser Anning
7) Senator South Australia, Senator Rex Patrick, Represented by Jonathan Sharman
8) Senator South Australia, David Fawcett, Represented by Mr Micah Wright-Taylor
9) Senate RRAT Committee Secretary, Dr Jane Thomson
10) Department of Infrastructure, Mr Jim Wolfe
11) Department of Infrastructure, Ms Melissa Cashman
12) Aviation Advisor to the Deputy Prime Minister, Mr Stephen Campbell
13) Civil Aviation Safety Authority, Group Manager, Mr Rob Walker
14) Airservices Australia, Mr Stephen Angus
15) Australian Transport Safety Bureau, TBA
16) iAOPA Secretary General, Mr Craig Spence
17) University of New South Wales, Prof Ian Hampson
18) Falcon Air Safety Officer, Mr Ken Lewis

ATTENDING INDUSTRY ASSOCIATIONS

19) Aircraft Owners and Pilots Association of Australia (AOPA Australia)
20) Aircraft Electronics Association – South Pacific Region (AEA)
21) Aircraft Maintenance Repair Overhaul Business Association (AMROBA)
22) Airtourer Association (AA)
23) Antique Aeroplane Association of Australia (AAAA)
24) Australian Aircraft Manufacturers Association (AAMA)
25) Australian Beechcraft Society (ABA)
26) Australian Business Aviation Association (ABAA)
27) Australian Licensed Aircraft Engineers Association (ALAEA)
28) Australian Mooney Pilots Association (AMPA)
29) Australian Parachute Federation (APF)
30) Australian Piper Society Inc (APS)
31) Cessna 182 Association of Australia (C182AA)
32) Cessna 200 Association of Australia (C200AA)
33) Cirrus Owner Pilots Association of Australia (COPA)
34) Colour Vision Deficient Pilots Association (CVDPA)
35) Experimental Light Aircraft Association of Australia (ELAAA)
36) Gliding Federation of Australia (GFA)
37) Hang Gliding Federation of Australia (HGFA)
38) International Comanche Society – Australia (ICSA)
39) Lancair Owner Builder Organisation (LOBO)
40) Recreational Aviation Australia Limited (RAAUS)
41) Regional Airports User Action Group (RAUAG)
42) Sport Aircraft Association of Australia (SAAA)
43) Seaplane Pilots Association of Australia (SPAA)
44) Australian Aero Clubs Alliance (AACA)
45) Your Central Coast Airport Association (YCCA)
46) AVPLAN-EFB
47) *Rotorcraft Asia Pacific– Observer Only***
48) *Angel Flight Australia (AFA) – Observer Only***
49) *Royal Federation of Aero Clubs (RFAC) – Observer Only***
50) *Australian Women Pilots Association (AWPA) – Observer Only***
51) *Australian Warbirds Association Limited (AWAL) – Observer Only***
52) *Regional Aviation Association of Australia (RAAA) – Observer Only**
53) *GARMIN Australia – Observer Only***
54) *Hawker Pacific – Observer Only***
55) *Thomas Global Systems – Observer Only***

IN THE ADMINISTRATIVE APPEALS TRIBUNAL
GENERAL ADMINISTRATIVE DIVISION
BRISBANE REGISTRY

Number: No 2012/3556.

BETWEEN: **ARCHERFIELD AIRPORT CHAMBER OF COMMERCE INCORPORATED**

Applicant

AND: **THE FEDERAL MINISTER FOR INFRASTRUCTURE AND TRANSPORT**

First Respondent

AND: **ARCHERFIELD AIRPORT CORPORATION PTY LTD**

Second Respondent

STATEMENT OF PETER FREDRICK MORRIS

I, Peter Frederick Morris of [redacted]

1. Attach as Attachment "A" is a statutory declaration by me made on the 9th day of December 2009 in relation to the underlying interests of the Scouts in relation to ground leases on Archerfield Airport. I confirm the contents of that statutory declaration remain true and correct.

2. Business and Property Representatives within the Queensland Regional Office of the Department of Aviation held delegations under section 15 of the Airports (Business Concessions) Act 1959 ("the Act") made by me as Minister to negotiate, issue, renew and terminate property leases on Commonwealth airports in the Queensland region, in accordance with instruments of delegation made under the Act.

3. I had the power pursuant to section 6 of the Act to grant leases and licences in respect of land within an airport and on such terms and conditions as I saw fit and to exercise any power or remedy of the Commonwealth in respect of any such lease or licence.

4. I was aware that the leasing term in section 11(1) (a) (ii) of the Act of less than 21 years which applied to ground leases at Commonwealth airports was inadequate and proved problematic because intending lessees could not afford to amortise the considerable capital cost of a leasehold improvement over such a short term. In other words, it did not

make financial sense and therefore intending lessees had difficulties to be able to obtain finance.

5. Ground leases were not to be confined to a single term and despite not having options to renew, would always be renewed on the same terms and conditions providing the lessee was up to date with lease payments. Delegates were acting under my instructions and my full delegation in representing to lessees or intending lessees (including the Scouts and Sailco Pty Ltd and others) that their leases would always be renewed. In making the representations to Sailco Pty Ltd and the Scouts Mr Munro and Mr Woodrow and other officers were duly acting within my authority for each of them to exercise the powers granted to me pursuant to section 6 of the Act to guarantee the lease renewal, provided Sailco Pty Ltd or the Scouts were substantially in compliance of their respective leases, that is, paid their rent.

6. This meant, continuous renewal of the lease, for a new term of the same length as the original term and on the same terms and conditions as the original lease.

7. The circumstances referred to above applied generally to all business and property officers within the Department of Aviation and for all non–terminal ground leases at Commonwealth airports.

8. In my second reading speech of the Federal Airports Corporation Bill of 1985 in the House of Representatives of the Federal Parliament of 13th November 1985 I stated in relation to the Federal Airports Corporation (a copy of Hansard is attached as attachment "B") I said:

> "*A general power of direction will also be utilised at the inception of the Corporation to enable the Minister to convey to the Chairman and members the Government's requirements on a variety of issues which will not be subject to recovery.*" and
>
> "*Provision is made for it to be able to levy charges for the use of its airports, to lease property on airports and to let business concessions. Arrangements existing at the time of transfer by way of lease or contract will, of course, transfer to the Corporation and will continue to bind the Corporation.*"
>
> "Arrangements" included any made by me pursuant to section 6 of the Act or as delegated pursuant to instruments of delegation including such representations as had been made by the department or myself personally to intending and existing lessees as to the ongoing renewal of their leases prior to hand over to the FAC . This included the Scouts, Sailco Pty Ltd and other lessees subject to Commonwealth leases on Federal Airports regulated by the act and the FAC Act.

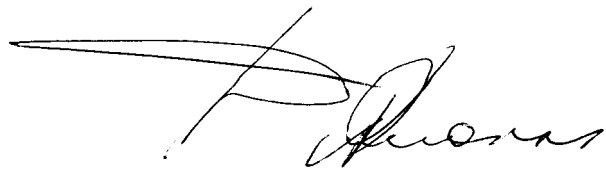
9. It was my direction that all rights, including any right existing in the leases granted under the Act together with the right to renewal of the leases, be transferred and become an obligation to the FAC pursuant to section 71(1), (2) and (3) of the Federal Airports Corporation Act 1986 (FAC Act) and that the Federal Airports Corporation ("FAC") must renew the leases, but substituting the FAC for the Department of Aviation, and that these be continuing obligations of the FAC.

10. Both during my term at Minister of Aviation and afterwards I was aware of a perennial national problem that was eroding and damaging aviation infrastructure, occurring both to federal and state airport infrastructure. Land developers were purchasing cheap land under the flight paths or at the ends of runways and then implementing well-funded and targeted lobbying campaigns to effect the closure of those runways, or portions of an airport, or the entire airport so as to then increase the values of the land they had purchased and to make super-profits from their activities. This has resulted in the closures of airports or aerodromes and runways or shortened runways and damaged the asset of the airport and utility of such airports. This has occurred to large airports, small regional airports and regional airports particularly when control has been handed to local councils or private entities.

11. During my period as Federal Minister for Aviation, the Department of Finance was pressing the government to privatise the airports. It was the view of cabinet at the time that Commonwealth Airports were a monopoly and that a monopoly was best run by Government as a Public monopoly, that is, transparent and publically accountable as opposed to private enterprise that had lack of transparency or any public accountability. The Department of Aviation warned of the consequences of privatisation including that the airport companies would prioritise to profit at the expense of the airport asset and would not be able to be controlled adequately by the Commonwealth but the Department of Finance had the view it could be controlled with legislation and the Hawke government concluded that it could not.

12. Some fifteen years after privatisation we are seeing that these earlier warnings of the department were right. Privatisation has allowed the monopoly position of the Commonwealth Airports to fall into private hands, and for the land developers to bring their lobbying activities from adjacent airport land onto airport land itself.

13. Privatised airports are not meeting the true requirements for users, additional airports are not being built and political lobbying to achieve financial gain is rife.



SWORN by Peter Frederick Morris on the 30th Day of March 2013, at Newcastle in the State of New South Wales

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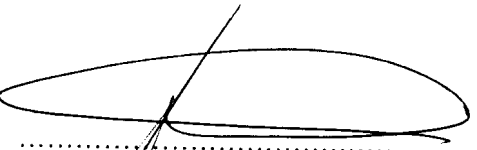
Deponent

In the presence of:



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A ~~Justice of the Peace~~/Solicitor
Judith Olsen

IN THE ADMINISTRATIVE APPEALS TRIBUNAL

GENERAL ADMINISTRATIVE DIVISION

BRISBANE REGISTRY

Number: No 2012/3556

BETWEEN: **ARCHERFIELD AIRPORT CHAMBER OF COMMERCE INCORPORATED**

Applicant

AND: **THE FEDERAL MINISTER FOR INFRASTRUCTURE AND TRANSPORT**

First Respondent

AND: **ARCHERFIELD AIRPORT CORPORATION PTY LTD**

Second Respondent

Attachments A and B to the Statement of Peter Fredrick Morris

"A" Statutory Declaration of Peter Fredrick Morris dated 9th December 2009

"B" 13th November 1985 second reading speech of the Federal Airports Corporation Bill of 1985

Peter Fredrick Morris

In the presence of:

~~A Justice of the Peace~~/Solicitor

Judith Olsen

Statutory Declaration

"I, (Full Name) Peter Frederick Morris

of (Address) [redacted] Post Code: 2290

(Occupation) Retired in the State of New South Wales, do solemnly

and sincerely declare that:

1) I was:

   a) A member of the Australian Parliament, House of Representatives from 1972 until 1998 for the electorate of Shortland (New South Wales).

   b) The Minister for Transport of the Federal Government from 11th March 1983 until 24th July 1987.

   c) The Minister for Aviation of the Federal Government from 13th December 1984 until 24th July 1987.

   d) The Minister for Resources of the Federal Government from 24th July 1987 until 19th January 1988.

   e) The Minister for Housing and Aged Care of the Federal Government from 19th January 1988 until 15th February 1988

   f) The Minister for Transport and Communications Support of the Federal Government from 15th February 1988 until 2nd September 1988.

   g) The Minister for Industrial Relations of the Federal Government from 2nd September 1988 until 4th April 1990.

2) The Commonwealth Department of Aviation (also known as Department of Civil Aviation and Department of Transport & Communications – Aviation Division) ("the departments" and "the department") and the formation and oversight of the Federal Airports Corporation were within my ministerial portfolios or responsibilities ("the ministerial responsibilities").

3) The granting of Commonwealth leases and related arrangements on federal airports was within the legislative framework of the ministerial responsibilities.

4) During the period I was the Federal Minister for Aviation, Manfred Cross, the Federal member for the electorate of Brisbane at the time, sought my assistance on behalf of the Queensland Branch of the Scout Association of Australia ("the Scouts") which was endeavouring to secure a lease of land on a non-commercial basis at Archerfield Airport on which to locate their proposed Youth Aviation Activities Centre.

5) I needed to determine if the Scouts met the necessary aviation requirements for a grant of a land upon Archerfield Airport and to consider if any concessional arrangements were warranted. I formed the view that the community based activities proposed to be conducted at the proposed Youth Aviation Activities Centre met the aviation criteria and would lead to increased numbers of competent young people being attracted to a career in aviation and that this would be of national benefit.

6) Accordingly I instructed the department to examine ways land could be provided to the Scouts that met the Scouts financial and other criteria and to implement the solution.

7) After the department had indentified a suitable site that met the Scouts requirements Manfred Cross sought my further assistance and expressed concern to me that the lease period being proposed by the department was too short given the amount of investment the Scouts would be incurring.

8) I was of the view that the lease granted to the Scouts could be renewed at the expiration of each term of the lease provided the Scouts met the obligations of the lease (e.g. made the lease payments). It was certainly not my intention that the Scouts leases on Archerfield Airport would be limited to a single term. The lease for each new term was to be on the same terms and conditions as the original lease. I advised Manfred Cross of these matters and re-assured him that renewal of the Scouts leases would occur and would not be a concern.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the ***Oaths Act, 1900***.

Declared at Charlestown, this 9th day of December 2009

Before me:

Stephanie Herbert
(Signature of JP)

STEPHANIE HERBERT
(Print Full Name of JP)

129270
(NSW Registration Number)

Declarant (Signature)
(This must only be signed in the presence of the JP)

Penalties for False Statutory Declarations
The ***Oaths Amendment Act 1996*** provides that if a Statutory Declaration is made to gain material benefit and the offence is dealt with by indictment the penalty is up to 7 years imprisonment. If dealt with summarily then the penalty is up to 2 years imprisonment and/or a fine of 100 penalty units ($11,000). If the offence is swearing a false declaration that does not involve material benefit, the penalty is up to 12 months imprisonment and/or a fine of 50 penalty units ($5,500).

Title: FEDERAL AIRPORTS CORPORATION BILL 1985
Second Reading

Database: House Hansard

Note: Where available, the PDF/Word icon below is provided to view the complete and fully formatted document

Previous Fragment | Next Fragment

- Hansard
  - Start of Business
  - ADJOURNMENT OF THE HOUSE
  - INTERSTATE ROAD TRANSPORT BILL 1985
  - INTERSTATE ROAD TRANSPORT CHARGE BILL 1985
  - HOME AND COMMUNITY CARE BILL 1985 [COGNATE BILL: HOME AND COMMUNITY CARE (MISCELLANEOUS AMENDMENTS) BILL 1985]
  - HOME AND COMMUNITY CARE BILL 1985
  - QUESTIONS WITHOUT NOTICE
  - AUSTRALIAN AUDIT OFFICE
  - ADMINISTRATIVE REVIEW COUNCIL
  - AUSTRALIAN CONCILIATION AND ARBITRATION COMMISSION
  - AUSTRALIAN SCIENCE AND TECHNOLOGY COUNCIL
  - CURRICULUM DEVELOPMENT COUNCIL
  - AUSTRALIA'S POPULATION TRENDS AND PROSPECTS
  - PAPUA NEW GUINEA SUPERANNUATION SCHEME
  - DEPARTMENT OF COMMUNITY SERVICES
  - INDUSTRIES ASSISTANCE COMMISSION
  - STEEL INDUSTRY AUTHORITY
  - DEPARTMENT OF TERRITORIES
  - PERSONAL EXPLANATIONS
  - NATIONAL INQUIRY INTO LOCAL GOVERNMENT FINANCE
  - PETITIONS

Mr PETER MORRIS (Minister for Transport and Minister for Aviation)(4.53) —I move:

That the Bill be now read a second time.

The purpose of this Bill is to establish the Federal Airports Corporation. For many years the Commonwealth-owned airports have been administered by a department of state-most recently the Department of Aviation. When the Government came to office in 1983 it had as part of its platform a policy for improved administration of major airports. We believed that placing this responsibility with a largely independent statutory authority would offer significant advantages to the travelling public, taxpayers, the aviation industry and airport administrators. Subsequent analysis has clearly confirmed that view.

I hasten to say that this view is not a reflection upon the Department of Aviation and its predecessors, but a recognition that the commercial operation of airports would be better managed by a Commonwealth business enterprise. Departments of state are of necessity bound by the Government processes which inhibit commercial flexibility and responsiveness. The aviation industry has been critical of this fact and of the inability of the current administrative processes to make changes in a timely manner to meet the requirements of a dynamic market. Additionally, governments in the past have unduly influenced the priorities for aviation infrastructure development for reasons unrelated to economics or efficiency. Indeed many of the decisions taken in the past have inhibited economy and efficiency in the industry.

This legislation will go a long way towards rectifying these problems and will enable the Corporation to act more readily to meet the changing needs of the travelling public and the aviation industry. The Federal Airports Corporation is an important part of the Government's overall strategy to improve the efficiency of the aviation industry and the levels of services to the consumer. This strategy includes the two reviews which have already been undertaken, that is, the Bosch Inquiry into Aviation Cost Recovery and the Butcher-Scully Review of International Air Freight. This Government has made substantial changes to Trans Australia Airlines and Qantas Airways Ltd to allow them to operate more commercially. Consequently both have achieved record profits in the past year. We have been steadily improving departmental efficiency and have moved to separate airport and airways charges so as to promote further efficiency in the aviation industry. Honourable members will be aware that we currently have a review under way of the Opposition's 1981 two-airline agreement.

In framing the legislation the Government has had to face the task of balancing the need for autonomy and entrepreneurial management with the need for public accountability to maximise public benefit. This approach fits in with the Government's policy of public enterprise-efficiency, consumer responsiveness and successful management. I believe that we have achieved that balance.

While the Corporation will be the sole provider of airport facilities in most areas where it will operate, it will provide an important part of the infrastructure for a competitive aviation industry. Within that context it will in all of its activities be subject to close scrutiny by aviation users and the aviation industry. This scrutiny will be enhanced through requirements in the legislation for consultation, disclosure of results and for the publication of indicators which year by year will show the performance of the Corporation across the range of its

activities and on an airport by airport basis.

The Government has set objectives for the Corporation covering social, financial, management and efficiency aspects. The Corporation will be required to take these objectives into account in its planning and operations. Additionally, the Corporation will be required to put forward to the Minister for Aviation each year a three-year forward program including its budget for the following year and details of its corporate plans. These requirements will be exercised at a strategic level, leaving the Corporation free in its day to day management and exercise of its commercial judgment.

To enable the Corporation to operate as autonomously as possible, it will be freed from the requirements of staffing under Public Service conditions, the requirement that it utilise the Department of Housing and Construction for its capital works-although it will be expected to provide the opportunity for that Department to compete for such work on a commercial basis-and the need for its day to day land dealings to be administered through the Department of Local Government and Administrative Services.

This legislation will provide a framework for the operation of airports more efficiently, more commercially and in a manner in which the Corporation's performance will be able to be judged by its owners, the people of Australia. Given the potential for greater efficiency resulting from setting up the Corporation, the Government will require it, and the Department of Aviation, to ensure that there is no net increase in staff over the two organisations at the time of the establishment of the Corporation. The rights and interests of employees transferring from the Department of Aviation to the Corporation will be protected. To ensure that their employment is not jeopardised, the Government will require as a matter of policy that the Corporation offer positions to all staff whose functions are transferred. While the Corporation will have power to set conditions of employment for its staff, it will also be required to provide, at the time of the transfer, offers of conditions of employment to transferring staff at least equivalent to those which they currently enjoy in the Australian Public Service.

I turn now to the more significant detail of the legislation. The functions prescribed for the Corporation will enable it to own, develop and operate its airports in an efficient and cost-effective way. It will, however, have overriding requirements to operate its airports safely and in a manner which accords with the public interest. The Department of Aviation will retain responsibility for the setting of safety and security standards for airports. The Corporation will be bound to abide by those standards. The Department will also retain responsibility for overall national airport planning issues. The legislation makes it clear that the Department of Aviation, through the existing integrated air traffic control system, will retain responsibility for the safe operation of aircraft.

The Corporation will be constituted in much the same way as other Commonwealth transport business undertakings with seven members including a chairperson and a deputy chairperson appointed for periods not exceeding five years. The usual provisions for such matters as remuneration, leave of absence, termination of appointment and disclosure of interests will apply.

The legislation provides for the specification of certain airports to be the responsibility of the Corporation, with ministerial approval being required for the Corporation to accept responsibility for others or for the Corporation to close an airport. The Corporation will, at the outset, take responsibility for all State capital city airports including the general aviation airports and will also be responsible for Coolangatta and Launceston airports. Although there has been some public debate about the inclusion of the general aviation airports in the Corporation, it is the Government's considered view that to exclude them would deny those airports the expertise and flexibility of management which will reside in the Corporation.

This is of particular significance in Sydney where the operation of Bankstown is a matter of concern and sensitivity to the people in nearby areas. There is no question that Sydney will be the city in which the new Corporation will face its major challenges and will have its major responsibilities even before considering a second Sydney airport. The Government has therefore decided that the head office of the Corporation should be located in Sydney.

An important aspect of the legislation is the requirement that the Corporation provide the Minister annually with an up-dated corporate plan including its budget and financial targets for the forthcoming year. It is largely through this mechanism and through its reporting procedures, including its annual report, that the Corporation will be kept aware of government requirements. Similarly, the responsible Minister will be able at the strategic level to monitor the Corporation. The successful use of this mechanism will be the major factor in enabling the Corporation to be freed from ministerial involvement in day to day management issues.

The legislation provides for the capital structure for the Corporation to be determined ministerially before the Corporation takes over its airports. The appropriate gearing ratio obviously depends on such matters as the value of assets being vested in the Corporation, its future investment program, levels of working capital required and the level of financial flexibility necessary for proper management. I will be consulting with my colleague the Minister for Finance (Senator Walsh) before determining an initial capital structure for the Corporation. It will also be useful to have the views of the Corporation's board on this issue before a particular commencing debt-equity ratio is fixed.

It must be recognised that airport operations are highly capital intensive, requiring long term investment planning decisions. In setting the capital structure for the Corporation, we will therefore need to give particular attention to the balance to be struck between the long

term viability and needs for future investment of the Corporation, and the reasonable expectation of the Government for a proper return on the substantial public investment in airports. Provision is also made for a specific power of direction, which in particular circumstances would incur reimbursement where such a direction results in financial detriment to the Corporation. A general power of direction will also be utilised at the inception of the Corporation to enable the Minister to convey to the Chairman and members the Government's requirements on a variety of issues which will not be subject to recovery. Included amongst these will be, for example, the payment of ex gratia payments to local government in lieu of rates and the requirement that the Corporation offer employment to Department of Aviation employees whose functions transfer to the Corporation.

The Government has decided that the Corporation should not be subject to Commonwealth, State and local government taxes. In this respect the Corporation will be in a similar position to other public transport enterprises. If, however, the Corporation engages in activities in competition with private enterprise it will be required to do so through a subsidiary and thereby in respect of those activities be liable to taxation. This decision will continue the existing arrangements for Commonwealth airports and will ensure that taxation does not impose a new and substantial cost on the users of airports.

The Corporation will be required to operate in a manner which will enable it to produce a reasonable rate of return upon the assets which it employs. Provision is made for it to be able to levy charges for the use of its airports, to lease property on airports and to let business concessions. Arrangements existing at the time of transfer by way of lease or contract will, of course, transfer to the Corporation and will continue to bind the Corporation.

Mr Deputy Speaker, the establishment of the Corporation is a significant step forward in ensuring that the provision and operation of costly airport infrastructure is based on efficiency and investment undertaken only when there is financial and economic justification. In moving to establish the Federal Airports Corporation to operate our airports we are bringing Australia into line with general practice internationally. For the first time in Australia the financial performance of airports will be measured and results made available to airport users. One of the objectives set by the Government is that the Corporation be a good neighbour to the communities it serves. Within this responsibility the Corporation will be responsive to the needs of the travelling public and to those living in close proximity to airports.

Mr Deputy Speaker, I believe that this Bill represents a major step forward in aviation in Australia. It will assist the airport user. It will provide the basis for rational development and operation of airports. And it will reduce the call on the taxpayer for airport infrastructure costs. I commend the Federal Airports Corporation Bill to the House.

Debate (on motion by Mr Beale) adjourned.

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Report of the Expert Panel on Aviation Skills & Training

June 2018

Contents

Summary

Australia is experiencing a severe shortage of aviation personnel and the situation is growing worse. The current shortage of qualified pilots and aircraft maintenance engineers is a global problem and a major issue for Australia's aviation system.

Urgent action is required if the country is to avoid major disruptions.

This is not a future threat, it is a significant *present* challenge that is currently disrupting the industry, and actions to address it need to include immediate mitigations supported by a longer-term sustainable strategy which involves many stakeholders.

Introduction

Aviation is a cyclical industry and growth has traditionally been closely related to global economic conditions. For years surpluses and shortages of qualified personnel have been a characteristic of the industry as passenger demand has fluctuated in a cyclical pattern, reflecting developments in the world economy. In the past the tendency would have been to regard the current shortage of personnel as part of a familiar industry cycle. The next two decades however look to be a fundamentally different environment for global aviation and the outlook is for growth to occur at unprecedented levels at a time when the Australian industry is not well prepared.

A different approach to the training of future generations of aviation professionals is required and a start must be made now.

The size of the challenge is enormous. The International Air Transport Association (IATA) has forecast that current annual passenger numbers will double to reach 7 billion by 2036. In that same period Boeing has predicted that global demand for additional aviation technicians will exceed 648,000 (256,000 will be required in the Asia Pacific) and over 637,000 additional pilots will be required (253,000 will be required in the Asia Pacific).

As an advanced aviation nation Australia is potentially well-placed to be a major player in this growth, however, as this review points out, there are issues within the aviation training and regulatory systems which need fixing.

Solutions are available to resolve the many issues which are involved however a collaborative and cohesive set of short and longer-term actions is required by both industry and government to ensure the domestic aviation industry continues to provide safe, reliable and sustainable air services to Australians, particularly regional Australians. The task then is for Australia to fully grasp the substantial growth opportunity of providing larger scale training for aviation professionals from the burgeoning industry in the Asia Pacific and beyond.

In late 2017 industry stakeholders determined there would be value in establishing an industry panel to recommend strategies to respond to concerns about shortages of pilots and maintenance engineers. An Expert Panel on Aviation Skills and Training (the Panel) was formed to undertake a multi-faceted review to identify strategies to support future training and retention of aviation professionals in Australia, and to examine what steps could be taken to further develop Australia's position as a leading exporter of aviation training. The Department of Infrastructure, Regional Development and Cities provided the secretariat for the review.

The Panel's Terms of Reference and Membership is at Appendices 1 and 2.

The Panel has reviewed the alignment of industry needs with how those requirements are currently being supplied and has examined interrelated issues including regulatory requirements, current training processes, barriers to entry to the industry, migration issues, and input from various stakeholders.

This review represents a high-level examination of the key issues which the Panel believes are contributing to the shortage of qualified pilots and maintenance engineers in Australia. Due to limitations on the time Panel members could make available and the relatively short

duration of the review it is not designed to be an exhaustive report. In some areas more detailed work is required.

The principal issues which have led to the current shortage are well identified and the Panel believes that the recommendations in this report should provide the impetus for urgent action.

1. Challenges for Australia of rapid growth in global aviation

Aviation in Australia is a highly-regulated industry. Within that regulatory framework the skills, knowledge and competency that has been developed over many years has underpinned the safety record of the industry in Australia. That reputation is well-regarded globally and Australian aviation expertise is increasingly sought after particularly in the rapidly growing markets of the Asia-Pacific region.

It is clear however that in the face of unprecedented global demand for aviation professionals, Australia does not have an aviation training system capable of meeting the requirements of the industry now, or in the years ahead.

Our training system suffers from a lack of strong policy direction and coordination. It needs to be overhauled to ensure that Australia is able to continue to provide the high standard of aviation safety and services that Australians expect, and for the country to take advantage of the growing demand for pilots and aircraft engineers in the Asia Pacific.

There are many issues which contribute to the current situation.

The aviation training and skills sector is complex and is affected by an interplay of a range of issues which include:

- The nature and extent of a long-running regulatory reform program;
- The continuing evolution and delivery of Aviation and Aeroskills Training Packages;
- Changes in the industry, particularly those impacting on the economic viability of parts of the General Aviation sector;
- The level and availability of student loans and the visa and eligibility requirements for temporary migration of skilled overseas personnel.

For training providers these issues and the constant change that accompany them creating ongoing administrative burdens and compliance costs which impact on their financial viability.

The Panel has also noted that changes to areas of government policy such as to education or immigration have often resulted in unintended but negative consequences for the aviation industry and some examples are included in this review.

The highly competitive nature of the aviation industry means that aviation businesses are operating to much more rigorous commercial demands than ever before. In this context the costs of training, retention and future workforce planning has become an increasing challenge in a dynamic aviation market. Efforts by industry to find longer-term and sustainable solutions that support the expansion of the Australian aviation sector are ongoing. However, the Panel believes that more needs to be done both by industry and government to develop closer collaborative mechanisms to better match the changing demand for skilled professionals with relevant training and retention programs.

As worldwide aviation activity continues to grow, particularly in the Asia-Pacific region, the concern is that internationally based airlines will increasingly look to Australia as a source of highly qualified and experienced airline pilots, flight instructors and licenced maintenance engineers which will further exacerbate the present shortages of aviation professionals in Australia. These personnel cannot be replaced in the short term. Replacement training programs are measured in several years, not months, and years of 'hands on' experience is required to meet the competency levels needed by the industry.

The long-term sustainability of a safe and efficient Australian aviation industry will require a range of measures to be put in place to support ongoing high-quality training and the retention of a sufficient pool of aviation professionals to meet the needs of the aviation industry.

2. Defining the 'shortage' of skills

The Panel noted recent media commentary about the 'shortage' of pilots and licenced engineers in Australia and the impact this was having on Australian airline operations.

As a starting point the Panel was of the view that there was a need to better describe the actual 'shortage' of skills to enable it to better target its recommendations.

In terms of pilots, the current shortage refers to insufficient numbers of pilots with the necessary skills, experience and aptitude to fly and command aircraft operated by Australian airlines. Australia's major airlines are currently expanding operations and have a need for additional pilots to support these plans. The current pool of suitably qualified and experienced pilots is inadequate to meet the current levels of demand, with experienced Australian pilots being recruited by major international airlines to support the global expansion of air services. Without action the gap between demand and supply is likely to grow, and grow quickly.

The Panel also noted recent statements in the media which referred to there not being a shortage of pilots in Australia. The Panel is of the view however that the data referred to in this reporting is based on the number of pilots holding a commercial pilots licence and not on the availability of skilled and experienced pilots able to fly larger multi-engine aircraft, and in particular, to become pilots in command.

Australia's current training system tends to lead to a significant gap in experience and skills between pilots holding a commercial pilots licence, and what is required to fulfil the actual requirements and needs of Australia's airlines. A decline in the availability and retention of experienced flight instructors is another significant factor influencing the availability of pilots and maintenance engineers.

In terms of engineers, the situation is clearer. There is a serious shortage of licensed engineers available to oversee the maintenance of aircraft to the required regulatory standards. The licenced engineer shortage is further exacerbated by the age profile of this group who are generally in their mid to late 50's. This situation is even more pronounced in the General Aviation sector than in larger airline operations.

3. International Experience

Similar challenges are being faced by airlines worldwide and there are lessons for Australia.

The international industry experienced a difficult period from 2002 to 2012 due to the effects and the aftermath of the 9/11 terrorist attacks and the international recession which impacted on passenger demand. The profitability of many airlines was under pressure and pilot hiring freezes were implemented.

Since that time the situation has changed dramatically with a steady improvement in the world economy, growth in passenger numbers, the continuing emergence of low cost airlines and the introduction of new aircraft technology (B787 and A350) capable of providing long haul non-stop city to city connections.

There have been issues at the entry and exit levels of the industry. The 'boom bust' cycle of this period has dissuaded potential new entrants to aviation who have sought alternate careers. During the last few years the industry in the US, Europe, Canada, Australia and New Zealand has also experienced a high level of retirements at a time of strong global growth.

Experienced pilots are now in short supply. The days of a one-company flying career are long gone. Pilots are now changing companies an average of seven times during their careers and have now become 'global employees'. Airlines are experiencing cost pressures as pilots can now command higher salaries and improved conditions. This is now a worldwide issue. For example, experienced pilots are being recruited into Chinese carriers and are reportedly being paid over US $300K tax free.

The industry has recognised the importance of this issue. IATA is undertaking priority work to identify training capacity, regulatory requirements, career pathways, pilot aptitude testing and partnerships to better connect training organisations with airlines.

New ways of training aviation professionals to meet the global growth challenge are under active discussion. One issue which has been canvassed in this review is how to address the current difficult career pathway for pilots. This problem has been recognised internationally and the establishment of training support systems built around not for profit organisations which provide financial and career assistance are being suggested. Australia should monitor these developments closely.

Airlines such as Emirates have been forced to 'park' a significant number of their aircraft mainly because of the shortage of pilots and late last year announced a US $135M initiative to train up to 600 pilots per annum.

Despite these efforts there is a widespread view that the industry will be playing catch up for years and that further disruption to air services is inevitable.

4. Issues impacting the training and retention of aviation professionals in Australia

4.1 General Aviation and the traditional pool of resources

The Panel noted that Australia's commercial aviation industry had traditionally drawn new trainee pilots and engineers from the General Aviation industry into the regional sector and the domestic airlines had attracted pilots from the regional level and from the Australian Defence Force.

The term 'General Aviation' covers a very broad area which contains a number of major segments. The term was originally applied to VH registered (Civil Aviation Safety Authority (CASA) registered) aircraft often owned and flown by private individuals which operated to CASA flying and maintenance regulatory standards. In recent years a 'recreational category' has emerged which is largely self-regulated and which continues to grow strongly. The 'traditional General Aviation' sector has in the past been a major contributor of pilots and maintenance engineers to Australia's aviation industry. Regrettably this is no longer the case.

That traditional 'organic' supply approach is no longer appropriate to present or foreseeable circumstances. Faced with the current levels of demand it is doubtful, even if the traditional General Aviation industry is revived, that this pathway could provide sufficient numbers of pilots and engineers to meet current and future demand.

In relation to the announcement of their intention to start cadet pilot training, Qantas CEO Alan Joyce was recently reported as saying, *"There is a shortage of pilots everywhere. We are lucky because we are at the top of the food chain."* and further, *"what we are worried about is that we are taking pilots from the military and general aviation, and we can't keep doing that or the ecosystem won't survive".*

It is believed by some Panel members that the 'ecosystem' has actually been incapable of supplying the required skilled individuals through the 'food chain' for some time.

Part of the reason is that the General Aviation sector has undergone significant change which has resulted in the traditional pilot and maintenance engineer pipeline largely drying up.

The decline in traditional General Aviation has been caused by a number of factors which have included the economics of this area of aviation, the cost of regulatory compliance, the cost of access to secondary airports, the age and costs of maintaining the General Aviation fleet and the increasing use of alternatives such as drones for surveillance and aerial photography.

There are two aspects to the current situation which are now exacerbating the shortage and, if action is not taken, will continue to disrupt domestic aviation in Australia.

A critical career pathway was once provided for pilots and maintenance engineers coming from operators flying passenger, charter and freight services using small twin engine aircraft. This area of the industry has now virtually ceased. As a result, a layer of the industry that previously provided an area for skill development has largely disappeared.

The declining use of small twin engine aircraft has contributed to the decline in numbers of pilots and instructors with sufficient multi-engine experience to transition to commercial airline operations in Australia. This declining pool of expertise in the General Aviation sector has, in large part, influenced the establishment of direct pilot training programs by Regional Express in 2007 and more recently by Virgin Australia and Qantas.

Secondly, the global demand for pilots has led to more international carriers poaching pilots from Australia's domestic airlines at a time where these airlines are themselves introducing new aircraft types into service. This further increases their need to recruit from the regional sector.

The impact on regional operators is well illustrated by the recent experience of Regional Express which in the 2017/18 year lost 40 per cent of its captains (38 per cent in 2016/17) and 30 per cent of its total pilots (24 per cent in 2016/17).

Australia's aviation industry is facing the twin dilemma of a lack of trainee pilots at the entry level of regular passenger transport operations and the loss of experienced pilots to international airlines and to retirement.

While the Panel has reviewed the various reasons for this decline in the traditional sector of General Aviation, the steps that may be necessary to revive this important sector of the industry are outside the scope of this review. In the context of this review it is believed however that any likely achievable recovery would not be sufficient to supply the personnel which are now required.

The Panel believes that a more direct, targeted larger-scale training intervention is required.

A range of other factors impacting on the availability of skilled pilots, instructors and engineers are set out below.

4.2 Flying experience

The Panel noted that obtaining relevant flying experience was a key factor for pilots wanting to transition to a career with a major airline.

There have been significant changes occurring in the industry over the past few decades which are making the goal of gaining flying experience more and more difficult.

As mentioned fleets of small twin-engine aircraft in the General Aviation sector are declining and modern replacements for ageing aircraft are more limited. In the past, pilots had been able to gain valuable and extensive experience flying small twin-engine aircraft such as the Piper Navajo which had been used extensively for Regular Public Transport (RPT) services across Australia. However, the steady decline in the number of regional air services operated by such aircraft now provide fewer opportunities for pilots to gain essential multi-engine experience necessary for transitioning to regional and major Australian airline operations.

The Panel was provided data from the Bureau of Infrastructure Transport and Regional Economics (BITRE) which confirms that while there has been steady growth in overall regional RPT passengers (up 96 per cent from 2000 to 2016) and steady growth in the number of overall aircraft hours flown (up 34 per cent from 2000 to 2016), there have been steep declines in this sub-sector of the industry. Essentially, the regional aviation (and, to a

lesser extent, the General Aviation industry) has up-gauged the size of aircraft conducting many operations.

This is highlighted by data on activity conducted in multi-engine aircraft from the four most common manufacturers of smaller aircraft used in the regional and General Aviation industry (Piper, Beechcraft, Cessna and Fairchild). Total numbers of landings in multi-engine aircraft from these manufacturers decreased 60 per cent from 2000 to 2016. The total number of regional RPT hours in these aircraft types declined more than 73 per cent from 2000 to 2016, with overall hours declining 50 per cent.

At the same time, the total number of landings by multi-engine aircraft from the manufacturers of larger aircraft used in the regional and General Aviation industry (de Havilland, Bombardier, Saab, British Aerospace, Fokker and Embraer) have increased by 14 per cent over the same period, with regional RPT hours increasing 37 per cent and total hours increasing 41 per cent.

Similarly, it was also noted the share of RPT passenger movements at all Australian airports by aircraft with up to 30 seats declined from 8.3 per cent in 1985 to 0.7 per cent in 2017. For Regional Airports (all non-Major-City airports), the share of RPT passenger movements accounted for by aircraft with up to 30 seats declined from 17.7 per cent in 1985 to 2.9 per cent in 2017, while for Smaller Regional Airports (those with less than 100,000 passenger movement in 2017), the share of RPT passenger movements accounted for by aircraft with up to 30 seats declined from 46.3 per cent in 1985 to 19.3 per cent in 2017.

In addition, in terms of aircraft with a Maximum Take Off Weight of under 8000kg (a proxy for aircraft with less than 19 seats), data from the BITRE confirms that between 2000 and 2016, multi-engine hours of such aircraft dropped 68 per cent while single engine (VH registered) aircraft hours also dropped by 24 per cent during the same period.

As noted earlier a major positive change in the industry was highlighted by Recreational Aviation Australia (RAAus) which noted that recreational flying is one sector of General Aviation that has increased substantially over the past five years, with annual growth around 8 per cent pa mainly attributed to ‘affordability’, a different regulatory environment and the increased availability of recreation-specific flying schools. The association observed that recreational flying was a useful first step for commencing an aviation career, with low cost, access and availability helping to develop a broad base of continuing interest in aviation. While increased recreational flying is fostering interest in aviation careers and developing basic skills, the sector is however not a current direct source of pilots needed by the airline industry. RAAus is looking to engage further on transitioning beyond a Recreational Pilots Licence (from single engine to multi-engine aircraft) as a pathway into commercial operations. To progress this connection the Panel suggests that CASA investigate the recognition of a percentage of RAAus flying hours being recognised for progression into the commercial sector.

There is a view that CASA’s regulations with respect to recognition of flying experience are lagging industry practice and slowing the ability of the industry to bring new pilots into operational service.

4.3 Availability of experienced instructors

The availability of experienced instructors is a major issue influencing the numbers of pilots and engineers. In relation to pilot training, for example, flying instructors are being offered attractive salary packages to move or to return to airline flying, leading to a decline in the pool of experienced flying instructors available to undertake pilot training.

Industry stakeholders also raised significant concerns about the decline in the number of candidates undertaking flying instructor courses. Stronger partnerships between training facilities, educational institutions and airlines were needed to attract and retain high quality and experienced instructors who are key to the sustainability of future aviation training in Australia.

The Panel noted that CASA's recent changes to the requirement for class 2A medicals for instructors engaged in certain training activities will potentially assist with the availability of instructors at the entry level of the industry. However, further work in this area is required.

Engineering instructors have traditionally been sourced from highly experienced personnel who seek a career and/or lifestyle change and have a desire to ensure they pass on their experience to future generations. These instructors come from military or civilian backgrounds and tend to be in the middle to older age demographic. While the ability to draw on professionals from these backgrounds still exists, their numbers are diminishing and there are now more attractive alternatives to remaining in the industry.

There were also concerns raised about the number of CASA flight examiners available to undertake mandatory checks and examinations which is impacting the ability to finish training or retraining and so that pilots can be checked to line. These concerns are driven by regulatory changes (Civil Aviation Safety Regulation (CASR) Part 61) which are impacting the aviation industry and has resulted in a lack of sufficiently qualified CASA-approved flight examiners. This is a problem affecting both the industry and CASA's regulatory oversight and the Panel asks that the CASA CEO review this situation.

Stakeholders noted, and the Panel agreed, that CASA, working through its Aviation Safety Advisory Panel, should undertake a review of flight examiner upgrade pathways and examiner/instructor qualifications, privileges and proficiency checking to determine if adjustments could be made to relevant regulatory requirements, with the view to ensuring such processes enhance the transition to flight examiner qualifications and that related regulatory checking processes are streamlined.

4.4 Approved Testing Officers /Flight Examiners - Indemnity Issues

A government decision with another unintended consequence concerns the indemnity which had been provided to Approved Testing Officers (ATOs). As a delegate of CASA, Approved Testing Officers have been indemnified against liability or loss arising from the exercise of powers conferred upon them by CASA, with CASA's comprehensive insurance covering any liabilities or losses arising from their performance of functions carried out on behalf of CASA. However, in September 2014 CASA replaced ATO delegations with a system of flight examiner ratings (FER) on the licences of suitably qualified and experienced licence holders. Under these revised arrangements, flight examiners conduct flight tests under the

authority of their rating and not as a delegate of CASA and therefore without the CASA liability insurance cover.

For ATOs that have transitioned to the FER regime, responsibility for indemnity insurance now rests with the flight examiner or the organisation employing the flight examiner, not with CASA. Existing ATOs who have yet to transition to the FER regime are still indemnified by CASA however CASA has set 31 August 2018 as the deadline for this transition to the FER regime.

A large number of ATOs yet to transition to the FER regime are located in regional Australia, with a significant proportion working as independent operators due to the relatively small throughput of trainees in these areas. Industry stakeholders have raised concerns that these regionally based examiners in particular will not be able to afford the cost of their own indemnity insurance, and will therefore no longer undertake flight examination work, leading to a shortage of examiners in regional areas. In these circumstances, trainees will need to travel to larger centres for mandatory examinations, adding significantly to the cost of undertaking training in regional areas.

Some stakeholders have called for ongoing CASA indemnification for flight examiners to address this issue and the Panel agrees. CASA is in the process of reviewing these arrangements. As part of that review, a working group comprising CASA, the Department of Infrastructure, Regional Development and Cities, and the Department of Finance/Comcover was established to examine all aspects of the indemnity scheme and the insurance-related considerations that underpin them. Comcover has confirmed that indemnities for ATOs will continue until 31 August 2018 and it is expected a decision on the future of indemnities will be settled mid-July.

The Panel urges the government to continue with the indemnity scheme as it previously operated and thus avoid further disruptions to the pilot pipeline at a time when the industry can least afford them.

4.5 Cost barriers to entry

Another significant barrier to entry into the aviation industry is the cost of undertaking relevant pilot training or engineering courses, particularly in circumstances where there was no certainty of post-training employment.

It was noted that the availability of Vocational Education and Training (VET) student loans had recently encouraged more applicants to take up aviation related training. While this support is helpful the Panel believe that the current cap of $75,000 should be raised to $150,000 as the present limit does not support a student undertaking the full suite of courses needed to progress through to the basic Commercial Pilot with Instrument Rating and certainly not to instructor level.

VET Student Loans

Australian vocational education has a world-leading funding model with the VET Student Loans (VSL) program. Aviation is a very expensive choice for students, and graduates need to spend at least $100,000 to gain the minimum qualifications for the industry.

Prior to the introduction of VSL, vocational aviation training was limited to students with significant financial support from families. However, VSL has opened up pilot training to students from any socio-economic background. This has resulted in an increase in enrolments, although this increase is not sufficient to mitigate the pilot shortage.

Although the benefits of the VSL program are recognised, there are three significant draw backs to the system: the student level cap, the Registered Training Organisation (RTO) level cap and the exclusion of maintenance training in the system.

Student Level Cap

In 2018, the FEE HELP loan limit is $102,392. However this limit is not sufficient to provide student pilots with all of the licences and ratings required.

The table below illustrates the tuition fees required to achieve various licences and ratings.

CASA Licence / Rating	Tuition Fees[1]	Explanation of Requirement
Commercial Pilot Licence	75,000	All pilots
Multi Engine Command Instrument Rating	30,000	>99.9 per cent of Pilots
Flight instructor Rating	30,000	Specialist requirement, high demand
Agricultural Rating	15,000	Specialist requirement, low demand
Multi Crew Co-Operation	7,500	All airline pilots

A brief note on Licences and Ratings is at Appendix 3.

The implication of the FEE HELP Loan Limit of $102,392 is that student pilots from a poorer socio-economic background can access funding for only the Commercial Pilot Licence and the Multi Engine Command Instrument Rating. This is leading to severe shortages in the industry for pilots with Flight Instructor Ratings and Agriculture Ratings.

The main area where the shortage of pilots with a Flight Instructor Rating appears is in the lack of instructors, check and training captains and flight examiners in the industry.

It is recommended that increasing the FEE HELP Loan limit for aviation to $150,000 would permit more students to be able to complete the Flight Instructor Rating as well as either the agriculture rating for students wanting to stay in General Aviation or the Multi Crew Cooperation course for those wanting to continue to the airlines.

RTO Provider Cap

Currently, the Department of Education and Training and Australian Skills Quality Authority (ASQA) set a limit on each provider for the maximum amount of VSL funding that will be provided to students at that RTO.

[1] Indicative tuition fees in the industry, and not representative of any single provider.

This limit may cause a shortage of capacity in flight training, which will then reduce the number of new pilots graduated each year.

The Panel recommends that:

- Greater transparency is given to RTOs on how this limit is calculated;
- The total industry limit is increased when there is an increasing demand for graduates, as there currently is for pilots; and
- RTOs with higher graduation success rates are rewarded with larger limits.

A further unintended consequence with impact on the pilot shortage issue has been drawn to the attention of the Panel by Swinburne University of Technology.

A decision announced in the recent Federal Budget concerning proposed changes to FEE-HELP will result in a student's HECS-HELP loan counted with their FEE-HELP loan when determining if they have exceeded the FEE-HELP loan cap. This will result in all piloting aviation students who are undertaking their first tertiary qualification facing significant up-front fee imposts under the CSP / FEE-HELP model.

Currently, a Bachelor of Aviation student will incur a FEE-HELP loan for the flying training of $100,070 (minimum) and an additional HECS-HELP debt of $27,555 (minimum). In addition, there is an upfront cost of equipment/publications, and medical of $4,938 bringing the total to $132,563. If a student elects to undertake a Flight Instructor rating then the fee costs (plus equipment) costs will increase to $145,788. For a double degree student that increases to $154,973.

The effect of this proposed change would be to reduce the amount of FEE-HELP for trainee pilots at a time when the opposite is required to manage the pilot shortage in Australia.

In order to support the ongoing availability and viability of the VSL scheme, the Panel is of the view that the current cap should be raised to $150,000 and greater targeting of these loans is necessary as currently some students do not complete the training or are unable to reach a job-ready standard to obtain a job for which they trained.

In aircraft maintenance training no student loan scheme currently exists. While the amount of student assistance varies from State to State there is a contribution required from the student or the employer. While this amount is significantly smaller than the pilot training figures above it is still a sizeable out of pocket expense for those wishing to embark on a career in aircraft maintenance.

The Panel recommends that the VET loan cap be raised to $150,000 and that it be more targeted and a loan scheme similar to the pilot VET program be introduced to assist maintenance engineer student costs.

4.6 'Job' vs 'Career'

The Panel observed that an issue being faced by airlines was that being a pilot or an engineer is now considered to be a 'job' rather than a 'career', and as such, it was now more difficult to hire and retain staff for the medium to long term. In addition, the Panel was of the view that the aviation sector had lost some of its 'gloss' as a preferred and well-paid career choice and more attractive jobs/careers are now available in industries such as Information Technology which tend to offer good levels of remuneration and are better suited to the lifestyles now sought by younger generations.

It was also noted that pathways to career progression needed to be improved to enable the aviation industry as a whole to compete with other industries and retain staff in the longer term. Currently, the pathway to post-training employment and career progression is unclear, with students uncertain about their 'return on investment' given the high cost and time needed to undertake relevant training. In the case of recently graduated pilots, it was also often the case that they would need to locate to remote areas to build up sufficient flying hours and these locations can act as a disincentive to attracting people to the aviation industry.

Other industries were also competing strongly with aviation in terms of salary packages, entitlements and workplace choices and location and the Panel believes that the aviation industry needs to do more to foster an ongoing interest in an aviation career.

4.7 Attrition rate of skilled staff

Stakeholders believed that accurate workforce planning was difficult due to the lack of data in the various separate sectors which comprise the industry. It is difficult to quantify attrition rates of skilled staff which impacts on the ability of the industry to adequately plan for the recruitment of new staff, particularly during a rapidly changing aviation environment. The demographic profile of the industry, lack of a defined retirement age, external factors such as potential ongoing changes to superannuation entitlements, and the ease of mobility into other employment or early retirement were among some of the factors that made attrition rates difficult to quantify and manage.

Better workforce planning would help to establish a pool of expertise which would assist in meeting the demands of the industry particularly during cycles of low and high activity. The Panel noted organisations such as Airlines for Australia and New Zealand (A4ANZ) could potentially provide a forum to enable airlines to share data, facilitate improved workforce planning and address a number of issues raised in this review.

4.8 Industry partnerships and cooperation

The establishment of effective training partnerships is a challenge for industry as well as government.

The Panel believes that industry needs to move away from the traditional 'poaching mindset' and promote stronger training linkages across the industry.

While some welcome recent developments have occurred in relation to pilot training the Panel suggests that part of the solution lies in better alignment of training programs with

actual flying and engineering experience which meets the competency requirements for airline pilots and licenced engineers.

The Panel believes that more needs to be done by the industry to work up a strategy to meet these challenges. The Panel suggests that the airline industry body A4ANZ should consider arranging a forum with stakeholders from industry and government to discuss forward resource planning and how more effective training partnerships can be developed between various sectors of the industry in order to provide clearer career pathways for both pilots and maintenance engineers. Further, the forum could also discuss with state and federal government stakeholders steps to develop a more coherent training policy aimed at meeting the needs of industry now and into the future.

4.9 Education and training alignment

There is a major problem with the system of aviation training in Australia.

As the schematic at Appendix 5 indicates there are numerous organisations involved in policy development, funding, delivery and auditing of aviation training in Australia but no one organisation has oversight and responsibility for coordination, continual improvement and to ensure the most efficient use of government funding.

The training system appears to have developed in a piecemeal fashion, there are overlaps as well as gaps in delivery and oversight and, as it currently stands, it is not well equipped to meet the challenges of aviation industry demand now or into the future.

In the flight training sector there is good alignment of competencies between CASA and the Department of Education and Training; there is a national scheme of VSL funding available for most of the flight training required and there is less requirement for alignment between Australian regulations and European Aviation Safety Agency (EASA) regulations.

The major problem areas are in maintenance training where there is poor alignment of competencies between CASA and Department of Education and Training; there are separate funding schemes in each state; and there is an urgent need for alignment with EASA regulations.

Structure and alignment of training

The structure and alignment of current training courses is producing sub-optimal outcomes.

Australia currently has two primary engineering maintenance training streams each with their own suite of requirements. This structure produces outcomes that are not efficient and are in fact contributing to the shortage of qualified licenced aircraft maintenance personnel.

These two course options are a Certificate IV course which results in an aircraft maintenance engineer (AME) qualification, and a Diploma course which leads to a licenced aircraft maintenance engineer (LAME) qualification. The LAME qualifications, which the Diploma pathway offers, are urgently needed in the industry as these qualifications provide the ability to check and certify aircraft engineering work prior to the aircraft entering or re-entering service.

Both courses are separately audited. Registered training organisations are audited by ASQA under different legislation to that applied by CASA. CASA only audit maintenance training organisations and not RTO's delivering Certificate IV training or any other courses only delivered as a vocational outcome even though they may have a relationship at some stage with a regulatory requirement.

ASQA is tasked with ensuring RTOs are delivering training appropriate for the qualification in accordance with the relevant training package however it does not have any input into the content.

There is also the issue of misalignment.

The Certificate IV course which is provided by RTOs (which include state-based TAFEs) is not aligned to CASA's Part 66 maintenance regulations. Unless training is delivered by a CASA approved Part 147 training organisation, students who graduate from courses through non-approved organisations obtain qualifications that do not match CASA's licencing requirements and the needs of the industry (as described in CASA Part 66). As a result they require retraining and re-examination. CASA is of the view, and the Panel agrees, that all maintenance training should be consistent with CASR Part 147 requirements to ensure graduating students are of a consistently high standard and have the ability to obtain internationally recognised licences. At present some maintenance training organisations, primarily RTOs, operate under the VET based system, with the assessment of training undertaken by ASQA. Students are able to graduate from these organisations with a pass rate of 50 per cent and which provides an outcome that has little or no use as part of the regulatory pathway to a licenced engineer qualification. Other maintenance training organisations conduct training under CASA Part 147 requirements which require a pass rate of 75 per cent and this means that the student graduates to a higher-level qualification that is recognised for licencing purposes.

There is also a further misalignment of the competency package with respect to gaining a Diploma of Aeroskills where competencies do not directly align with the CASR Part 66 module topics.

Harmonisation of regulations

The lack of harmonisation of Australia's regulations with other leading aviation countries is also impacting the supply of skilled employees for the domestic market, as well as the ability of Australian training organisations to compete in the global market for training delivery.

CASA currently has formed a Technical Working Group comprised of representatives from industry and CASA (reporting to the Aviation Safety Advisory Panel) which is examining a new CASR Part 66 covering engineering and maintenance.

This work provides the opportunity to harmonise Australian engineering and maintenance regulations with frameworks being used by the rest of the aviation world. The complete adoption of the EASA equivalent Part 66 basic training processes would streamline training programs and again harmonise Australia's regulations with the vast majority of advanced aviation countries. The EASA approach would ensure that regulatory-based aviation maintenance training is of a standard where a vocational outcome would become a secondary benefit not an influencing component as it is today. Alignment with EASA would

mean that Australian licenced engineering qualifications would again be globally recognised which in turn would make Australian maintenance providers more attractive for international clients, particularly those in the Asia-Pacific region.

Recognition of Australian maintenance training internationally is not completely achieved by the adoption of EASA Part 66 but also requires a review of CASA's regulation allowing the acceptance of EASA maintenance training performed in other countries. For example, under EASA's Part 147 Type Training Certificates a person who completes a Boeing 787 training course does not have that training recognised by CASA. Currently only CASA Part 147 type training is recognised even though in this case the course is most likely derived from the same manufacturer, Boeing.

State and Federal training financial assistance

The Panel further noted that there is an anomaly with respect to incentives from both State and Federal governments, such as payroll tax arrangements for apprentices whereby employers receive financial assistance when engaging staff undertaking a Certificate IV course, however it is understood no such benefit is paid when engaging staff undertaking a traineeship (diploma) course. It is noted that these types of incentives do vary from State to State which further complicates the process for national training organisations. Importantly the diploma is the course that can ultimately provide licenced engineers which are the target group in critically short supply, particularly in the General Aviation sector.

This situation has produced unintended outcomes in relation to the availability of training and employment opportunities for aircraft maintenance engineers (a Certificate IV course) and licenced aircraft maintenance engineers (a diploma course). This has contributed to a serious shortage of LAMEs especially in the General Aviation sector. The current system in most cases requires re-enrolment into further training such as a traineeship to obtain a CASA licenced qualification but also to attract what funding may be available in relation to the diploma. The two-step process would be unnecessary if funding was more accurately targeted to current needs.

Various Panel members and stakeholders noted that training needed to continue to be not only of high quality but also 'fit for purpose'. A prevailing view amongst certain areas of the training industry seemed to be that 'competency' of their graduates related to their ability to successfully complete the training course whereas when it came to pilot and engineering training, competency covered a broader definition where knowledge, behaviour and attitude (decision making and safety) were other key components. Practical experience also needed to be given greater priority as part of an overall training curriculum.

The Panel believes the notion of whether a student is competent to enter a career in the aviation industry needs to be revised to reflect this broader package of 'competencies' which are essential to a professional and safe aviation industry and which would achieve a more balanced training outcome and develop more 'job-ready' graduates.

A series of measures are recommended later in this review.

4.10 Cadet Pilot Programs

There is a strong view in industry, especially in the regional aviation sector, that Australia's major airlines need to step up and invest in long term training of pilots and engineers.

The industry has fundamentally changed. Pilots that once came from General Aviation are no longer available in the numbers that are now required and this has occurred at a time of massive international demand for aviation personnel.

The Panel welcomed the contribution that has been made by Australian airlines in support of ongoing pilot training, including the programs currently being undertaken by Regional Express and Virgin Australia. The recent announcement by Qantas that it intends to open a new pilot training facility in 2019 to train up to 500 pilots per annum is an indication of the urgency of this issue.

The need for all sectors of the aviation industry to take responsibility for and provide meaningful contribution towards the production of the required skilled workforce is considered fundamental.

The Panel also believes that there are broader opportunities for these cadet pilot academies to train increasing numbers of pilots and engineers not just for Australia but for the international aviation industry.

4.11 Economic viability of flying schools

The Panel noted the economic viability of some of the traditional flying schools was being impacted by the limited availability of suitably experienced flying instructors, high operating costs (including insurance), and the cost of complying with a range of recent regulatory requirements. This remains an important source of new entry cadet pilots however the Panel acknowledges that this area of the industry is under significant financial and regulatory pressure. The Panel recommends that for flying schools whose principal role is flight training, some form of financial relief should be made available, possibly through a review of landing fees and airways charges which would assist this sector of the industry to survive.

In relation to the agriculture sector, there is an ongoing need for a small number of pilots each year with a specific 'agriculture' rating. However, it is currently uneconomical for flight training schools to offer agriculture-specific flight training due to the low annual through-put of trainees needed for this small but important sector. The ability to maintain an appropriate number of trained pilots for agriculture operations will diminish over time as experienced agriculture rated pilots begin to retire from the industry and the sector loses this source of trainers. A partnership with a training organisation, with appropriate support and incentives, is needed to address future shortfalls in trained agriculture sector pilots.

4.12 Skilled migration

The Panel noted how reforms to the migration framework had impacted the supply of skilled labour for the aviation industry. Skilled migration is an essential consideration in medium and long-term aviation workforce planning, particularly if skills shortages are expected. In April 2017, a number of aviation-related occupations (including Aeroplane Pilot, Helicopter Pilot, Air Traffic Controller, Aircraft Maintenance Engineer (Avionics) and Flying Instructor were removed from migration eligibility lists, attracting negative industry feedback.

During subsequent reviews, pilot, engineer and flying instructor roles were among aviation occupations returned to migration eligibility lists, with caveats:

- Aeroplane Pilot – only for regional Australia;
- Aircraft Maintenance Engineer (Avionics) – short-term skilled occupation list;
- Flying Instructor – only for regional Australia; and
- Helicopter Pilot – only for regional Australia.

These changes only partially satisfied industry concerns.

In general terms, Australian airlines support and call for changes to skilled migration which would allow the recruitment of skilled workers for longer periods of time and the removal of caveats restricting migration to regional areas. The current time limit (of two years) does not provide the security required for many to make the decision to relocate themselves and their families to Australia. It is thought that a residency option should also be considered.

This would provide airlines a means of accessing a larger experienced human resources pool. However, other stakeholders, such as the Australian and International Pilots Association, note that an increased pilot intake through skilled migration provisions is only a 'stopgap' measure which does not address systemic issues.

The Department of Jobs and Small Business is responsible for undertaking regular reviews of the Short-term Skilled Occupation List (STSOL), Medium and Long-term Strategic Skills List (MLTSSL) and Regional Occupation List (ROL) used for prescribing skilled migration eligibility. The next update to the STSOL, MLTSSL and ROL will occur in July 2018.

Pilots, flying instructors and aircraft maintenance engineers applying for skilled migration visas are subject to skills assessment by CASA and must meet equivalent Australian standards.

The Aerial Agricultural Association of Australia noted migration settings were important for its sector, especially in relation to fire-fighting given the rotation of pilots between the northern and southern hemisphere fire-fighting seasons provided an efficient source of qualified and experienced pilots for this particular activity.

As noted previously there was some debate around what methodology was being used for determining skills shortages. The Panel noted the importance of accurately defining the 'shortages'. In the case of pilots, the 'shortage' refers to the availability of skilled and experienced pilots able to fly and command larger multi-engine aircraft.

For example, the number of pilots holding a 'commercial pilots licence' does not provide an accurate measure of the 'shortage', given the significant gap in experience and skills

between pilots holding a commercial pilots licence and that required to fulfil the requirements and needs of Australia's airlines.

Similarly, in the case of aircraft engineers, the 'shortage' refers to the availability of *licenced* aircraft maintenance engineers who are able to check and sign off on aircraft engineering work. Using numbers of 'aircraft maintenance engineers' does not provide an accurate measure of the 'shortage' given the significant gap in responsibilities between these categories of engineers.

4.13 Regulation.

The panel was well aware that the industry was on 'regulatory reform overload' and is keen to see the long-running reform program completed. Important steps are now underway to finish the program and to engage more effectively with industry. The Panel hopes that this review will make a contribution to that process with respect to the urgent need to improve aviation training.

There is much to be done.

Australia has departed from the regulatory approach of major overseas regulators in some important areas (notably recognition of technical qualifications) which has led to issues in relation to the sourcing and training of overseas pilots and engineers, the ability of Australian trained personnel to take up overseas employment and the opportunities for Australian companies to undertake maintenance on overseas registered aircraft in Australia.

There are further ongoing transitioning issues between the old and new regulations which is causing confusion especially in the training area (CASR Part 61).

As noted earlier the resourcing of some areas of CASA appeared inadequate given the organisation's need to undertake mandatory requirements in relation to audits, checks and examinations. As a consequence of the shortage of CASA's flying operations inspectors the industry had experienced delays which in turn has impacted on the ability of airlines to quickly move forward in filling staffing gaps.

The Panel believed the alignment of Australia's maintenance regulations with those of EASA would best support industry expansion, enhance Australia's reputation as an international training provider, and provide smoother employment paths. Consideration of the Federal Aviation Administration (FAA) regulations seemed to be generally the best way forward for the alignment of pilot training. CASA's current regulatory structure already allows for acceptance of EASA standards and qualifications and therefore this avenue could be adopted, again without undue additional effort.

Some stakeholders believed regulatory compliance costs were impacting on the economic viability of some training organisations particularly those smaller operators who are unable to effectively fulfil all new Air Operator Certificate (AOC) requirements with respect to Safety Management Systems and potential Fatigue Risk Management System changes. This is due to having to meet more than one regulatory framework and more actual audits for no real benefit. Under the FAA systems, some flight instructors can conduct training activities (in accordance with the scope of their approvals) without the need for an over-arching AOC construct. This then allows them more flexibility and a lower overhead cost. A similar model could be adopted within the CASA system without large regulatory change.

On a positive note it is also clear that an important part of the reform program is the way CASA is working with industry and the better consultative mechanisms that are now in place. The Panel acknowledges in recent times CASA has changed its approach to regulatory reform and industry engagement to a more positive process but the Panel also acknowledge the significant amount of work that remains to be done.

4.14 Diversity

The industry is mindful of the need to encourage greater diversity in employment opportunities in the aviation sector which is at present heavily male dominated.

This situation must change.

Currently 3 per cent of commercial pilots and less than 1 per cent of aircraft engineers worldwide are women and the industry has not done well tapping into this very large source of potential skills. If female participation rates could be raised to 10 per cent it would be a significant increase and assist the aviation/aerospace industries to meet its skills demand.

The Australian Helicopter Industry Association represents an area of the industry which has been seriously affected by skilled shortages and has suggested more has to be done by industry and government in Years 11 and 12 at school to attract female students. Female commercial pilots and engineers would be invaluable in selling this message. It was noted that the proposed Qantas pilot training academy was aiming to achieve 40 per cent female new pilot graduates by the first 10 years of operation.

The Panel noted the work that has occurred to establish The Australian Indigenous Aviation Foundation which aims to facilitate the training of young indigenous men and women who wish to pursue a career in aviation.

The Panel recommends that a concerted strategy to encourage diversity be developed as part of the implementation of revised aviation training schemes.

5. Training overseas pilot and engineering students

The growth in aviation in the Asia Pacific and the demand for aviation professionals provides a very significant opportunity for Australia to build on our reputation as an advanced aviation country.

Austrade has recognised the important opportunity that exists to market Australia's aviation expertise and the training facilities which are available.

While there are a number of companies and organisations involved in training throughout Australia, there is a view in industry that the magnitude of the demand for aviation professionals requires a new approach and that scale of training operations and facilities will be an important factor.

In the maintenance training area the development of workforce capability and career paths to meet the impending maintenance skills shortfall and developing a maintenance training export industry will require the:

- Expansion of training both in the skills required to work on existing aircraft and innovative techniques to work on next generation aircraft;
- Retention of as many as possible of the present generation of aircraft maintenance engineers;
- Reform and the rebuild maintenance repair organisation (MRO) training to ensure that the new generation of qualified engineers will be available to replace the current generation as they retire; and
- Harmonisation of training and career paths across sectors (civilian, defence, airline and general Aviation).

The most important issue is to develop the training capacity required to build an innovation-oriented aircraft maintenance workforce, and to ensure that maintenance training makes a significant contribution to Australia's education exports.

The Panel did not have the time or resources to explore this issue in detail other than to conclude that there is a significant opportunity here for Australia and that more work needs to be done.

There are precedents where the Federal Government has taken the initiative to respond to urgent skills and capability shortages such as in the area of cyberspace security. The Panel believes that the Department of Infrastructure, Regional Development and Cities and the Department of Education and Training should bring together industry stakeholders and education institutions, and arrange a forum to discuss potential opportunities to develop a number of aviation training centres of excellence, especially in regional Australia.

6. Recommendations

The Panel makes the following recommendations to Government and to industry for further consideration.

Short term recommendations to industry

Careers in the industry

The Panel recommends the development of an industry wide career pathway program from initial training through early flying experience to transitioning to the major airlines. This will address the development of industry partnerships, the interchange of personnel with the regulator, the promotion of careers as pilots and engineers and the involvement of experienced personnel prior to or after retirement. The Panel believes that this represents an opportunity for industry to take a leading role and urges the main commercial airlines through the industry body A4ANZ to consider this recommendation.

Airline training programs

Given the clearly identified inability of the traditional 'ecosystem' to provide the numbers of appropriately qualified individuals required by the various levels of the industry, it is imperative that all employers, particularly the major airlines, take greater responsibility for the production of their skill needs.

A4ANZ is asked to convene a forum of industry stakeholders to discuss the following issues:

- Steps that can be taken to develop an industry workforce plan which provides better data on the training needs of the industry for the foreseeable future.
- The development of a career pathway for pilots and engineers that offers greater employment opportunities.
- The major airlines continue to commit to greater levels of training for their own pilot and engineering requirements.
- The alignment of training programs with actual flying and engineering experience required by industry.
- The promotion of the industry as a career especially to women.

Short term recommendations to government

Regulation

The Panel recommends government should prepare an overview which assesses the impact of Australia's aviation regulations on the sustainability of the industry including the alignment with EASA for maintenance and FAA for pilot training, regulatory prescription, transitioning from old to new regulations and shortages of specialist regulatory personnel is a major contributing factor which is inhibiting the supply of suitably qualified personnel.

The Panel agrees that the regulatory reform program be completed as soon as practicable and suggests to CASA's Aviation Safety Advisory Panel that it set up a working group with

industry to make recommendations to identify ways to reduce the regulatory impact on training and encouraging streamlined pathways to achieving flight examiner qualifications.

CASA is asked to consider the following issues:

- The number of flight examiner positions is inadequate and is proving to be a bottleneck to checking pilots to line. It is suggested that this issue be referred to the Aviation Safety Advisory Panel so that the regulations can be streamlined.
- Adopt the European Aviation Safety Agency maintenance regulations to harmonise Australian regulations with major aviation countries.
- Review if the flying experience of RAAus pilots can be recognised in part as experience for progression into the commercial industry.
- Consider the implementation of a system for small training organisations similar to that operated by the FAA so that training could occur outside the requirements of holding an AOC (and the requirements for SMS and FRMS) systems).
- The CASA CEO and the Aviation Safety Advisory Panel review the flight examiner upgrade pathways and examiner/instructor qualifications and streamline the regulatory process with a view to encouraging more pilots to take up these roles.

Policies impacting on aviation

During this review the Panel has noted various areas of government policy which have impacted on the industry, often with unintended consequences, such as the 457 visa issue, the ATO indemnity, the recent proposed changes to student loans and the current dispersed nature of industry education and training.

The Federal Government is asked to:

- Provide greater coordination of decision making and consultation with industry so that the unintended consequences referred to in this review can be minimised.
- Continue with the ATO indemnity insurance scheme.
- Ensure migrant eligibility list match the needs of industry and extend the residency option for aviation positions in short supply.
- Examine what steps can be taken to provide some financial relief for flying schools principally involved in flight training.

Short to medium term recommendations to the government

Education and Training

The Panel believes that the whole system of industry training by various State and Federal government stakeholders needs complete reform if it is to be able to meet current and future challenges. This would include the delivery of current training programs, the direction of government assistance, the costs of training and the encouragement of diversity. While many organisations are involved there are overlaps and areas of potential duplication and no one organisation seems to have responsibility for the aviation training system.

Australia's system of providing aviation training needs major reform.

The Department of Education and Training is asked to:

- Take a lead role to significantly reform, rationalise and update Australia's aviation training systems.
- Take steps together with their state-based delivery partners to make the certificate 1V course compliant with CASA regulations.
- Coordinate and align the ASQA auditing charter with CASA regulations to ensure qualifications and licences obtained by graduates are able to be recognised by international standards.
- Raise the VSL limit for trainee pilots to $150,000 and ensure the VET scheme is more tightly targeted.
- Establish a VET scheme for maintenance engineers.
- Review the VET cap which currently applies to RTOs and how that cap is calculated.
- Expand the definition of competency to include a broader definition where knowledge, behaviour and attitude (decision making and safety) were other key components.

Potential for larger scale aviation training in Australia

The Panel believes that there is considerable scope for Australia to develop a much larger aviation training capability including opportunities to grow the aviation training export market.

The Panel recommends that further work occur on this issue with a view to the establishment of larger scale aviation centres of excellence which have the potential to provide substantial financial benefit to Australia.

The Department of Infrastructure, Regional Development and Cities and the Department of Education and Training, in conjunction with other government agencies, are asked to:

- Arrange a forum of industry stakeholders and education training providers to explore the establishment of a small number of centres of excellence to build upon Australia's aviation expertise and existing cadet flying academies and to maximise the opportunities for Australia in the training of aviation professionals in the Asia Pacific.

The Department of Infrastructure, Regional Development and Cities continue to monitor national and international developments in respect of the pilot and engineer shortage.

Appendix 1: The Terms of Reference for the Expert Panel was as follows:

Purpose: To recommend strategies for a sustainable and successful aviation training sector to:

- Support the adequate training and retention of aviation professionals, focusing on pilots and maintenance personnel, for all sectors of Australia's aviation industry; and
- Build a foundation for Australia to be the leading exporter of aviation training and skills services for the Asia-Pacific region.

The review will be industry-led and conducted within a three-month timeframe, focusing on practical, implementable measures, and on setting the scene for reform. This includes:

- Examining current data to understand likely trends for aviation skills into the future, and implications for the aviation industry, government and training providers;
- Identifying short-term opportunities for improvements to the Australian aviation training system, and how longer-term issues can be addressed;
- Identifying where the training system is working well, including examples of successful aviation training providers and how lessons from their experience can be applied elsewhere;
- Reviewing aviation training strategies that have worked in other industries and countries;
- Describing aviation career pathways and strategies to promote career development, retention and sustainability;
- Developing strategies to improve diversity within the industry;
- Identifying structural and regulatory barriers to improving training performance and the career prospects of Australian aviation professionals, including opportunities to harmonize Australia's aviation regulations with those of the major international regulators;
- Explore the role of organization scale and investment as it relates to training delivery performance including in General Aviation;
- Exploring opportunities for the delivery of aviation training in regional Australia, including consideration of regional and local community benefits and impacts; and
- Setting the scene for future policy development by describing what success looks like.

Appendix 2: Membership of the Expert Panel

The Expert Panel was formed in April 2018 and met in April and June and held meetings with government and industry stakeholders in May 2018.

The Panel membership comprised:

Chair:	Greg Russell, Chair, The Australian Aviation Associations Forum.
Member:	Chris Hine, Chair, Rex Flight Training Academy.
Member:	David Trevelyan, Managing Director, Basair Aviation College.
Member:	Mark Thompson, Technical Training Manager, Aviation Australia.
Member:	Mike Higgins, Chief Executive Officer, Regional Aviation Association of Australia.
Member	Adrian Young, Head of Flying Operations and Chief Pilot, QantasLink.
Member:	Stuart Aggs, Director of Group Flight Operations, Virgin Australia Group.
Member:	Aaron Keevers, Process Improvement Co-ordinator, Aircraft Structural Contractors.

Appendix 3: A brief note on Licences and Ratings.

Commercial Pilot Licence: The minimum requirement for any pilot seeking employment in the industry. Holders are licenced to fly typically only a single engine aircraft in good weather conditions.

Multi Engine Command Instrument Rating: Almost all career pilots require this rating, as it permits the holder to fly a multi-engine aircraft under instrument conditions (poor weather conditions.) It would be very rare for working pilots not to need this requirement, although some agriculture pilots might fly only single engine aircraft during their careers.

Flight Instructor Rating: This rating is required for pilots who want to become instructors. It is also required by pilots in airlines who want to become Check & Training Captains, and also pilots who want to become Flight Examiners for CASA. It should be noted that the areas in the industry currently suffering the most acute shortages are pilots that need this rating; instructors, Check & Training Captains and flight examiners.

Agricultural Rating: Required for pilots who want to work in the agriculture industry (eg crop-dusting.) Note that this rating is not currently provided in Australia by any RTO with VSL as students typically have exhausted their FEE HELP Loan Limit in obtaining earlier qualifications. This has caused concern in the agriculture sector of a lack of pilots coming through with this rating.

Multi Crew Co-Operation: A short course on simulators that is required for all new airline pilots after August 2018.

Appendix 4: Consultation with additional stakeholders

In addition to the stakeholders represented on the Panel, consultations were undertaken with the following additional stakeholders:

- Civil Aviation Safety Authority
- Department of Education and Training
- Australian Skills Quality Authority
- Flight Training Adelaide
- Royal Aeronautical Society Australian Division
- University of New South Wales
- University of Southern Queensland
- Innovation & Business Skills Australia
- Swinburne Institute of Technology
- Small to medium General Aviation maintenance companies
- New South Wales Department of Industry
- Aerial Agricultural Association of Australia
- Australian Helicopter Industry Association
- Recreational Aviation Australia
- Royal Federation of Aero Clubs
- Skills Canberra, Chief Minister, Treasury and Economic Development Directorate, ACT Government
- Queensland Department of Education and Training
- Workforce Development & Training (Skills Tasmania), Department of State Growth
- Western Australia Department of Training and Workforce Development
- NT Department of Business
- SA Department of State Development
- VIC Department of Education and Training

Information on the International Air Transport Association's approach to the skill shortages was also considered by the Panel.

Appendix 5: Government agencies involved in aviation education and training

Department of Education and Training

Responsible for national education and training policies and programs, including higher education.

VET Student Loans

Offers income contingent loan support to eligible students studying for certain diploma level and above vocational education and training qualifications. Eligible pilot-training students are entitled for loans up to a capped amount, currently $75,000 for specified Diplomas and Advanced Diplomas in Aviation. Lower student loans are available for other aviation-related courses.

Council of Australian Governments (COAG)'s Industry and Skills Council

COAG's Industry and Skills Council was established by COAG to develop and implement high-level policies that will assist Australian industry to be competitive and motivated to create jobs and investment. This Council is responsible for:

1. *Industry competitiveness, productivity and labour market pressures*
2. *Skills development and national training arrangements.*

Australian Industry and Skills Committee (AISC)

The AISC advises Commonwealth and State Industry and Skills Ministers on the implementation of national vocational education and training policies, and approves nationally recognised training packages for implementation in the VET system. The AISC draws on advice from its network of Industry Reference Committees.

Department of Infrastructure, Regional Development and Cities

Responsible for transport policy settings, including for aviation, and regulation of leased federal airports.

Bureau of Infrastructure, Transport and Regional Economics

Provides analysis, research and statistics on relevant matters, including for aviation.

Department of Home Affairs

Responsible for migration policy settings, including visas for skilled occupations, and transport security regulation.

Department of Jobs and Small Business

Responsible for regularly reviewing skilled migration occupation lists to ensure their responsiveness to changes in the Australian labour market and regional variations across Australia.

Australian Skills Quality Authority

National regulator for Australia's vocational education and training sector which regulates courses and training providers to ensure nationally approved quality standards are met.*
*(*Regulated by state authorities in Victoria & Western Australia)*

Registered Training Organisations (RTOs)

Training providers (private businesses and TAFEs) registered by ASQA (or, in the case of Victoria and Western Australia, the relevant state regulator) to deliver vocational education and training services. RTOs are recognised as providers of quality-assured and nationally recognised training and qualifications. RTOs do not provide aviation regulator outcomes unless CASA approved to do so.

Aviation Industry Reference Committee (IRC)

*The Aviation Industry Reference Committee is responsible for the AVI **Aviation Training Package** which provides nationally recognised Vocational Education and Training (VET) qualifications for occupations relevant to Aerodrome Operations, Airport Safety, Ground Operations, Cargo Services, Customer Service, Aviation Transport Protection, Aviation Search and Rescue, Management and Supervision, Air Traffic Control, Flight Operations (Pilots – aeroplane, helicopter, commercial, military, remote and pilot in command) and Flight Instruction. The Aviation IRC is supported by the Skills Service Organisation **Australian Industry Standards**.*

Aerospace Industry Reference Committee (IRC)

*Oversees the development of industry competency skills standards and qualifications in the Aerospace Industry and is responsible for the **MEA Aeroskills Training Package** which provides nationally recognised (VET) qualifications for occupations relevant to Aeroskills, Avionics, Aviation Maintenance and Aeronautical Engineering. The Aerospace IRC is supported by the Skills Service Organisation **Innovation & Business Skills Australia**.*

Civil Aviation Safety Authority

Responsible for regulating Australian aviation safety, including the issuing of licences to relevant aviation professionals and organisations.

Austrade

Responsible for enhancing international market opportunities for Australian businesses, promoting international education, encouraging direct foreign investment, and strengthening Australia's tourism industry. Includes international promotion of Australia's aviation education and training sector.

ARCHERFIELD AIRPORT CHAMBER OF COMMERCE INC.

Postal: GPO Box 2511 BRISBANE QLD 4001

President: Mr Lindsay Snell [redacted]

11 January 2023

By Email: Minister.King@mo.infrastructure.gov.au

The Hon Catherine King MP
Minister for Infrastructure, Transport, Regional Development
And Local Government
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Dear Minister,

RE: ARCHERFIELD AIRPORT PRELIMINARY DRAFT MASTER PLAN 2022-2042

We refer to the Archerfield Airport Preliminary Draft Master Plan 2022-2042 ("pDMP"), which is in consultation phase until 11th January 2023.

About

Archerfield Airport Chamber of Commerce Incorporated, (unincorporated body commenced in May 1989) is the aviation user representative body for Archerfield Airport, a not for profit whose objects are:
To Foster, preserve, maintain and develop aviation on Archerfield Airport (primarily), other secondary airports and nationally.

Members range from the most senior representatives of an international world class airline through to aircraft maintenance, overhaul, airframe, instruments and avionics engineering, fixed wing and helicopter flying training and charter organisations, professional and private pilots, aviation tenants and lessees, aircraft owners whose aircraft are based at Archerfield and the representatives of aviation community organisations.

This pDMP plan must be rejected by the Minister. Our summary submissions follow:

Zoning

Upon Zoning alone the pDMP must be rejected.
Both the Beatty Road and Mortimer precincts have mixed use zoning as do future zones. There are **no dedicated "Aviation only" Zones**. Mixed use precincts of aviation and non-aviation industrial are "Trojan horses" for "non-aviation industrial expanded development at the expense of aviation. In this pDMP all existing aviation businesses / buildings will be wiped out north of Boundary Road in favour of non-aviation development. Further there are non-aviation businesses occupying Beatty Road precinct sites currently because of inappropriate mixed-use zoning. Example: Cabinet making business occupying an entire building in the Beatty Road Precinct. This issue is particularly egregious when aviation business (e.g. Brisbane Aero Engines) had not been able to secure any lease for their previously existing on-airport overhaul business operations – despite the airport leasing company promising the AAT during proceedings related to the 2011 plan that the airport leasing company would provide them a lease. There were three overhaul facilities on the airport at privatisation and now there are no engine overhaul facilities / businesses are left on Archerfield Airport – the loss of each such business directly attributed to "not being able to obtain leases or on any commercially acceptable basis". Similarly, many losses of long-standing flying schools including advanced flying schools has occurred.
Further all three fuel companies (BP, World Fuel, and Viva Energy (Shell)) have not had their fuel farm leases renewed by the airport leasing company and exited the airport. The result is there is now only one refuelling company – a new entity in control of the directors of the airport leasing company. Further lessees are bound by clauses in airport leases that they can only use the airport leasing company's preferred supplier for fuel and cannot

bring any external supplied fuel onto the airport. There is now no competition as to fuel supply and members report unacceptably long wait times to receive refuelling service, impacting their operations.

04/22 Runways

The pDMP must be rejected by the Minister for proposed closure of the 04/22 runways.

The real purpose of such closure is in no way to improve the airport but a grab to gain, at the expense of existing infrastructure critical to the needs of present and future aviation, non-aviation commercial development, being predominantly the land of the proposed Barton and Ashover precincts.

"Realignment" implies keeping the same runway and moving the runway direction around – this is a misleading falsehood.

The 2022 pDMP "realignment" means closure of the instrument provisioned[1] 04/22 runways and replacement with inferior, shorter grass runways not of an equivalent standard and in no way improved.
The proposed 18/36 runways can never be instrument rated as clearance of obstacles on and 01/19 alignment's had been relinquished since the mid-sixties by the Department of Civil Aviation (or iterations of the name thereof) as they axed the 01/19 runway direction, from the future plans for the airport (as it was not often used and was disliked by pilots) and development around the airport was then not obstacle restricted and development restrictions then lifted by authorities in this direction.

To then propose a 01/19 direction runway is anathema to such previous lifting of restrictions on the airport and surrounds since the mid 1960's decision. Such change is nothing to do with aviation and only to gain commercial development land – in the Chambers view.

All registered operators are required by CASA's rules to assess obstacle clearances and are also required to factor take-off and landing distances for their aircraft operations therefore such 18/36 proposed runways are in all practical terms, highly diminished substitutes usable only for visual flight and by a limited number of aircraft and in non- air transport operations not requiring factoring. These 18/36 proposed runways can never become instrument runways. With operational lengths of ultimately possibly less than 800 metres after likely need for displaced thresholds because of the control tower etc (such length only being refined in a major development plan), aircraft complying with CASAs factoring rules e.g. air transport operators in the Chamber's opinion cannot use them.

Further the "realignment" uses largely the same grass ground of the 04/22 runways and is not an improvement. Improving the serviceability of the 04/22 runways and (any proposed 18/36 runways) can only be achieved by the provision of a bituminous seal or bituminous concrete surfacing – and that is not proposed in the pDMP.

Competent professional engineering assessment exists to the effect that it would be a far easier for the airport leasing company to seal the 04L/22R complex as the 04/ 22 runways during the 1970's was all lime stabilised to a depth of approximately 600mm.

Clause 9.2 of the *Commonwealth Lease* requires that "The Lessee must maintain the runways, taxiways, pavements and all parts of the airport essential for safe access by air transport to a standard no less than the standard at the commencement of the Lease". It is the Chamber's view is that the 04/22 runways closure in the pDMP for the above reasons is contrary to clause 9.2 of the Commonwealth Lease and therefore non-compliant with section 91(1)(ca) of the *Airports Act 1997.*

[1] The Federal Airports Corporation's: Drawing number FAP 91/167 Obstacle Limitation Surfaces including PAN-OPS Surface (Surveyor JE Bain 8-1-1996); and Department of Aviation Drawing No BS 9703 Sheet B1 "Archerfield Airport and Environs"; AACCI Preliminary Draft 04L RNAV approach plate and Draft Alternative Master Plan prepared 2015.

Illegally performed study and conflicts of interest

"Technical Studies" associated with the 2011 – 2013 master plan, the claimed basis of the "*04/22 runways commercial land grab plan"* were illegally performed by Mr Rodney Sullivan as he did not hold the required registration with the Board of Professional Engineers in Queensland (whose main objects include imposing obligations on persons about the practice of engineering) in breach of section 115(1) of the *Professional Engineers Act 2002 (Qld)* and sections 5 & 6 which binds all persons both within and outside Queensland in relation to Queensland sited projects .

Further the code of conduct made pursuant to the *Professional Engineers Regulation 2019 (Qld)* was not followed by Mr Sullivan– some examples follow:

- act impartially and objectively in the provision of all professional engineering services
- communicate and consult with ...other stakeholders in a timely and effective manner
- must take into account the public interest
- comply with all laws, statutory rules and codes attached directly or indirectly to the engineering profession

Mr Sullivan has an ownership interest in Burnie Airport in Tasmania and has shortened their runways for commercial development such that aerial ambulance operators have been adversely affected in the use of that airport. Mr Sullivan held senior engineering/management positions in the former Commonwealth Department of Aviation (DofA) from 1968- 1989 and Civil Aviation Authority (CAA), with responsibility for Archerfield Airport and if a 01/19 runway direction was such a good idea then he would have already implemented it.

Mr Sullivan's conclusions of the 18/36 runways as being adequate relied upon a "Cinderella's Shoes" assumption of forcing pilots (including vulnerable student pilots) to have to deal with 10 knot crosswinds on the 10/28 runways before being allowed to use the cross runways, to produce an outcome that the ALC wanted. Addressing a 18/36 OLS or considering CASA operator factoring has not been considered. His view that obstacles may require the pilot to fly a turn or series of turns to avoid obstacles in the vicinity of the airport shows no understanding or practical experience of the difficulties of flying aircraft with an engine failure upon climb out and afterwards.

A seemingly compliant runway with MOS part 139 becomes quickly unusable when the legalities of air operators as to CASA air operator factoring, self- assessment of obstacles etc mandated in CASA's laws / operations manuals must be complied with for compliant conduct of their air operations. This disconnect between airport planning and real-world operations use means users of Archerfield airport and (other airports) are being duded out of its utility.

Mr Charles William Whitney – Australia's most experienced aircraft design engineer prepared analysis as to why the airport leasing company's *Archerfield Airport Planning Issues - GA Aircraft Performance* cannot be relied upon for runway distance determination. The said airport leasing company produced document was the work of unqualified persons – no aircraft design engineers, no pilot qualifications, no air operator experience by this person, no understanding of FAA design certification rules and a conflict of interest as the son of the directors of the airport leasing company produced the document.

Underlying Interest in the land

An airport leasing company is required to certify that the underlying interests in the land have been taken into account in preparing the pDMP. The Minister may not be aware that lessees of aerodrome land of Commonwealth Airports Act airports pre- privatisation had collateral agreements with the former FAC and Commonwealth, that their lease documents (the legal intertest in the land) would be renewed three times, without reversion of lessee's improvements. We submit that if the said collateral agreements (the equitable interest in the land) are taken into account this pDMP does not comply with such underlying interests in the land.

Head of Power

There has been reliance by airport leasing companies, the Infrastructure Department and previous Federal Ministers upon the federal court single judge decision in *Westfield Management Ltd v Brisbane Airport Corporation Ltd [2005] FCA* ("Westfield") as *the* authoritative basis for permitting non-aviation commercial development upon Commonwealth Airports Act airports.
This reliance is unfounded as the "head of power" was never decided in that case. It was only agreed by the respective party's barristers in their facts issues and contentions to agree to assume and not contest "head of power" of the *Airports Act 1997*. There is however subsequent competent "constitutional opinion" by Senior Counsel to the effect that portions of airport land which is not used for its compulsory acquisition purpose (e.g. non- aviation development) are no longer a "Commonwealth Place" and instead subject to State Law. In the case of Archerfield Airport non- aviation development, the Brisbane City Council Planning laws would apply and they, in essence, do not permit such development. The Minister in our opinion must reject the pDMP for non-aviation development.

10/28 Road Cutting and Grooving
The 10-metre-deep open road cutting at the western end of runway 10L/28R built across the effective RESA of runway 28R/10L has been a huge safety concern of pilots generally and our members over many years since its construction. Overrun or undershoot into this road cutting is almost certain to be fatal to aircraft occupants.

There have been accidents and incidents near this road cutting and it is a reasonably foreseeable event that further accidents / incidents will occur, particularly with more light jets operating into the airport that do not have reverse thrust mechanisms and is therefore a heightened risk factor from aquaplaning. Further the pDMP does not provide for grooving of the runway (which allows a wet runway to be treated as dry) and without grooving the present 10/28 runways are inadequate for RPT operations.

We request yourself as Minister to require the airport leasing company to amend the pDMP to incorporate a causeway solution or a filling in of the service road into the pDMP and further to require the airport leasing company to add grooving of the 10L/28R runway into the pDMP.

We note that the airport leasing company is on public record in the AAT stating they would groove the 10L/28R runway after being challenged in the AAT by our Chamber over the inadequacy of the runway length for proposed RPT operations.

Yours faithfully
Archerfield Airport Chamber of Commerce Inc.

Lindsay Snell

Captain Lindsay Snell
President

Archerfield

Brisbane's Metropolitan Airport

Master Plan 2011-2031

PART 1: Context, vision and plans for the future

Foreword

This plan reflects the aviation users true current and future requirements for the airport, and with due regard to the Community that surrounds it, as intended to operate by the Parliament of Australia thorough the *Airports Act 1996*.

This Alternative Master Plan has been discussed widely with a broad section of users, from flying schools, private aircraft owners, holders of Air Operators Certificates, aviation community and non- aviation community organisations and our members.

The plan restores aviation as the first priority for the Airport, not the profits or super-profits of Archerfield Airport Corporation from land development activities which are inconsistent with the use of the airport as an airport site and disruptive and damaging of aviation businesses and operations.

This plan zones the airport entirely in accordance with the SEQ Plan which only permits the airport to be Zone SP6 (Special Purposes Airport) , not General Industry, not Light Industry and not Extractive Industries.

The plan restores the airport from the downgrading and damage by inappropriate construction too close to runways that has occurred since privatisation by relocating offending structures and obstacles that limit the present and future capacity of the airport from that which existed at the commencement of the airport Commonwealth lease.

The plan recognises the underlying interest in the land of the exiting aviation lessees who trusted the Commonwealth as to their lease renewal and who invested their private funds into aviation infrastructure making Archerfield Airport the centre of aviation excellence it has formerly been prior to the activities of present ALC.

Archerfield is Brisbane's only secondary airport. Brisbane Airport has reached its capacity limits with current infrastructure which cannot be alleviated before 2020 even with immediate infrastructural improvements. This Plan recognises that many aircraft that currently operate in to Brisbane will need to operate into Archerfield. Charter, private and freight aircraft capable of landing at the airport, operate under the instrument flight rules and therefore the plan reflects providing for this so that Archerfield can exist as an IFR destination airport without reliance upon Brisbane Airport and be a destination of reasonable reliability to such aircraft.

I commend the plan as the true plan required for the users Archerfield Airport and the Community

Captain Lindsay Snell
President
Archerfield Airport Chamber of
Commerce Incorporated

THE CHAMBER OF COMMERCE INCORPORATED ALTERNATIVE MASTER PLAN

SUMMARY

What Is Wrong With the Airport

The airport is a registered airport and not a certified airport.

What is NOT wrong with the airport is that the runways are appropriately aligned with sufficient operant directions and operators and users are entirely satisfied with the existing directions – determined by nearly 80 years of use.

Unsealed runway 04L / 22R has better serviceability when the drains are mowed and racked – however the existing ALC has not adequately maintained them.

The cross runways at present are unsealed and therefore cannot ever be all weather coping with surface water or heavy rain unless they become sealed.

The main 10L/28 runway eastern extension of 160M was constructed prior to privatisation to accommodate the requirements of metro-liner freight aircraft is not formally recognised in official documentation such as ERSA

The ALC is restricting access to the airport to aircraft operations of no more than 5700 kgs unless with special in advanced approval, thus preventing accessibility and not providing for real demand.

Archerfield is not a certain destination for IFR aircraft arrivals, due to inadequate approaches and too high minimas and meaning that an alternate airport (usually Brisbane) is needed by such intending arriving aircraft – which is now problematic due to Brisbane Airports own capacity issues and inability to accept ad hoc arrivals.

Instrument approach minimas to land at the airport are not low enough for marginal conditions, being only two NBD circling approaches that have high approach minimas and with only one runway non-precision approach which is not in the right direction for prevailing winds in inclement weather. Runway arrivals invariably require a circling approach to land and consequently higher minimas than straight in runway landings. In summary the airport has not been purposefully developed and planned as it should be for Instrument arrivals and taking advantage of current and future GPS technology.

The airfield having only one runway with lights for night operations cannot accommodate aircraft to land in conditions of high crosswinds at night.

The airport is not manned after hours as there is no responsible person in attendance to switch the PAL (Pilot activated lighting) manually on after hours, all aircraft arriving require an alternate airport usually Brisbane – however with demand issues at Brisbane Airport there is difficulty satisfying this requirement.

There is no approach lighting whatsoever on the airport which is a safety deficiency for aircraft at night and making approaches a risk to crew passengers and the communities surrounding the airport.

There is no instrument landing system on any airport runway – and this is a needed for the lowest approach minimas,

IFR instrument training and pilot 35 day re-currency requirements as training schools and approved test officers cannot get access to the Brisbane ILS, the Amberley Airforce base ILS or rarely the Royal Australian Army Oakey Airbase ILS, and this is now a critical issue affecting general aviation operations in SE Qld.

A deep road cutting at the western end of runway 28R/10L is a danger to any aircraft overshooting runway 28R or undershooting runway 10L.

Pickles Auctions Heavy machinery and auction yard is a problem and stress pint for pilots. It is located within the Queensland Government prescribed public safe area for runway 10L on take-off and runway 28 R for landing and in the 80 percent GA accident distribution area being in the intolerable risk category. Further it occupies an area needed for approach lighting for the main instrument runway.

The ALC has permitted obstacles to be constructed in the OLS areas of the airport as a Code 3C airport. The airport was require to be maintained to at least the standard it was at the beginning of the Commonwealth lease (Code 3C) and obstacles are affecting the expansion capability of the airport that was always preserved by the Federal Airports Corporation at privatisation.

There is no staging area for natural disaster such as helipads for Erickson Aircrane fire-fighting helicopters or a military NH90 to safely come and go from the airport day or night.

What Demands Does it need to Meet

There is forecast high demand for pilots in the Australasian region over the next 20 years and although Archerfield has had a fine history of flying training, it is a high cost centre, but the perfect location for flying training should their become an environment of an airport leasing company that encouraged aviation on the airport.

There is an exponential increase in demand for Charter and fly in fly out operations, to the regions particularly in support for Mining and these are flights being conducted under the instrument flight rules in turbine aircraft. The Chamber is aware of Q300 and Q400 Charter operations desired to be conducted at the airport. Such aircraft and even the piston twin and single engine aircraft now GPS and ILS equipment for runway approaches – and the airport needs to catch up to meet their requirements.

The most common aircraft for mining charter is the King Air B 200 aircraft, after lessons learned in the 1980's with accidents in piston aircraft – small turbine aircraft replace the larger pistons aircraft except for mostly freight operations.

Future aviation activities include the increased Charter, Freight and Corporate aircraft traffic of code 3C or 4D already wanting to use Archerfield Airport because of the capacity constraints of Brisbane Airport (as is now evident) such that the airport requires to be preserved in its entirety as "SP6 aviation" to accommodate this demand.

Aviation demands will increase in the coming years as the population in SE Queensland increases but no-one can foresee the exact requirements into the next 50-100 years. Land cannot be permitted to be locked up for non – aviation purposes that would or reasonable will be required into the future.

The airport is a public utility and quasi –monopoly and the lessee must meet the requirements of users and accommodate the rights of operators to validly exercise the rights conferred upon them on their Air Operators Certificate to carry out those activities for the place certified in the certificate. Therefore this plan accommodates banner towing and tail dragger aircraft areas within the runway strip.

Flying training continues to be an important component of the airport and therefore the dual parallel runway system needs to be kept so that circuit training operations can co-habitat with arrivals and departures.

The airport needs to become a **destination of high certainty of arrival of IFR aircraft** and stand on its own without the routine need to hold Brisbane airport as an alternate.

Given the 2011 floods in Brisbane, and Brisbane Airport being a lower elevation than Archerfield Airport, and on opposite side of the Brisbane River, there is a direct requirement for the airport to be maintained for such current military aircraft types as the C130J and the new replacement for the Caribou the Alenia C-27J transports (28M wingspan = code "C" requirement) – that can access nearly four times the number of airfields in Australia than the larger C-130J, as well as being able to operate into softer or unprepared fields.

The airport was an important centre for natural disaster management during the 2011 Brisbane Floods with extensive helicopter operations form the airport such that it is proven that there needs to be a staging area for helicopters, for floods firefighting etc.

The airport has no FBO (fixed Base operator) style facilities for corporate aviation yet there is clearly a demand and persons ready to build such facilities for immediate requirements.

How the Chamber's Alternate Master Plan solves the issues

The alternative Master Plan solves the issues by:

1. Formalising the 160M increased take-off length of the 28R/10L runway that already exists.
2. Removal of Pickles Auctions sub-lessee and returning Lot 5 on Registered Plan No. 179578 County of Stanley, Parish of Yeerongpilly land to SP6 Aviation uses and clear of all non-fragible objects excepting the addition of approach runway lighting systems.
3. Stage 1 -Upgrade the pavement of the existing 04L/22R cross runway and sealing to code 3C / code 3D to permit all weather use of a crosswind runway and proper and regular maintenance of drains .
4. Implementing for the 04L/22R cross runway non – precision approaches and preserving the runway for precision instrument approach runways as "all weather to category I " night capable instrument runways..
5. Stage 2 Extending the 04L/22R to the SE subject to further major development plan) to 1600M to code 3D standard permitting aircraft such as Q300, ATR 72 or Q400 aircraft being highly suitable aircraft for higher capacity fly in fly out and other Charter operations.

6. The 04L runway, being a dominant bad weather approach direction, will keep aircraft over the Oxley creek flood mitigation area – being an area entirely devoid of population and therefore highly acceptable to the community surrounding the airport at Acacia Ridge.
7. A 04L GNSS approach plate (draft design) proves such approach would not infringe Amberley Airspace.
8. A short taxiway from the 04L/22R runway to the large aircraft parking area is added to accommodate these aircraft without the need for initial extensive distances of new taxiway works.
9. Extending the 28R/10L main runway (subject to further major development plan) into BCC land Oxley creek catchment area –and possibly reactivating the plan and agreement the Federal Airports Corporation is included, given the critical Brisbane Airport capacity issues now restricting operations.
10. Simple Approach lighting for 10L/28R and 04L/22R sealed runways improves the safety of aircrew and the local community from arrival accidents at night and in weather of restricted visibility and is usual practice for instrument runways.. This is to be installed for non – precisions approaches and upgraded to category I lighting for precision runways
11. A banner towing and pick up and drop off area is restored and formalized in the plan on the grass in front of the control tower –a proven established area for operations determined over many years of operations between operators and Air Traffic Controllers.
12. This Plan maintains the existing Control Tower, and the fuel farms, and truly recognises pre – existing interests in the land – such as the Scouts Ministerial Agreement and lessees rights to conduct their aviation businesses unhindered and have their airport leases renewed, and to be provided airport access.
13. A Bridge is to be constructed over the deep road cutting or trenches backfilled to improve this potentially lethal safety issue and access can be gained Mortimer Road .
14. The airport land east of Beatty Road and including the Pickles Auction area is returned to aviation and is to be used for simple approach lighting and reserved for future category I instrument approach lighting.
15. Until GNSS wide area augmentation or a Ground Based Augmentation system at Brisbane or Archerfield Airport is commissioned such that GNSS approaches with vertical guidance can be added, instrument landing system equipment is added in this plan. Note that certain Transport Category aircraft could achieve near ILS arrival minima with VBaro.

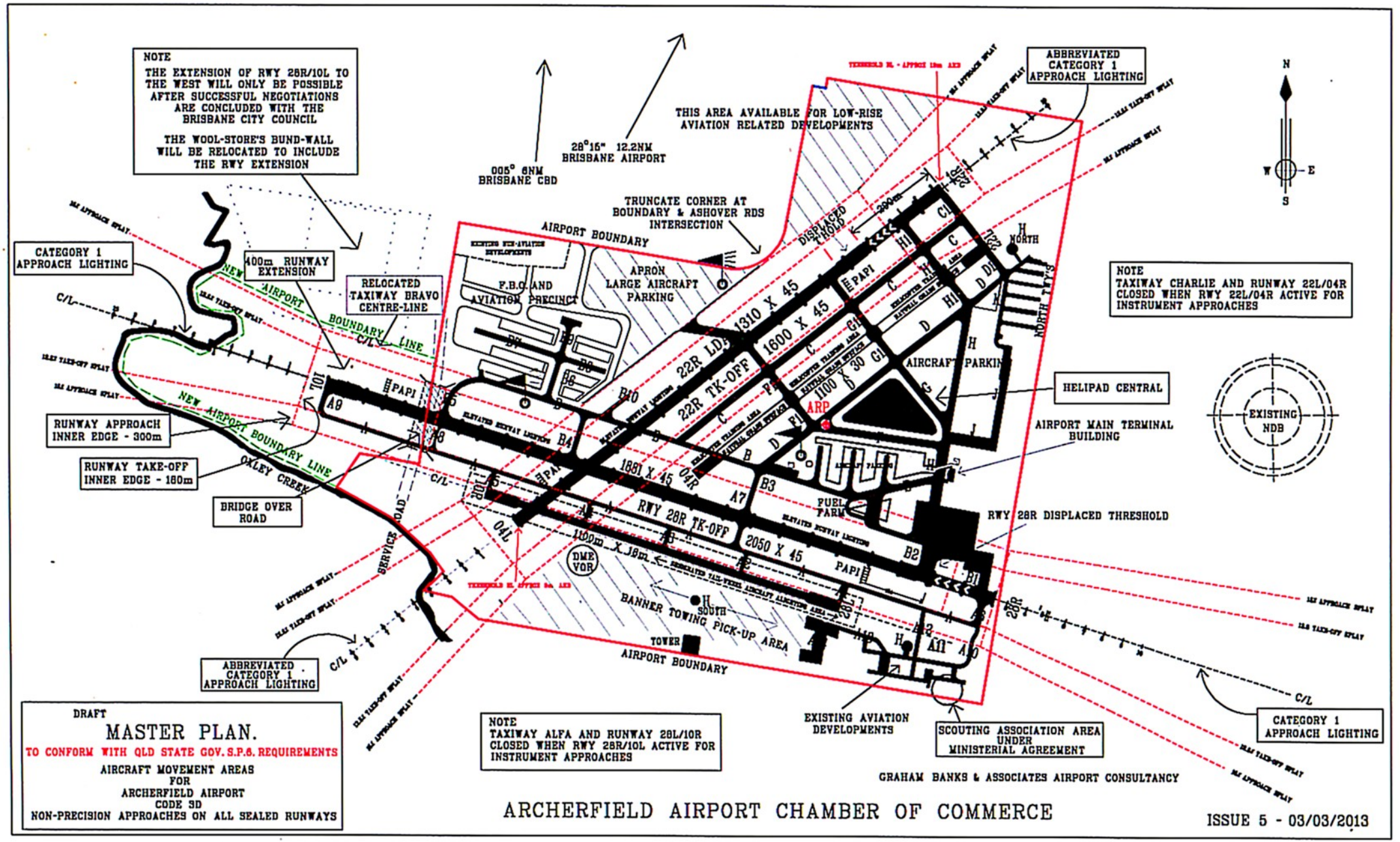
16. PAPI visual slope visual indicators are to be placed on all instrument capable runways in keeping with the usual practice for instrument approach runways to have VSI's.
17. The Chamber 's plan calls for a responsible person to be in attendance on the airport who can switch the airport lights on manually at night. As there is a 24 hour security patrol, that is a task that the security officer should be trained in so that arriving aircraft at night can dispense with an alternate due to PAL lighting.
18. The Chamber's Plan preserves the airport asset so it can provide for the growth needs of South East Queensland both current and the future, and for new aviation related business to base their operations at the airport.
19. The Chamber's Plan maintains the airport is to revert to SP6, and in accordance with state legislation and the South-East Queensland regional Plan.
20. In this plan the airport is to become a "Certified Airport"
21. Hard stand apron for larger aircraft has been provisioned in the plan close to runway 04L/22R
22. A central helipad landing area that can accommodate heavy helicopters such as Erickson Aircrane fire-fighting helicopters or a military NH90 for day or night assess.
23. An emergency /natural disaster staging area is provided in the plan.
24. Offending structures or obstacles are to be removed or relocated to preserve the OLS in accordance with obstacle restrictions and removal procedures. [i.e. Dismantling and relocation of the Archerfield Airport Corporation owned Emergency Management Queensland and the Corporate Jet Hangars .]
25. Runway 04L/22R requires a re-location of the fence and a smoothing of the road corner of Ashover Road and Boundary Road to meet 04L /22R runway instrument approach requirements.

REQUIREMENTS

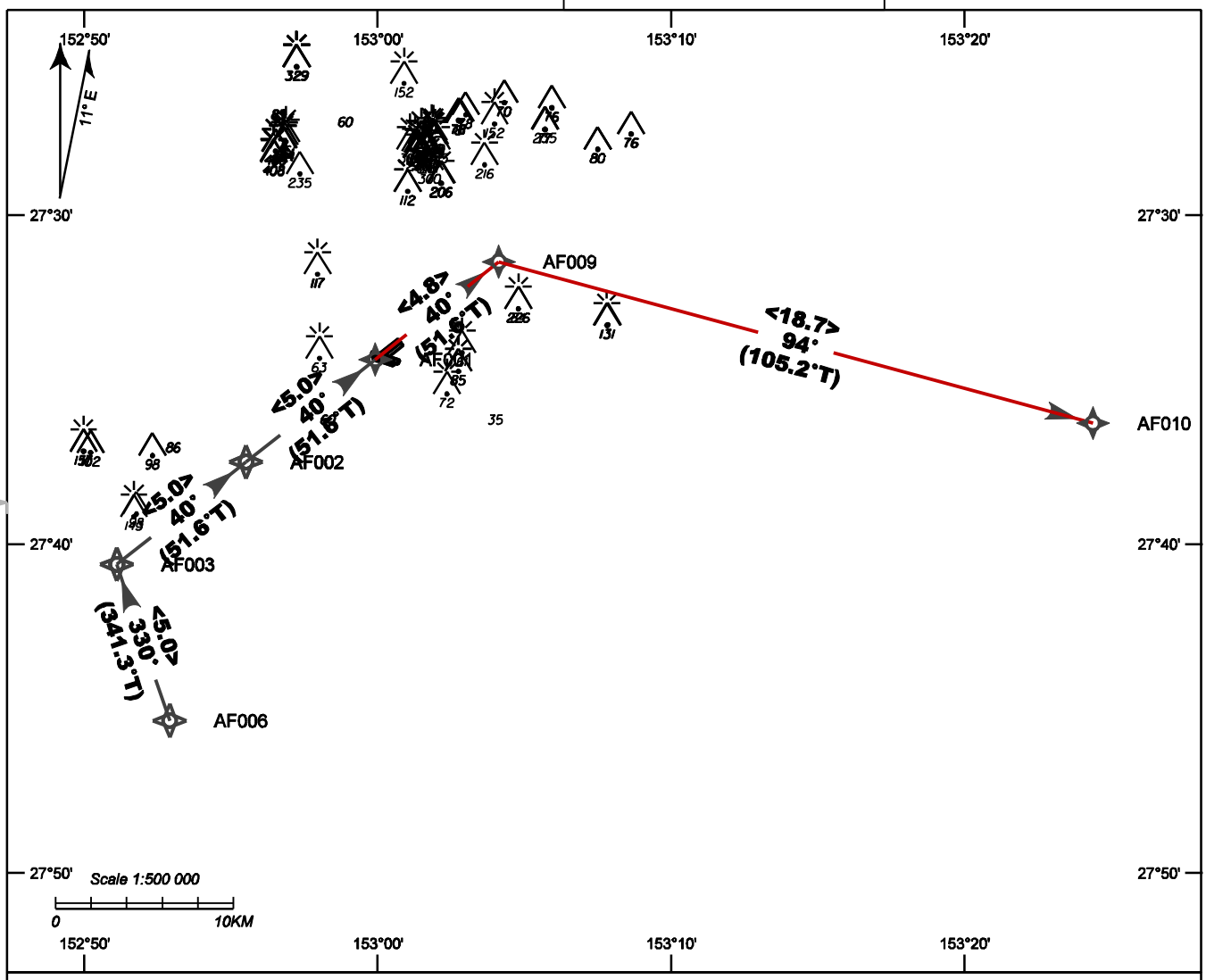
Archerfield Airport Corporation is required by 1st March 2014, pursuant to Division 4, subdivision A of the *Airports Act 1996* to lodge a Major Development Plan in respect of the components of this plan that require a major development plan, that is Stage 2 of this plan (or are not otherwise the subject of a Section 89(5) exemption by the Minister), having first obtained the agreement of Archerfield Airport Chamber of Commerce Incorporated to the said Major Development Plan in writing.

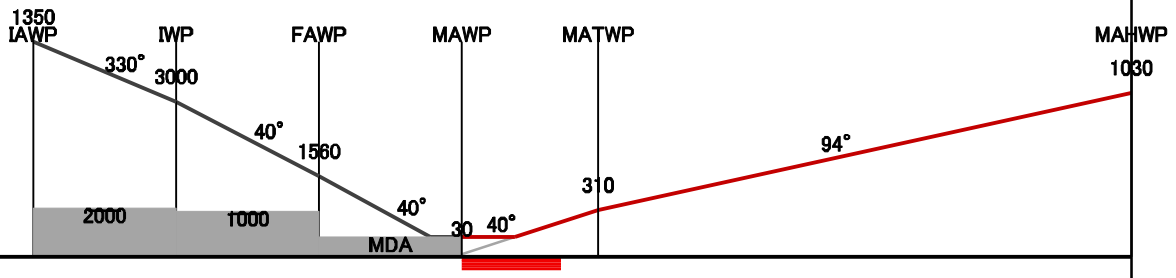
Archerfield Airport Corporation is required to cease all non- aviation development, industrial development, aviation development not approved or contrary to this plan, upon approval of this Alternative Master Plan by the Administrative Appeals Tribunal and is required to commence stage 1

construction including drainage works, filling and sealing of the existing runway 04L/22R by 1st September 2013 and to complete same by 31st October 2014.


NOTE
THE EXTENSION OF RWY 28R/10L TO THE WEST WILL ONLY BE POSSIBLE AFTER SUCCESSFUL NEGOTIATIONS ARE CONCLUDED WITH THE BRISBANE CITY COUNCIL
THE WOOL-STORE'S BUND-WALL WILL BE RELOCATED TO INCLUDE THE RWY EXTENSION
005° 6NM BRISBANE CBD
28°15" 12.2NM BRISBANE AIRPORT
THIS AREA AVAILABLE FOR LOW-RISE AVIATION RELATED DEVELOPMENTS
ABBREVIATED CATEGORY 1 APPROACH LIGHTING
N
W
E
S
CATEGORY 1 APPROACH LIGHTING
400m RUNWAY EXTENSION
RELOCATED TAXIWAY BRAVO CENTRE-LINE
TRUNCATE CORNER AT BOUNDARY & ASHOVER RDS INTERSECTION
AIRPORT BOUNDARY
APRON LARGE AIRCRAFT PARKING
F.B.O. AND AVIATION PRECINCT
NEW AIRPORT BOUNDARY LINE
DISPLACED THOLD
1310 X 45
1600 X 45
1100 X 30
22R LDG
22R TK-OFF
NORTH
NORTH TAXIWAY
NOTE
TAXIWAY CHARLIE AND RUNWAY 22L/04R CLOSED WHEN RWY 22L/04R ACTIVE FOR INSTRUMENT APPROACHES
AIRCRAFT PARKING
HELIPAD CENTRAL
EXISTING NDB
AIRPORT MAIN TERMINAL BUILDING
RUNWAY APPROACH INNER EDGE - 300m
RUNWAY TAKE-OFF INNER EDGE - 180m
OXLEY CREEK
BRIDGE OVER ROAD
1881 X 45
04R
RWY 28R TK-OFF
FUEL FARM
RWY 28R DISPLACED THRESHOLD
2050 X 45
1100m X 18m
DME VOR
SERVICE ROAD
04L
BANNER TOWING PICK-UP AREA
SOUTH
TOWER
AIRPORT BOUNDARY
ABBREVIATED CATEGORY 1 APPROACH LIGHTING
EXISTING AVIATION DEVELOPMENTS
SCOUTING ASSOCIATION AREA UNDER MINISTERIAL AGREEMENT
CATEGORY 1 APPROACH LIGHTING
NOTE
TAXIWAY ALFA AND RUNWAY 28L/10R CLOSED WHEN RWY 28R/10L ACTIVE FOR INSTRUMENT APPROACHES
DRAFT
MASTER PLAN.
TO CONFORM WITH QLD STATE GOV. S.P.6. REQUIREMENTS
AIRCRAFT MOVEMENT AREAS
FOR
ARCHERFIELD AIRPORT
CODE 3D
NON-PRECISION APPROACHES ON ALL SEALED RUNWAYS
GRAHAM BANKS & ASSOCIATES AIRPORT CONSULTANCY
ARCHERFIELD AIRPORT CHAMBER OF COMMERCE
ISSUE 5 - 03/03/2013

INSTRUMENT APPROACH CHART | **AD ELEV 19 m** HEIGHTS RELATED TO | **RWY 04L YBAF RNP APCH**





OCA(H) - CATEGORY	A	B	C	D	GS	KT
2.5% MDA(H)	442	442	442			Min:S
					Rate of Descent	FPM
					GS	KT
RVR						FPM

CHANGE:

EFF:

Geodetic System: WGS84 Bearings are Magnetic Elevations in METERS AMSL

Archerfield Airport Chamber of Commerce Inc

Submission to the Productivity Commission Inquiry:

Economic Regulation of Airports

Archerfield Airport Chamber of Commerce Incorporated

About AACCI

Archerfield Airport Chamber of Commerce Inc is incorporated pursuant to the *Associations Incorporation Act 1981* and the *Associations Incorporation Regulation 1999* being Queensland statutes and being the incorporated body of the previous unincorporated body of Archerfield Airport Chamber of Commerce, collectively ("AACCI" and "the Chamber").

The objects of the Chamber are: *To Foster, preserve, maintain and develop aviation on Archerfield Airport (primarily), other secondary airports and nationally.*

The Chamber's members range from the most senior representatives of an international world class airline through to fixed wing (airplane) and helicopter Air Charter, and flying training organisations, corporate flight departments, professional (Commercial) and private pilots, aviation tenants, aircraft owners whose aircraft are or have been predominantly based at Archerfield and the representatives of aviation community organisations: aircraft maintenance, overhaul, airframe, instruments, avionics and related engineering experts and much more. The Chamber also has interstate Chamber affiliated- members.

The Chamber is a not-for-profit organisation whose objects have been declared a public purpose with a sanction to receive public donations pursuant to *The Collections Act 1966* (Qld).

Readers of this submission who would like to make (anonymous) public donations pursuant to *The Collections Act 1966* for the Chamber to run a head of power challenge in the High Court based principally upon the Robertson SC opinion (refer Annexure D1 &D2 to this submission) may do so by making deposits to the Chamber's Bank of Queensland Bank Account BSB124057 Account no 20220853 and emailing notification about the deposit to the treasurer to receive a receipt.

Background

Purposes of Air Travel

The primary purpose of travelling by air whether by buying an airline ticket on an RPT service, chartering an aircraft or helicopter (or indeed owning either) is the time utility that the aircraft or service provides. If there is a failure to achieve that time utility, the value of the air travel or service is significantly diminished. This also applies generally to freight and critically to perishable freight. This core time utility concept does not seem to be something that Government or Regulators sufficiently appreciate.

The Air Transport System Operates as a "Whole"

The RPT Airline Aircraft operate primarily between the Primary Capital City Airports, International Airports and the Major City and larger Regional Airports all under Instrument Flight Rules ("IFR").

General Aviation Aircraft operate primarily from the Secondary Airports and the Regionals, Certified and Registered airports and authorized landing areas. Commercial Air Transport and Corporate GA Aircraft also may operate from the Capital City Primary Airports and Major City Airports. General Aviation Aircraft operate both under Visual Flight Rules ("VFR") and IFR depending on the aircraft certifications, on-board equipment, pilot qualifications and airport design standards and approvals including the airport's instrument approaches (if any).

Aircraft must land at airports / aerodromes or authorised landing areas by law and are economically captive to such airports. The ability of a flight from airport "A" to airport "B" to proceed is dependent upon the airport system "as a whole" not just departure airport "A" and arrival airport "B". The availability and suitability of Airport "C" (possible thousands of kilometers away and never intended to be a destination) can solely determine if the A-B flight can proceed – if at all.

A flight may be able to plan to proceed to an "acceptable airport" but must always be able to fly to a "suitable" airport. Essentially a suitable airport is not one which also requires an alternate itself. An airport's aeronautical infrastructural facilities (e.g. runway lighting, standby power generation, navigation aids, availability of an ARO (responsible person in attendance), number, length and direction of runways, imposed curfews, forecast weather conditions and the airport's policies and practices of the airport management must all be aligned for such flights to proceed.

Secondary airports and Primary Capital City Airports in our advanced aviation environment are designed to work as airport pairs, the Capital City Airport handling scheduled public transportation (e.g. Airlines) and the secondary airport non-scheduled air services (mostly referred to as General Aviation). With limited exceptions Brisbane Airport doesn't handle Helicopter operations leaving that to the secondary and other airports. The secondary airport also relieves the primary airport of traffic that would otherwise inundate the primary airport's traffic capacity if it were not there. Other capital cities have multiple secondary airports, but Brisbane has only the one, being Archerfield.

Airports, in the national interest, cannot be operated with singular interest as isolated fiefdoms and with disregard to the Air Transport System as a Whole.

Composition of The Australian VH Aircraft Register

Page 1 Figure 1 to this Inquiry's Issues Paper refers to the rising number of passengers and international air freight however this is not the sum-total of the Sky – far from it.

The Australian Aircraft VH Register, (which excludes the non- VH registered aircraft such as Warbirds, and Sports and Recreational Aircraft which are on separate self-administered bodies registers) lists 15,551[1] aircraft as at 18th October 2018.

Approximately 1603[2] of the VH Register were either Gliders and Motor Gliders (1,178) and Manner Free Balloons (425).

Rotorcraft (Helicopters) were approximately 2267.

Table 7 Flying Activity by VH-registered aircraft (2016)

Industry sector and flying activity		Number of Aircraft
Commercial air transport		
Scheduled	International	200
	Domestic	621
	Freight only	96
Non-scheduled	Passenger transport charters	1669
	Air ambulance	162
	Freight only	83
	Other commercial air transport	73
Total Commercial air transport		2343 D

The BITRE *Australian Aircraft Activity 2016* report includes in Table 7 the make-up of "Commercial Air Transportation" but includes in a note D that "*the sum of Total General Aviation and Total Commercial Air Transport aircraft will exceed Total aircraft as some aircraft operate in both industry sectors*".

The entire fleets of the three major RPT airlines total only 309 aircraft (Qantas 133, Jetstar 76, and Virgin 100[3]).

Examination of the most common RPT airline aircraft types reveals that there are only 591[4] of them on the Australian VH Register however being of that type is not sufficient to assume RPT operations.

Assuming however that they are all used for RPT operations, the remaining approximately 13,357 aircraft are what has traditionally, in the past, been known known as "General Aviation". The Commercial Air Transport Sector statistics obviously includes aircraft that play a significant and generally under-recognised role in passenger and freight operations in the Commercial Air Transport Sector. It is noted from the BITRE General Aviation Study (2017) that the ICAO classification of Civil Aviation Activities and the ICAO Reference Manual for Aviation Statistics makes no distinction regarding aircraft size.

[1] Source: CASA Civil Aircraft VH Register 18th October 2018
[2] Source: Sort by "Airframe" of CASA Australian VH Register downloaded on 18th October 2018
[3] Source: Planespotters.net October 2018
[4] Source: CASA Civil Aircraft Register sort by Manufacturer: Boeing 199, Airbus 124, Fokker 75, SAAB 52, Fairchild 50, ATR 16, DHC 62, BAE 13.

A key difference between the traditional view of GA and the new ICAO classification is the treatment of air transport charter activity. Previously, small transport charter operations were considered to be part of GA. However, the new ICAO definition explicitly excludes them.[5]

Additionally, how the BITRE reports aviation statistics compared to the ICAO model can be found in Figures 1.1 and 1.2 in the study.

The BITRE General Aviation Study (2017) reports "a *serious lack of comprehensive and robust data on the entire GA sector, including its level of activity and its economic and community contribution*"[6].

Rotorcraft (Helicopters) comprise approximately 2267 of the 13,357-aircraft leaving approximately 11,090 Fixed Wing, Commercial, Private and Corporate Aircraft.

Buried within the BITRE Table 7 "Flying Activity VH-Registered Aircraft" subheading "General Aviation" is a further sub-heading.

Own Use Business	Own Business Travel	2254

These 2254 aircraft include significant operations that are passenger and/ or freight transport operations.

One example is "Angel Flight" whereby aircraft owners donate their aircraft to transport sick but able persons and their carers from remote localities to major cities for medical treatment.

Corporate Flight department operations are also buried in this statistical classification and are passenger and freight operations.

One example of this is Western Grazing Company group that has a fleet of turbine and piston engine aircraft (including operating "A" class aircraft - in the airline transport category) transporting its own staff and management between multiple outback properties from its permanent aviation base and substantial own private hangar facilities at Brisbane Airport. This company group formerly operated from its own facilities on Archerfield Airport until its lease was not renewed by the ALC but is now inconveniently restricted to operations in the middle of the day at Brisbane Airport due to airport demand restrictions. It's group is the owner of the largest hangar facility on Brisbane Airport.

Another example is the FKG Group, a privately owned dynamic industrial and infrastructural projects group which is based at Toowoomba Airport to support substantial projects in remote locations in Australia (and Papua New Guinea) with multiple aircraft including class A air transport category turbine aircraft transporting some of its more than 1000 staff and delivering time critical freight or equipment to support its project operations. It also operates as required into Brisbane airport to transport time critical staff.

Applying the analogy of Ground Transportation:

> RPT Airline Aircraft are analogous in operation to the Busses and the B doubles and is the most familiar type of air transport to the general-public, and government.
>
> The General Aviation Fixed Wing Fleet are largely analogous to the Min-Buses, Limousines, Taxis, Couriers, Utility vehicles and Private Cars

[5] BITRE General Aviation Study (December 2017) page 6
[6] BITRE General Aviation Study (December 2017) page 59

The General Aviation Helicopters have a variety of roles analogous to Limousines, Sky Cranes, motor cycles and small special operations vehicles.

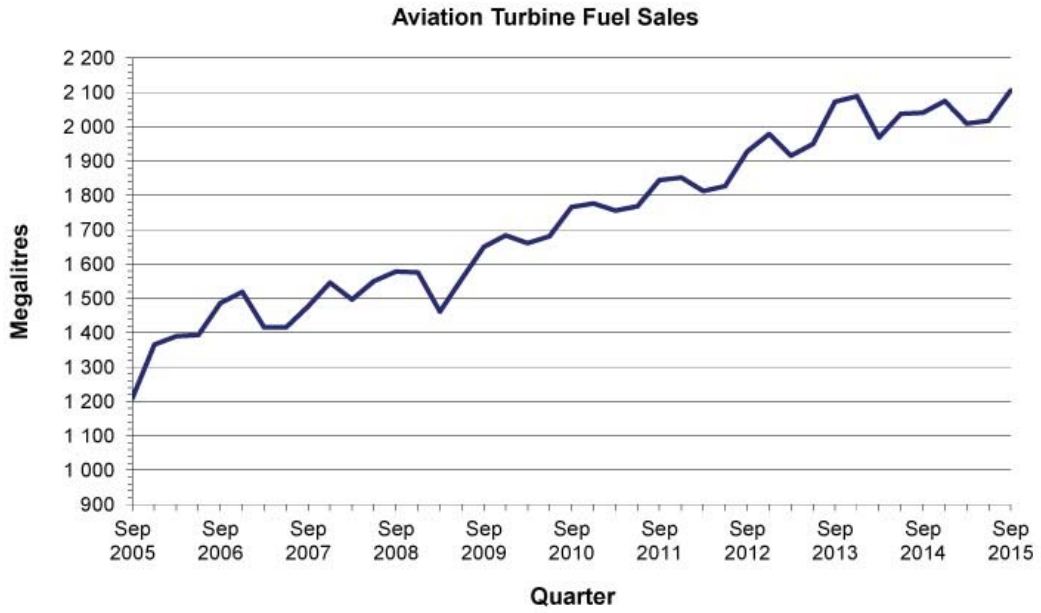
Aircraft on the Australia Register that are powered aircraft operate on the following fuels[7].

FUEL	NUMBER OF AIRCRAFT	PERCENT
Diesel	14	NSV
Gasoline (Avgas or alternatively approved fuel e.g. Mogas)	11,561	82%
Kerosene (JetA1 or Avtur)	2,529	18%
TOTAL	14104	100%

From the above table Diesel fuel specific aircraft are not significant in the fleet although it is acknowledged that some turbine aircraft are approved to consume diesel as a substitute for kerosene e.g. turbine agricultural aircraft.

Aviation Turbine Fuel Sales data as published by the BITRE shows rising consumption[8].

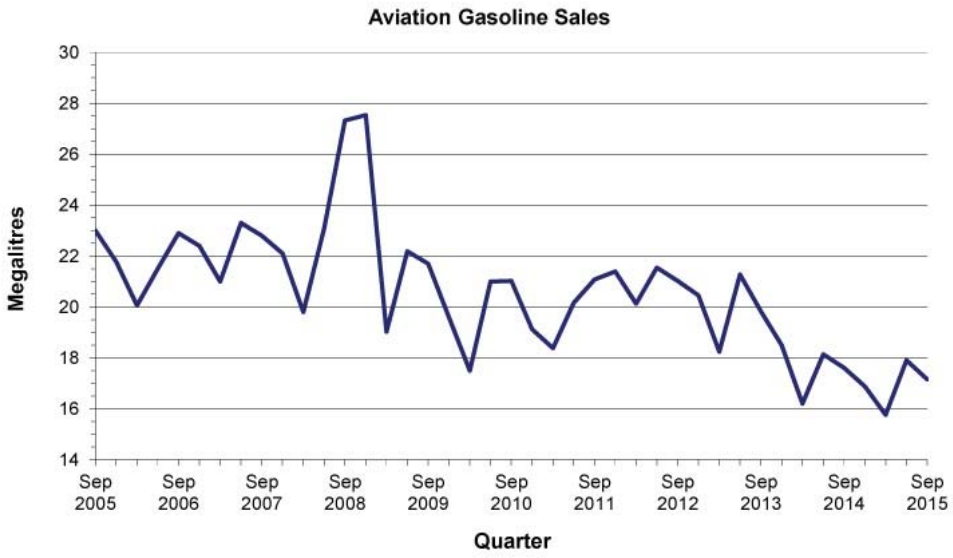
Aviation turbine (avtur) fuel sales



[7] Source Sort by "Fuel Type" of CASA Australian VH Register downloaded on 18th October 2018
[8] BITRE website

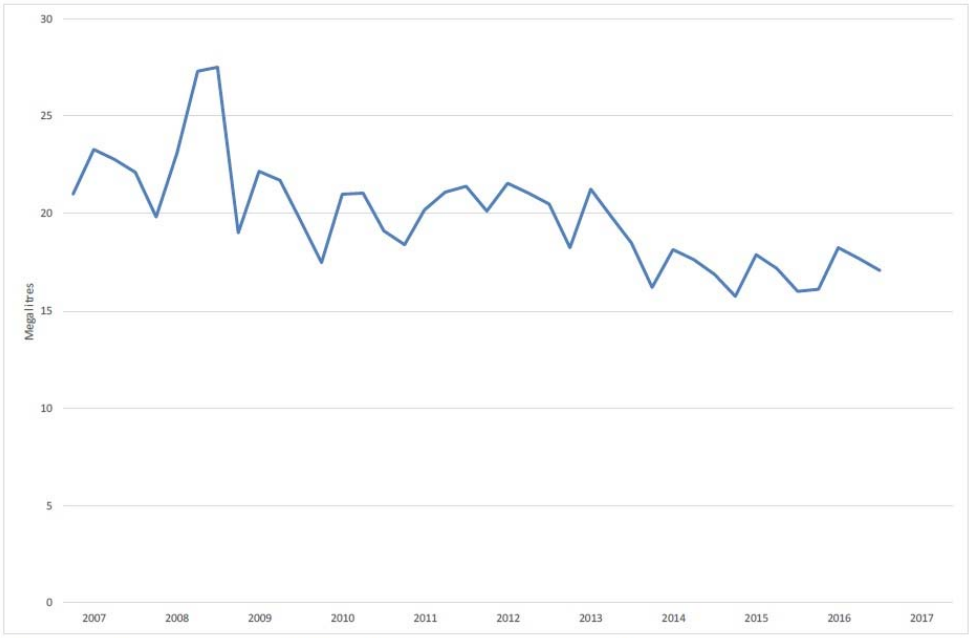
Whereas Avgas Fuel Sales data as published by the BITRE shows falling consumption.

Aviation gasoline (avgas) fuel sales



The BITRE in its General Aviation Study (December 2017) states that "*Sales of Avgas in Australia Fig 3.3 have been falling for some time, mirroring the gradual fall in hours flown in VH-registered aircraft.*' Figure 3.3 is reproduced below.

Figure 3.3 Volume of aviation gasoline sold in Australia



Source: Department of Environment and Energy 2017, Australian Petroleum Statistics 2016

In a growing economy with increasing population it is expected that passenger and freight operations (as per figure 1 of the issues paper) should be and are rising. It is also expected that General Aviation being a significant part of the economy and supporting multiple business sectors, should also similarly be rising, yet the opposite is true.

Clearly something is seriously wrong for this not to be the case.

AACCI believes the current privatised regulatory environment, the Federal Governance of Secondary Airports and the ALOP airports, is a central issue.

Commericalisation of certain Airports for other than aviation purposes, abuse of market power of the privatised secondary airports as unrestrained monopolies, the unconscionable conduct, misleading and deceptive conduct and degradation of aviation infrastructure by the Airport leasing companies or ALOP airport successors have hampered, economically restricted and in some cases decimated the general aviation community and associated industries.

It is welcoming that the Productivity Commission has no pre-determined position on airport regulation arrangements and will provide a report to the Australian Government with its assessment of the regulatory framework. This is long overdue.

Only a review of Airport Regulation that considers General Aviation, ends "Light- Hands" government administration, and considers the head of power will be acceptable to the General Aviation Industry and AACCI.

Airport Regulatory Framework

History

A dot- point precis of Federal Airports Regulation since Federation by Airport Ownership and Operation phases follows:

Phase 1 Federal Government as Owner and Federal Government as Operator

- Commonwealth of Australia -Federation – 1901. (Note: There were no direct powers contained in Commonwealth Constitution as aeroplanes were not invented until 1903 (e.g. Wright Flyer).
- Secondary Airports acquired by the Federal Government by Compulsory Acquisition pursuant to the *Lands Acquisition Act 1906-1936* for Commonwealth Defence Purposes (e.g. Archerfield Airport -1929-1936 and – 1942 to 1946 – Refer Annexure A Statement of Dr V Dennis)
- Secondary Airports were initially operated by Department of Defence and the first hangars and other Aviation Buildings were built on the airport by the Commonwealth Government.
- Powers in relation to airports and civil aviation were sought to be added to the Constitution by referendum in 1937 but this failed and as a work-a-around the States individually passed Air Navigation Acts.
- The Commonwealth signed international aviation treaties/ conventions. Department of Aviation was created, and control over Secondary airports was handed over from the Dept of Defence
- Civil Aviation developed and grew and used these airports and the Federal government built more buildings / hangars for civil aviation.
- As Civil Aviation exponentially grew the Federal Government did not want to keep funding more buildings and hangars for use by civil aviation. It became the practice and then the policy of the Commonwealth from at least July 1982 not to provide airport buildings other than those required for Departmental purposes or joint user terminals and to provide ground leases for civil aviation users permitting private construction and development for approved aviation purposes of hangars and aviation buildings upon Airport land.
- Department of Aviation (and like titles) ("DOA") however would only grant air operators certificates and aircraft maintenance organisations licensing if they had a presence on the secondary

airports (i.e. Constructed their own building on a Commonwealth airport or had a long-term lease of a Commonwealth owned building)

- Federal Government decided to lease out ground leases and permit aviation air operators etc to construct their own buildings on the airports – pursuant to the *Airports (Business Concessions) Act 1959* which only provided for leases for up to 21 years (excepting terminals).
- Civil Aviation organisations objected to the Federal Government short lease terms and claimed it was just not economically viable for their businesses to build expensive aviation use structures / hangars etc with DOA stringent building standards for only 21 years or shorter periods and was a financial barrier to civil aviation development.
- In response, DOA then represented to each civil aviation operator to the effect that prior to the operator agreeing to take ground leases, that ,provided the operator timely paid their rent to the Commonwealth and complied with lease conditions (e.g. environmental requirements etc) that their leases of airport land (and buildings as applicable) would, subject to airport planning constraints, be continually renewed (as ground leases and no reversion if applicable) **("the collateral agreement with the Commonwealth" and "the Equitable Interests in the Land ").** The applicable departmental document in 1977 being "*General Principles on the Leasing of Sites and Buildings, other than Terminals at Commonwealth Airports*" and in 1985 the *Airport Site Rental Policy*. (Refer Annexure B statement and statutory declaration by Barry Thomson - former Manager General Aviation Federal Airports Corporation)
- Note that in this Phase 1 – all Departmental planning for airports was subject to parliamentary oversight, approval and parliamentary committee scrutiny and users could make submissions to the parliamentary public works committee / attend hearings and the parliament would query departmental offices and direct the Department to ensure civil aviation user requirements were being met/ accommodated.

Phase 2 Federal Government Qango as Owner and Operator (Federal Airports Corporation)

- Federal Airports Corporation ("FAC") was formed pursuant to the *Federal Airports Corporation Act 1986* ("FAC Act") with the result that primary and secondary federal airport land was owned by the FAC and the airports were operated by the FAC (a Qango) under the FAC Act. The FAC Act substituted the Federal Airports Corporation for the Commonwealth in respect of leases or licenses of airport land or airport authorities and exercised the Ministerial powers of the *Airports (Business Concessions) Act 1959* in so far as they were not inconsistent and a range of other Governmental regulatory functions (on airport access, control over off airport developments interference -e.g. obstacles interfering in protected airspace above land surrounding airports. Leases or authorities in existence at the time of transfer continued.
- The issue of lack of economic viability of inadequately short lease terms of ground leases including site rental policy was incorporated into the *Document of Policy Statements & Standard Lease & Licences in 1992 or 1993* and updated in 1994 into the *"FAC Policy Manual Volume 8 Property Policy"*. These policies were represented to intending lessees of ground leases upon which constructed hangar structures such that they would have a land lease document for up to 25 years ("the legal interest in the land") and an entitlement to three times renewal of the legal interest in the land without reversion of lease build improvements (i.e. common law right waved by the FAC) and at the ground lease rate, that is without regard to the improved value **("the FAC collateral agreement" and "the Equitable Interests in the Land "**). This general policy was subject to only one exception and that was when the specific land was needed for airport master planning that may affect the availability of the site.

Phase 3 Federal Government as Owner and Private Airport Leasing Companies as Operators.

- In 1996 / 1997 the Federal Government decided to transfer the ownership of the Primary and Secondary Airports back to the Commonwealth from the FAC and then grant long term leases (generally 50 year leases with a further 49 year option) to Airport Leasing Companies (ALC's).
- The Commonwealth and/or the FAC assigned their right, title and interest in the lease of Secondary Airports to the ALC pursuant to the *Airports (Transitional) Act 1996* ("ATA") and the Specific Airport Sale Agreement (which included the Airport's Airport Transfer Instrument (Exhibit G to the Sale Agreement) and the Section 11 Declaration (Exhibit F to the Sale Agreement). Pursuant to section 20(d) of the ATA, the Act applied to Secondary Airports. The notes to Section 11 of the ATA state: *This section only provided for the transfer of the FAC's rights, title and interests*. Accordingly, it did not affect the continued existence of existing leases or other existing interests.
- Pursuant to sections 31 and 33 of the ATA the Minister for Finance could, by written instrument, declare that, a liability of the FAC:

  a) Ceased to be a liability of the FAC immediately after the grant; and

  b) Became a liability of the ALC immediately after the grant

- The word "liability" is broadly defined in section 4 to mean "liability or duty, including a contingent or prospective one"

- Then Minister for the Department of Finance and Administration of the Commonwealth making a declaration pursuant to the ATA in relation to the Airport (the declaration) that:

  a) Pursuant to section 31 of the ATA the FAC's rights under Specified Contracts, as defined in the declaration, ceased to be the rights and obligations of the FAC immediately after the Grant Time (as defined by the declaration) and became rights and obligations of the ALC immediately after the Grant Time

  b) Pursuant to section 33 of the ATA:

  i) Each Specified Liability ceased to be a liability of the FAC immediately after the

  Grant Time and became a liability of the ALC immediately after the Grant Time;

  ii) The ALC became the FAC's successor in law in relation to each Specified Liability immediately after the Specified Liability became a liability of the ALC.

  The Airport Transfer Instrument [ATI] being Exhibit "G" to the Airport Sale Agreement. "Specified Liability" is defined in clause 1.1 and Part 1 of Schedule C to the ATI as:

  "Any liability of the FAC (other than a liability under contract or a liability to refund all or part of an aeronautical charge which arises as a result of litigation, action or demand

  concerning the validity of that charge by the FAC) in respect of, in relation to, in connection

  with or which arises from:

  (a) A Specified Asset, a Specified Contract, a Specified Employee;

  (b) Any land or Structure the subject of the Airport Lease;

  (c) The ownership, occupation or operation of the Airport Site by the FAC at any time

  before the Grant Time; or

(d) A former employee of the FAC who was last employed at the Airport Site;

or any combination of the above

Words in the ATI have the same meaning as the ATA, including the word “instrument”. The

ALC is therefore the successor in law to the rights, liabilities and obligations of the Commonwealth and/or the FAC.

Section 4 of the ATA defines “Instrument” as follows:

Instrument includes a document.

The Explanatory Memorandum to the Airports Transitional Bill 1996 states:

‘The term "instrument" includes a document which under the Acts Interpretation Act has

a very broad meaning. For example, it could include, memoranda, correspondence both formal and informal, waivers, notices and other writings.’

It is submitted that statements made by the representatives of the Commonwealth , the “Airport Site Rental Policy” and the conduct of the Commonwealth in issuing leases in accordance with the Aviation Site Rental Policy, the statements and circulation to lessees of the FAC "Document of Policy Statements & Standard Lease & Licence Agreements" and the conduct of the FAC in issuing leases in accordance with the "Document of Policy Statements & Standard Lease & Licence Agreements" or Policy Manual Volume 8 :

a) Gave rise to a collateral contract;

b) Gave rise to an equitable estoppel; and/or

c) Created an equitable interest in the land;

or constituted misleading and deceptive conduct.

This right is an equitable lease on the same terms as the previous lease. The right was capable of specific performance.

The ALC’s took the lease of the airports subject to these rights. The ALC’s have persistently refused to recognize the rights and indeed have actively pursued The ALC’s right to the reversion of the buildings and other fixtures constructed by the lessees.

It is therefore submitted that the ALC’s each took the lease of the Airport subject to the equitable interests or equities held by the aviation tenants as a result of the conduct of the Commonwealth as to the renewal of the leases.

Further, the collateral contract is a contractual obligation that transferred to the ALC’s and binds the ALC’s.

The *Airports (Business Concessions) Act 1959* was repealed by the *Airports Act 1996*.

Most of the states Air Navigation Acts have now been repealed as many states are of the belief that the Federal Government has the head of power from its foreign affairs powers.

The *Air Navigation Act 1937 (Qld)* though still remains a current statute.

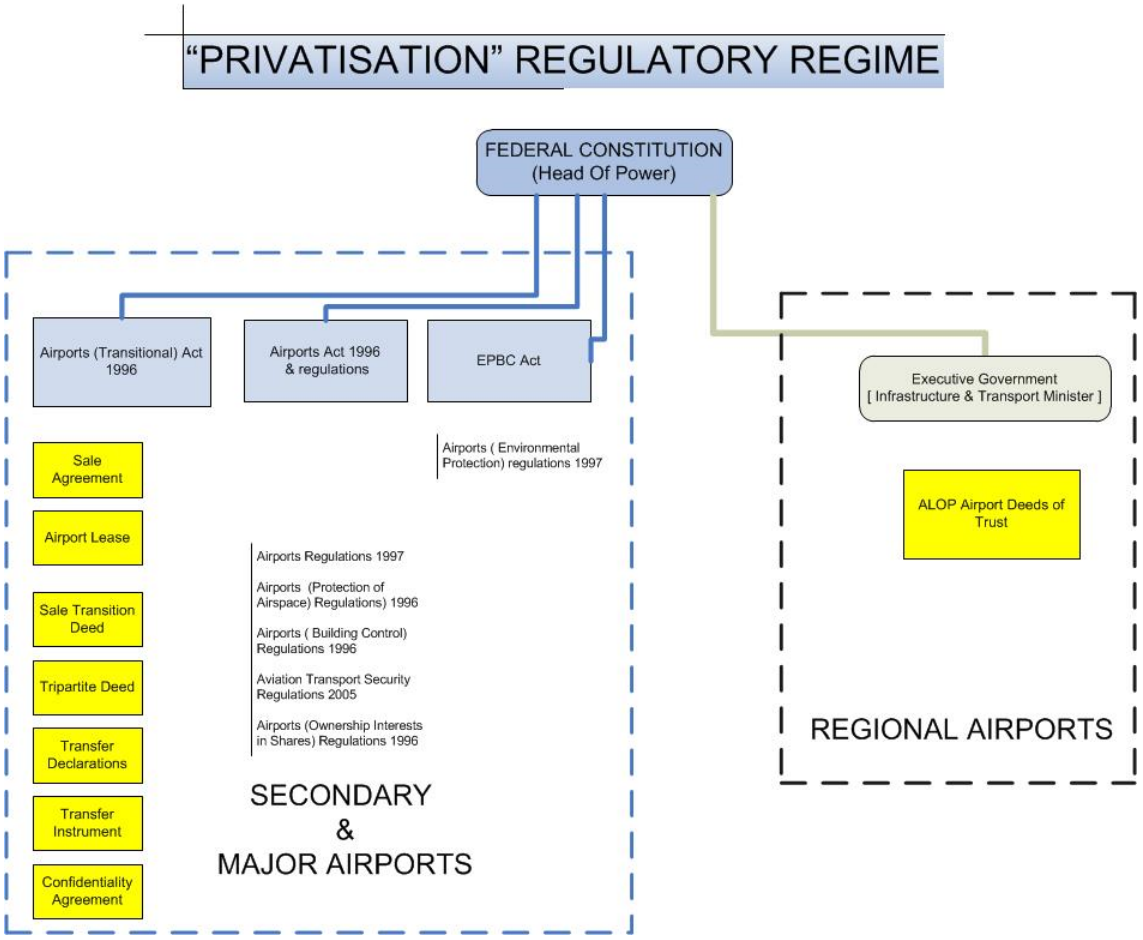
The Background to Privatisation of Airports

The history of Airports above shows that the Airports were acquired for defence purposes. It was never contemplated at inception that the originally acquired airports from a planning and design perspective be mixes of aviation and non-aviation developments.

Any significant non-aviation development on these airports generally only can be made at the expense of diminished aviation facilities and infrastructure.

It can be said also from Hansard that there had been no stomach in Canberra for any more Investment in Terminals at the Major Airports that was a significant driver of 'sale' of the T1's.

The regulatory regime related to Federal Airports is represented below.



We have seen a progressive abandonment by the Federal Government of its responsibilities related to Airports over time. This does not only apply to the major and secondary airports but also to the ALOP airports whereby the ALOP concept started in the 1950s but accelerated around 1986-1989.

The Hon. E. P. Pickering, the New South Wales Minister for Police and Emergency Services, in addressing the New South Wales Legislative Council in April 1992, provided the following description of the Commonwealth's intentions regarding local airports

The Federal Government in 1989 announced its intention to withdraw from ALOP over five years. Past capital investment was written off, and no further development funds were made available. The shires and councils that already own the local airports were 'invited' to take over full responsibility[9]

Mr Graham Bailey (a former Assistant Departmental Secretary and a professional in airport engineering has stated:

When Federal Airports were run as Government owner and operator major development works came under the purview of the House of Representatives Standing Committee on Public Works ("PWC"). This process included written submissions by the proponent covering considerations as cost effectiveness and the public interest with stakeholder input and followed by public hearings. There was absolute transparency and accountability on every major Commonwealth Works. As part

[9] Commonwealth Parliament Regional Aviation and Island Transport Services: Making Ends Meet page 74

of that process Airport Master Plans also came under review. This could not happen without a team of appropriate technocrats skilled in airport, aviation and public works technical matters[10].

A constant theme behind the privatisation of Airports has been pressure from the Department of Finance.

It was the Hawk Government that proceeded away from the departmental control and ownership of airports model which ended up as a first step towards airport privatisation (and it is no secret that, in retrospect it was former Prime Minister Hawke's single most regret of his term in office, himself being a qualified fixed wing pilot).

Former aviation minister in the Hawk Government Mr Peter Morris has stated

> "*During my period as Federal Minister for Aviation, the Department of Finance was pressing the government to privatise the airports. It was the view of cabinet at the time that Commonwealth Airports were a monopoly and that a monopoly was best run by Government as a Public monopoly, that is, transparent and publicly accountable as opposed to private enterprise that had lack of transparency or any public accountability. The Department of Aviation warned of the consequences of privatisation including that the airport companies would prioritise to profit at the expense of the airport asset and would not be able to be controlled adequately by the Commonwealth but the Department of Finance had the view it could be controlled with legislation and the Hawke government concluded that it could not.*[11]

The Federal Airports Corporation took over the management of Primary and Secondary airports from departmental control from 1st January 1986 and it was widely acknowledged they ran the airports adequately.

Senator Woodley during the second reading speech of the Airports Bill 1996 and the Airports Transitional Bill stated:

> "*The FAC is a very profitable government business enterprise. Last year, it recorded a profit of $128 million. Sydney airport recorded a $69 million profit, Melbourne, $52.3 million, and Brisbane, $43.5 million. By the standards of the Stock Exchange, its earnings over assets ratio is up there among the top three or four firms ahead of the big Australian BHP and ahead of News Corporation. Its productivity, measured by the passenger per employee ratio, increased by 14 per cent in 1994-95 following the 15 per cent improvement the previous year. What more do you want from a company?*[12]
>
> *Its fees are the fourth lowest of a world representative listing of 40 major airports, with increases kept below the CPI over the past five years. What more do you want FAC to do? They are doing a fantastic job. This is an organisation which is achieving the shareholders' objectives. Why on earth and I nearly used a word I wouldn't use are we selling it? The Australian people, as the shareholders, are entitled to continue to ask this question.*

In 1995 it was the Keating Labor government that "paved the way" and put forward bills into Federal Parliament for the privatisation of the Federal Airports. Prime Minister Keating liked it as he regarded it as *the Clayton's sell-off of Federal Airports being a sell-off you are having when you are*

[10] Statement of Graham Bailey dated 9-6-13 (a former Assistant Secretary of the Department of Civil Aviation and a professional engineer)
[11] Statement by Peter Fredrick Morris dated 30 March 2013 paragraph 11 (Attachment B1 to this report)
[12] Senate Hansard 21-8-1996 page 2270 Senator Woodley

not having a sell-off because, instead of selling the airports outright, what was being sold was a right to run airports for 50 years.

It was the Howard Government however that implemented nearly the same Labor legislation to privatise the Airports. The Howard Government reasons given for the sale in press releases related to sales was they were sold to pay for Labor's debt.

Senator Woodley during the second reading debate stated the obvious question "*why is the privatisation of airports necessary? The answer, of course, is that privatisation is not necessary*".

"*Virtually all major airports overseas have been publicly owned and operated. That is a fact. Australians should be asking why we are deviating from this principle. The Democrats would argue that little, if any, micro-economic benefit will flow from the new airports regulatory regime.*

We are told that competition will force down airport usage prices. The reality, in the case of airports, is that scope for competition between Sydney and Melbourne, for example, or between Sydney and Perth airports is very remote. In fact, it is a ridiculous proposition. Not only is disaggregation against the world best practice of keeping airports together in a network, it is also against the advice of the FAC.

It is hard to see how anyone could seriously believe that there could be significant competition between airports in Australia. Just to state it makes obvious how ridiculous such a proposition is. Clearly, people fly to destinations because of location attractions not just because of the airport. They are not going to fly to Melbourne in preference to Sydney because they like the airport lounge in Melbourne better. They fly to the destination because that is where they want to go. The proposition just leaves me speechless and that is unusual for me.

The merit for breaking up the very profitable FAC into a string of single airport companies is also not immediately evident. The FAC, and many industry observers, are not convinced. Like many other decisions of the previous government and even more so of this government this so-called reform is likely to impact even more negatively on regional Australia. Senator Collins was more eloquent than I could be about the effect on regional Australia.

As a monopoly, the consumer benefits of the private sector running airports are only as good as the regulator overseeing them. We need to ask some fundamental questions, beginning with: are our airports now inefficient? Will the private sector run them so much better that the regulators might be able to force them to deliver lower costs? The Democrats believe the answer is no.

Senator Woodley summarised the proposed regulatory environment "*The Commonwealth will retain responsibility for land use, planning and building controls at the major airports. The Commonwealth will retain reserve powers to deal with demand management issues that may arise during the 50-year leases. The Airports Bill also sets out details of the post-leasing regulatory arrangements to apply to the airports.*

The running of an airport every day requires a long string of decisions made in the public interest. It is impossible to divorce the commercial aspect of running an airport from the public policy aspect. For more than almost any other utility, the Democrats believe this is the case. In short, there is a good, long list of reasons why airports should stay in public hands and few reasons why they should be in private sector hands.

Despite the privatisation wave across the world, virtually no other country outside the lunacy of Margaret Thatcher's Great Britain has sold its airports, because other governments throughout the world realise that to do so is to get rid of a utility that is too vital to a community, to its commerce,

to its quality of life and to its environment to be trusted to private sector hands. That is not to disparage the private sector, but it is to point out a few obvious things. There are no market forces to constrain the private sector on airports. Competition will be at the margins only

It is evident from a review of Hansard in relation to the introduction and passage of the Airports Bill 1996 and the Airports Transitional Bill 1996 that there was no parliamentary discussion about the Secondary Airports and barely a mention of General Aviation.

As a former Transport Minister advised this Chamber fifteen years post privatisation, word to the effect that all the parliamentary debate was about the T1 airports, that is the Capital Cities and nothing about the Secondary Airports and further that in retrospect the Secondary Airports should not have been sold. Further that it was the finance division that was trying to get the dollars out of it to pay for the national debt.

It would appear that airports privatisation was indeed rushed.

Given that politicians experiences with aviation are most likely to have been dominated by flights with the major carriers to Canberra and the Qantas Lounge T1 only debate is unremarkable.

The Secondary Airports aviation operations do differ significantly[13] to primary capital city airports (e.g. Close parallel runway operations in VFR conditions only – one for circuit training operations and the other for arrivals and departures to the regions, then converting to single runway operations during instrument conditions only weather at the airport.) Yet secondary airports were bundled into the same regulatory environment as the T1's. That is regulated by the *Airports Act 1996* plus regulations and the *Airports Transitional Act 1996* and regulations and the non-regulatory contractual documents related to the sale.

The FAC being a Federal Government QANGO was in reality the Federal Government and in that capacity exercised certain legislative powers in respect of federal aviation and airports legislation.

Upon privatisation each privatised airport however became the government's successor in law permitting them to exercise those powers formerly exercised by the FAC. This has given airport leasing companies powers that in our view are a conflict of interest and should never have been transferred to them as private corporations. This has created an environment where misuse has been inevitable.

The price capping regimes and price and quality of service monitoring regimes that has applied to Primary Capital City airports and more recently on a self-administered basis to Second Tier Federal airports has never been implemented for the Secondary Airports nor ALOP airports.

The Airports Amendment Act 2007 introduced changes to allow Ministers to seek additional specified material from an airport-lessee company rather than have to make a decision based only upon what was presented to the Minister by the ALC and to notify state and local officials of the commencement of "public consultation" (Refer Explanatory Memorandum to the Bill).

The Airports Amendment Act 2010 required additional aspects to be including in Master Plans:

> *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;*

[13] Refer paragraphs 41-44 and para 68 of the AAT statement of Graham Bank for details.

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

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 [14].

Airports Act Case Study - Archerfield

Archerfield Airport is the Capital City Pair (Secondary Airport) for Brisbane.

Prior to 1986, to have any form of airport occupancy it was necessary that the intending occupant have an explicit aviation requirement, that is have an aviation business (e.g. hold an Air Operators Certificate "AOC") and or a need for hangarage of an aircraft or be a specialised aviation support industry. Conversely in order to be issued with an AOC a permanent presence in the form of a long-term lease or the construction of a building on airport land was required. In other words, the General Aviation industry in the immediate region was captive to the airport and the airport was used only for purposes consistent with its compulsory acquisition purpose as a Commonwealth Place. Also refer to history – phase 1 in this submission and particularly in relation to ground leases.

From 1st January 1986, under the FAC administration, the FAC began to look for ways to mitigate the costs of running the airport; raised rents, introduced a General Aviation Infrastructure Tariff Charge ("GAIT"), closed the runway 13/31 complex, and granted some leases for non-aviation tenants.

The FAC edged out from the former aviation only use of the airport by granting a sizeable ground lease of airport land to BP on part of the land previously at the extreme NW end of former runway 13/31 and called the "BP Truckstop", eventually becoming the major contributor of non-aviation property rental on the airport[15]. Our Chamber has been made aware from former FAC officers that the FAC always had concerns about any non-aviation developments from a constitutional perspective and it is historical fact that the FAC had a specific section in their policy and procedures manual about Constitutional and Statutory powers[16]. It is also significant that the section 11 of the policies manual related to FAC exposure to the Trade Practices Act 1974 and particularly in regard

[14] Explanatory memorandum to the Airports Amendment Act 2010
[15] Refer Page 30 Archerfield Airport Information Memorandum Phase 2 Airport Sales (Attachment to AAT Statement of D Harrison)
[16] FAC Policy Manual Volume 8 Property Policy – Section 13 Constitutional and Statutory Powers of the Corporation (Refer Statutory Declaration of Barry Thomson)

to misrepresentation, property leases and section 52, misleading or deceptive or likely to mislead or deceive.

To the Chamber's knowledge at no time did the FAC on Archerfield ever actually displace existing aeronautical tenant's developed facilities with non-aviation related facilities although in only one case known to the Chamber the FAC canvassed same but offered all the costs of relocation to be paid for by the FAC.

It is clear from the Government's own Archerfield Airport Information Memorandum prepared for the phase 2 airport sales that there was very little non-aviation rental needed to make the airport profitable as Archerfield Airport already had positive EBIT.

Around 1996 -1997 with knowledge of impending sale the FAC on Archerfield Airport was rushing [17]around to all tenants offering refreshing of lease rental agreements.

As part of the sale process the Office of Asset Sales requested permission[18] from each tenant that the Departmental Files and FAC files related to their tenancies could be reviewed by intending bidders. The successful bidders of the phase 2 Airport sales had full access and knowledge about the collateral agreements related to lease renewal and the FAC policy manual.

The Federal Government had tried to dispose of all Phase 2 non-core regulated airports (which included Archerfield, Essendon Jandakot, Moorabbin, Mt Isa, Parafield and Tenant Creek) as freehold land. The following statement was made about the Phase 2 non-core regulated airports in the Phase 2 General Information Memorandum:

Note 3 To be sold freehold subject to a suitable agreement with the relevant states and territories and passage of amendments to the Airports (Transitional) Act[19]

If sold as freehold land Archerfield would have become regulated entirely under Queensland state law. We note that the Brisbane City Council zoning of the airport at the time was strictly only for aviation and aviation related purposes so that aviation only zoning would never have permitted non-aviation industrial development generally.

The press at the time reported that the ALC of Brisbane Airport wanted to purchase Archerfield Airport to ensure it remained open as it feared that a freehold sale would eventually mean the closure of Archerfield Airport and a transfer of Archerfield air traffic to Brisbane Airport – impacting on the revenue of Brisbane Airport. Ultimately being the ALC of two airports was not permitted by the Federal Government.

The bidding process for Archerfield Airport which was later criticised by the National Audit Office was highly irregular, including excluding persons from bidding for the airport, the selected bidder not meeting tender criteria as to deposits, and being allowed to retender and the amount paid for the airport a mere fraction of the FAC carrying value in their financial statements (refer statement of Mr Desmond Harrison[20]).

[17] Refer para 26 of AACCI AAT Facts and Contentions and or page 6 Attachment D9 to AAT statement of D Harrison
[18] Example OAS letter provided in AAT Statement of Manfred Cross
[19] Page 5 of Phase 2 Airports General Information Memorandum (Attachment D9 to statement of D Harrison)
[20] AAT Statement of Mr Desmond Harrison paras 2-11.

The amount of $3.1million ($2.1Million plus a capital expenditure amount was accepted for the airport) and this included all the Commonwealth Buildings (i.e. the Commonwealth Hangars, Terminal buildings etc).

Alleged interference in the bidding process by former Federal MPs Mr David Jull and Mr Gary Hargrave has been communicated to the Chamber but remains unproven.

The successful company Meingrove Pty Ltd was without any aviation qualifications or experience yet other bidders had years of aviation experience on the airport (e.g. Royal Queensland Aero Club Ltd & Others consortium– since 1929).

The Tender Evaluation Committee selecting a land developer as the lessee ahead of experienced aviation professionals defied logic for the future preservation of Archerfield as an airport and expanding aviation facility.

> *The current Secretary of the Department of Infrastructure and Transport Mr MrDack was one of the only two members from DoTARS on the Tender Evaluation Committee that decided the successful bidder of Archerfield Airport in 1997/98 and selling the airport at less than one fifth of its official Commonwealth / Federal Airports Corporation valuation according to the 1996/1997 financial year audited "Special Purpose Financial Report"*[21]

The very first Public Statement written into the sale documents by the successful tenderer was:

> *'"We look forward to unlocking the potential of a strategic land bank which is at the hub of S.E. Qld transport,*
>
> *He said "Fifty hectares of prime industrial and commercial land which is surplus to aviation needs will be progressively developed to underpin the viability of the airport itself. Major corporations will be involved in best practice developments of the calibre of the recently completed BP Truckstop."*

The self-serving presumption that there was any land "surplus to aviation needs" for the future or that there was "Fifty Hectares of it" or that it needed to be developed at all into non-aviation commercial or industrial development, set the ALC and the aviation users and this Chamber on a collision course ever since.

Post- privatisation hand over the Chamber had disturbing verbal reports from members that alleged at a social function held by the airport leasing company that a Director of AAC had informed those present that he would reduce Archerfield Airport down to one flying school and one aircraft maintenance organisation.

The 2000 Draft Master Plan showed written evidence of the Airport Leasing Company's ("ALC") commencement of non – aviation land development ambitions to dispose of existing needed aviation infrastructure by removing runways or lessening runway lengths related to the 04/22 runway complex[22] (being in essence the entire North East airport land compulsorily acquired in 1942[23] specifically to expand the airport with longer, and into prevailing wind 04/22 direction runways for heavier military bomber aircraft – Approximately 121 acres less Barton Street).

[21] AAT Statement of Mr Desmond Harrison para 11

[22] Refer Annexure A7-1_ Statement of Captain Lindsay Snell and attachment L1-L4 thereto

[23] Refer Annexure A1 Statement Valerie Ruth Dennis dt 25.6.13 attachment B4 Commonwealth of Australia Gazette 29th October 1942

On 19th August 2004 a meeting in Royal Queensland Aero Club was held by "Fly Archerfield" and Mr Richard Kent, General Manager of Archerfield Airport Corporation ("AAC") presented at the meeting in relation to the 2015 draft master plan for Archerfield Airport. He stated to the effect that AAC would not be renewing any leases on the eastern side of the airport (that is the entire Beatty Road aviation precinct) nor any leases of than 3000 sqM (a standard commercial industrial lease block) and that if the tenants didn't like it they could move to Watts Bridge (a visual conditions only grass airfield 1.5 – 2 hours' drive from Archerfield). This Chamber sought letters from those present to present a case to the ACCC. Those letters are attachment A1 to A10 of the statement of Desmond Harrison. Some business tenants in attendance declined to provide letters stating fear of reprisals from AAC if they did provide same.

On 3rd February 2005 a judgement in the Federal Court was handed down by Cooper J, in the matter of *Westfield Management Ltd v Brisbane Airport Corporation Ltd [2005] FCA 32* ("Westfield vs BAC") . Minister John Anderson as recorded in the press was delighted with the outcome to permit non-aviation commercial development on Brisbane Airport. This has been a precedent case that the Federal Government, ALC's and the Administrative Appeals Tribunal has relied upon for permitting non-aviation development on other airports including Archerfield.

During 2005, Sailco Pty Ltd's hangar site 235 (in the Beatty Road Aviation Precinct) became the first ground lease on Archerfield Airport to come up for lease renewal[24]. Sailco Pty Ltd ("Sailco") requested renewal in accordance with the collateral agreement as to renewal with the Commonwealth[25]. AAC advised they would not renew the lease sighting "planning" requirements. Sailco requested if renewal was available by re-location on the aerodrome on any basis. Sailco Pty Ltd was offered only a 3000 SQM industrial block of land at fully serviced industrial land rates – five times the current hangar lease of 600 Sq M. Sailco wrote to the then Transport Minister Warren Truss advising that the lease non-renewal issue was an "endemic" issue and requested an injunction in the Federal Court. Sailco's Commonwealth lease had clauses within the lease giving a right to remove the hangar however it became clear that the actions of on AAC were being conducted in an unconscionable way to obtain my any means Sailco's hangar improvements for nil consideration by reversion.

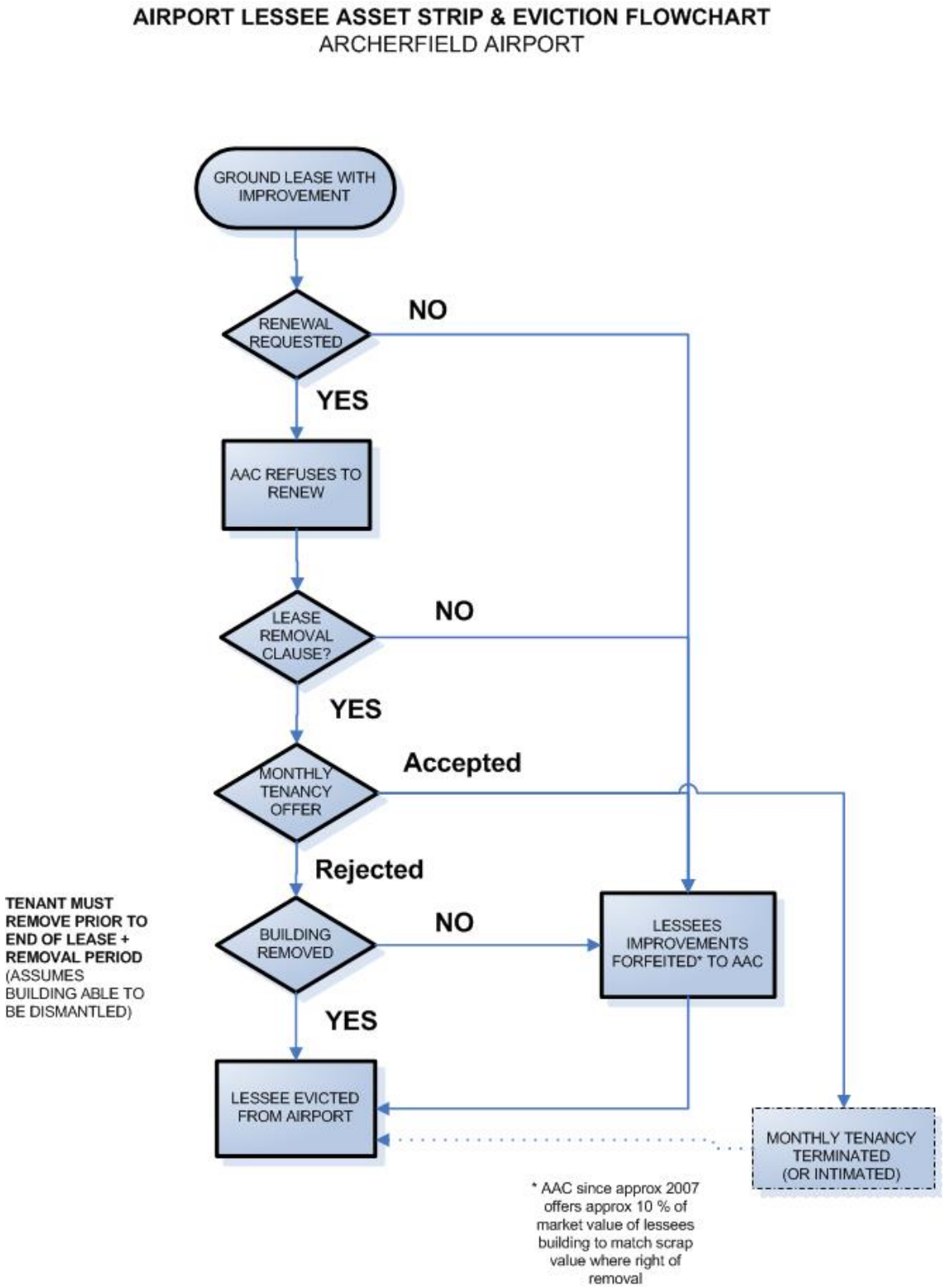
AAC also offered a one-year lease to Sailco which scrapped removal clauses and whereby AAC would acquire by reversion the Sailco hangar at the end of the one-year lease. Minister Truss advised Sailco it was a commercial matter between AAC and Sailco and did not intervene.

Sailco, out of options and rather than permit AAC to gain the hangar for nil consideration dismantled the hangar. After the hangar was dismantled and removed AAC built another aircraft hangar upon Sailco's 600SqM concrete hangar slab on the foundations, thus proving the unconscionable conduct and abuse of power of AAC in using "planning requirements" as a mechanism to not renew the leases to acquire Sailco's hangar improvements. More detail of this case can be perused in Annexure B9-1

The Sailco case became the template of behaviour of AAC excepting most lessees (who had no right of removal) have lost their assets by reversion. Where there was still a right by the lessee to remove the lessees improvements AAC learnt from the Sailco experience and subsequently made offers "under financial duress" for the improvements generally of about 10 percent of the true market value / replacement cost of the lessees improvements.

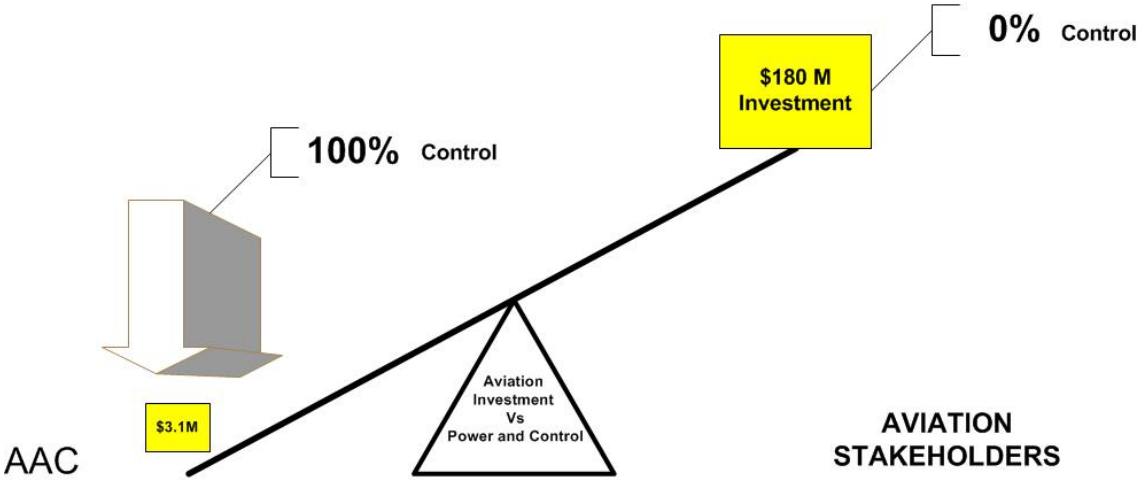
[24] Refer Annexure B8 Statement of Ross Steele paragraphs

[25] Refer Statement of Andrew Munro and Barry Thompson – Commonwealth and FAC renewal policy and representations



There were 142 leases on Archerfield the airport as per the FAC property system report of 1st December 1997. As of before June 2018 all previously renewed FAC leases have come up for 20-year renewal with the result that there is now (to the Chamber's knowledge) all airport lessees pre-

privatisation improvements not removed now being AAC's property[26]. It is the Chamber's estimate that AAC has acquired approximately $180 Million value of all lessee's assets by reversion or financial duress and controls the entire rental market of hangars and facilities and access to it on Archerfield Airport. The below diagram illustrates the position between power and control and aviation investment on the Archerfield Airport immediately after airport privatisation.



IMBALANCE BETWEEN POWER & CONTROL AND AVIATION INVESTMENT

Sailco, in 2011, in order to preserve its legal rights commenced action[27] in the District Court of Queensland against AAC (first defendant) and the Commonwealth (second defendant) claiming damages under the Trade Practices Act 1974 for unconscionable conduct, misleading or deceptive conduct, breach of collateral agreement, estoppel, and an order requiring to either of the defendants to grant a lease of the site (as defined in the claim) or an equivalent site at Archerfield Airport for a further period of 20 years or rectify the lease in accordance with the collateral agreement (being a further two options to renew of 20 years each).

In 2013, Sailco, being devoid of financial capability to sustain court action, there being no Airport Inquiry on the horizon, the Commonwealth engaging Ashurst lawyers to defend the case and filing defences including that Sailco was out of time as regards the *Trade Practices Act 1974* in respect of relief, had no choice except to sign a deed of release[28] and lodge a notice of discontinuance.

An example of the economic consequence to Queensland of the Sailco hangar loss follows. Crown Engineering ("Crown"), was a shareholder in the Sailco hangar and hangared its Beechcraft Baron aircraft in one of the "T" hangar bays. Crown Engineering manufactured parts under license including for huge drag lines that operate in the open cut Mining Industry. As a superior customer service, when a dragline was unserviceable and waiting on parts, Crown would engage an overnight shift of engineering staff to make the dragline part and if the part could be carried by their aircraft

[26] Note due to temporary monthly tenancy some fuel farm assets have not yet transferred or been removed.
[27] Refer Annexure B9-1 Statement of Claim Sailco Pty Ltd filed in the District Court of Qld
[28] Refer Annexure B9-2 _Sailco _Commonwealth_AAC_Deed of Release.PDF

would freight it out in their Baron aircraft which could depart Archerfield 24/7 as soon as the part was made, ensuring a speedy return to mining operations. A mine not operating can costs many tens of millions of dollars a day and time is critical. Following the loss of the Sailco hangar and their capital investment and given the sovereign risk of being on Archerfield Airport and no access Crown engineering ceased its service. Parts were subsequently freighted by truck adding another day or ao for delivery to the mines.

On 18th August 2005 a delegation of the Chamber and Royal Queensland Aero Club, met in the Ministerial Office of then Minister Warren Truss voicing concerns over the deteriorating position on Archerfield for aviation businesses (prices, lease non-renewals etc) and the proposals in 2005 Draft Master Plan to convert up to 60 percent of the airport into non-aviation industrial development involving closing down or shifting runways. At that meeting the following matters were raised.

1. Non-Renewal of Aviation Leases
2. Breaches of the Airports Act 1996 and Commonwealth Lease
3. Matters for the ACCC
4. Evidence of run down and downgrading of Assets on the Airport
5. Safety issues
6. 2005 Draft Master Plan – analysis

Minister Truss called upon the Chamber to "show him the evidence". A written evidence report[29] was provided to Minister Truss on 15th September 2005 together with 208 additional objections to the Master Plan. The written evidence report is attached to this submission (exclusive of plan rebuttal documents for the sake of brevity).

A letter prepared by the Chamber accompanying the submissions also stated:

"the AACC is aware of problems in the working of the act being raised with your department by other parties. The response in general to those letters was that these matters were to be resolved between the two parties as the Government was not involved or had any responsibility in this area.

With the greatest of respect this does not resolve any of the problems.

As an example I attach a copy of a recent letter received by one of our members from a Mr Peter Marchi (policy advisor) from your office, which makes reference to the Airport Leasing Company ("ALC") needing to make a profit. Mr Marchi's comments mark a singular departure of Federal Government practice by supporting the financial interest of a particular operator rather than the community at large."

Fortunately, Minister Truss required AAC to remove any reference in the 2005 Draft Master Plan in relation to removal / downgrading of runways and required the Beatty Road Precinct to be kept for aviation use. In a 5th December 2005 letter to our Chamber[30], Minister Truss outlined the steps he had taken also stating:

I wish to assure you and your colleagues that my major concern in considering the master plan was to ensure that the development plans for the airport reflected a commitment to the development of aviation uses as the primary and unconstrained purpose of the lease. While development for other commercial uses may assist in supporting the development of the airport, I am concerned to ensure that the nature and extent of such development does not prejudice the maintenance and growth of aviation activity.

[29] Refer Annexure A0_1_Evidence Submission toMinisterWarrenTruss_2005.pdf
[30] Refer Annexure A0_2_Minister Warren Truss_ YBAF 2005 Master Plan

There was no assistance however from the Minister in relation to ACCC matters raised with him.

On 16th March 2006 the Chamber wrote[31] to the ACCC and submitted a letter and issues paper. The ACCC responded on 24th March 2006[32] and then again on 6th April 2006[33]. The Chamber replied on 26th April 2006[34] advising to the effect that the issues were "endemic" not isolated contractual hard bargaining. On 18th May 2006[35] the ACCC responded with comments along the lines that it does not act for individual complainants but for the community in general and they weren't going to spend any budget on it. The ACCC could not see for example that the Scouts were in effect the "canary in the coal mine" of a systemic issue. The Chamber drew the conclusion that the ACCC may well have received government direction to have "light hands" in regard to ACCC action on airports and that there was not going to be any help from the ACCC.

Head of Power

The Chamber had for some time been conducting its own investigations and research into *Westfield v BAC* and was made aware from interviewing counsel acting in the case that "Facts Issues and Contentions" agreed to during the court case between the parties were that the parties would not seek any to examine the head of power, that is to constrain the scope of the court to a decision without reference to the head of power (the Federal Constitution).

The Chamber was also made aware during its research process, that the Sydney City Council, opposing a proposed Retail and Commercial Development planned for Sydney Airport, and not having "standing" in the Administrative Appeals Tribunal in relation to the Sydney Master Plan engaged from Barrister Tim Robertson SC constitutional advise in May 2006.

The minutes of Sydney City Council of 7th August 2006 stated:

> *"The City has obtained legal advice about whether the proposed commercial uses, which have no connection with aviation activities, can legally and validly be carried out on airport land under the Airports Act.*
>
> *That legal advice has been provided by Tim Robertson SC. Given the public interest in this issue, a copy of that advice is attached (Attachment C).*
>
> *While the issues are complex, a simple summary of the legal advice is that:*
>
> *1. There is a reasonable argument that the provision in the Airports Act, which exempts airport uses from State planning laws, applies only to aviation related uses, and not the proposed retail and commercial development;*
>
> *2. As a consequence, it is arguably beyond the power of the Federal Minister for Transport to approve the proposed retail and commercial development;*
>
> *3. The exemption in the Airport Act is limited by the constitutional power of the Federal Government. As a result, the Airports Act does not empower the Minister to approve the proposed retail and commercial development"*

[31] Annexure C1_AACCI complaint to ACCC_ 16_3-2006 excluding accompanying issues paper
[32] Annexure C2_Accc Letter to AACCI 24th March 06.pdf
[33] Annexure C3 _ACCC Letter 6April2006.pdf
[34] Annexure C4_AACCI letter 26April 2006 Response to ACCC letter 6-4-06.pdf
[35] Annexure C5_ accc-Letter 18th May 2006.

If the new development proposal is approved, it is open to a range of affected parties, including adjoining Councils, to challenge the decision by seeking a declaration from the High Court. While the proposed development will have a significant impact on the inner city, the City of Sydney is unlikely to be considered an affected party for the purpose of instigating legal action.

RECOMMENDATION It is resolved that Council:

(A) express concern that Sydney Airport is proposed to be further developed for nonaviation uses;

(B) receive and note the legal advice in relation to the limits on the Minister of Transport's powers to approve the retail proposal at Sydney Airport;

(C) note the Lord Mayor has provided a copy of the legal advice to the NSW Premier and NSW Minister for Planning, other Capital City Lord Mayors, adjoining councils, and other interested parties; and

(D) call on the State Government to lead with the Local Government and Shires Association to coordinate a High Court challenge on any approval that the Federal Minister gives to non-aviation related development at Sydney Airport."[36]

The Constitutional Opinion of Tim Robertson SC ("the Robertson Opinion) was placed in the public domain (Sydney City Council's website) as Attachment C to the council minutes of 7th August 2006 and is attached to this submission in full as an annexure[37].

Armed with the Robertson Opinion representatives of our Chamber met in October 2006 with Mr David Lowy at Westfield and we requested Westfield take the *Westfield vs BAC* decision on appeal.

Westfield advised the Chamber that the course of litigation was upset as the original solicitors acting for Westfield had to be replaced part way though the action as the originally appointed firm were found to have a gross conflict of interest, in acting for an Airport Leasing Company in another matter.

Further that the *Westfield v BAC* litigation in the Federal Court was brought by Westfield solely pursuant to post sale undertakings required by the terms of the sale agreement of Toombul Shopping Centre to Centro and the litigation was in Westfield's name only but actually was run by Centro.

David Lowy advised additionally that Westfield, in litigating the action in the Federal Court, had wholly satisfied their obligations under the sale agreement and did not need to appeal the decision in the Full Federal Court or High court and not running constitutional arguments in *Westfield v BAC* was by agreement between counsel for the Applicants and Respondents.

David Lowy further advised the Chamber that Westfield was a public company, would act solely in its own commercial interest, and, although he could see the benefits for aviation, could not justify to Westfield shareholders spending company finances on any appeal proceedings as it was not a contractual obligation to Centro.

In consequence of the Robertson material Westfield Ltd in November 2006 re-examined the issues and engaged a Sydney leading Constitutional Barrister to review the opinion of Robertson. Westfield also engaged Senior Council to review Cooper's decision. These advices are legal professional privilege of

[36] Annexure D1_Sydney City Council_ 070806_COUNCIL_MINUTES_extract(pages 656 and 657) click here

[37] Annexure D2_07-08-06_SCC_Constitutional Opinion -Tim Robertson SC

Westfield obviously however it is the Chamber's understanding that the Robertson opinion was corroborated.

In 2009 the Chamber contributed to an article published in Aviator Magazine (September 2009 edition)[38] with the lead headline

> *The demise of Australia's general aviation industry would threaten the national economy at every level. It's unthinkable. So it's surprising then that Australia's secondary and smaller airports, which are essential to general aviation services, are being carved up and sold out to private investors for industrial use. The sell-out is nothing to do with the need for general aviation services which are still valuable and*
>
> *growing strong. The reason is simply greed. Australia's general aviation industry is being threatened by the pressure of privatization and profit*.

While this article goes some way to explaining the issues being experienced up to publication date at Archerfield in 2009 it records that the issues were not isolated to Archerfield Secondary Airport e.g. Jandakot Airport.

Archerfield and the other Secondary Airports operate as a gateway to the regions for non-scheduled charter, freight and private flights (usually departing on one parallel runway) and training operations (on its paired other parallel runway).

The major airlines can't operate without pilots to fly RPT passenger and freight operations, however pilots are not created or trained at Capital City Primary Airports. The pilots have been created from extensive training operations at flying schools at the Secondary Airports and their general experience in GA non-scheduled operations. Overseas airlines training contracts are hallmarked by requirements for training to be conducted at airports with a control tower which is one reason amongst many why Secondary Airports are so important.

As Captain Snell stated in the article

"We cannot afford to allow this valuable facility to be squandered. Australia is desperately short of pilots and as Archerfield is a primary and secondary school of training if that goes, don't expect any university graduates to the airlines. This issue isn't going to go away".

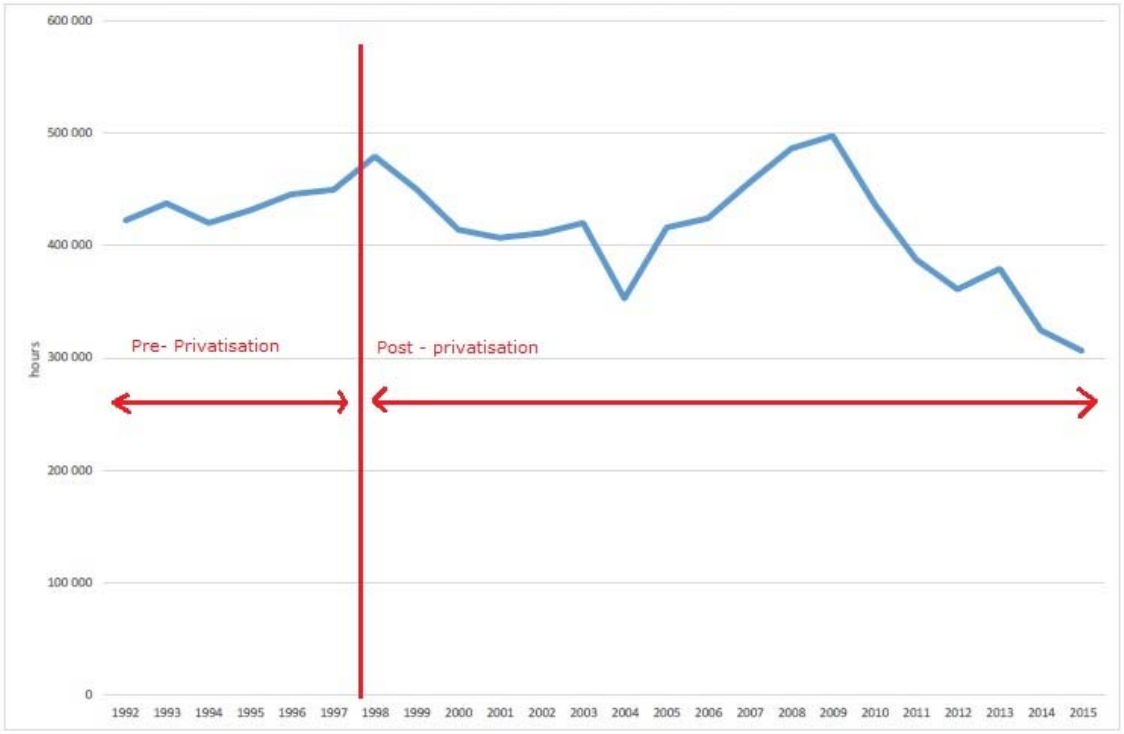
The issue of pilots has not gone away but intensified and is now a critical problem for the Major and Secondary Airlines not being able to meet recruitment requirements and resulting in inability to crew intended flights.

The BTRE flight training hours statistics graph (as shown below) records training hours Australia wide dropped from a high of approximately 480,000 hours in 1997 – 1998 just prior to phase II secondary airport privatisation, a sharp decline post-privatisation, a brief rise most likely due to the generous

[38] Annexure E1_ Aviator Article Sept 2009

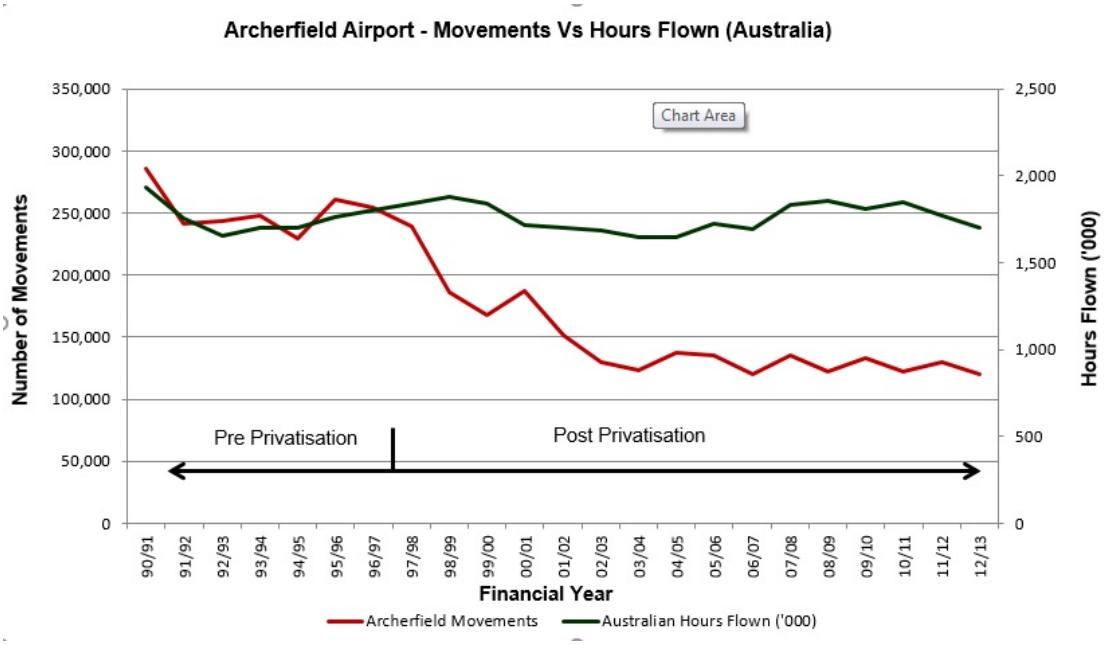
'Vet-Fee help" era then a cliff edge fall to 300,000 hours at the 2015 year.

Figure 2.4 Flight training hours flown (VH- registered aircraft Only)



Source: BITRE 2017, Australian Aircraft Activity 2015

Below is the Airservices Australia movement statistics for Archerfield from 1991 to 2013 plotted against Australian General Aviation Hours flown for the same period being both pre and post phase II privatisation[39]. This is only shown to 2013 because BTRE aviation statistics after 2013 changed such that GA charter is not included in GA statistics but buried within the Commercial Transport data. The chart shows Australian General Aviation hours have been almost a flat line in the same period whereas Archerfield Airport movements have halved in this period. It is the Chamber's view the movement collapse well reflects the known damage inflicted to General Aviation tenants and users from the post-privatisation management of the airport by AAC.



Post 2013 there has been a rise in movements, but mostly all helicopters movements. The helicopter movements in the 2013 financial year were 30,854 out of a total of 120,196 movements, but rose in 2016 to 50,858 and then in 2018 to 76,872. The increase is primarily due to new Queensland State Government Funded helicopter operations e.g. police air, Life Flight, Emergency Management Queensland who were prepared to pay the high lease costs and improvements to tired original Commonwealth hangars. These are aerial ambulance and enforcement activity movements not Air Transport operations which remain at historical low levels.

In a survey conducted by the Chamber of its members in 2006, their most concerning issue was the lease renewal issues on Archerfield airport the instability that created, and exponentially rising costs at a high cost airport. Many believed their businesses would not survive the next 10 years on Archerfield Airport which has proven correct.

As at the preparation of this submission **every** flying training school existing on the airport at privatisation has collapsed financially or been shut down (excepting only Gil Layt's Flying School). The director/owner reports that with the rental cost of having to rent their own building now lost by reversion, there is no profit from the business to pay himself any wages for his full-time management effort.

The Flying Schools, with some rare exceptions, also held charter licences (now Air Transport category licences) and retained charter aircraft for non-scheduled passenger operations in addition to their flying training activities.

Further at privatisation there were five CASA approved aircraft engine overhaul businesses on Archerfield Airport, now there are none.

[39] As prepared for the Chamber's AAT case in relation to the 2011-2031 Master Plan to FY 2013. This does not include out of ATC hours aircraft movements at Archerfield but this is not significant to trend analysis.

There are now no IFR (multiengine all weather) helicopters for Air Transport passenger carrying operations[40] at Archerfield Airport following the departure of Austcopters.

Lease issues are central to the departure or demise of all of the above referred to aviation businesses.

Pacific Air Freighters which used a DC4 Airline Transport aircraft because it could fly very significant freight tonnage (approximately 11 tonne freight payload) into unprepared unrated airstrips in the outback or pacific islands due to its low impact tyres and had its own on-board palette loading system was driven mercilessly off the airport. AAC did this by not providing access and exercising powers under airport control regulations (i.e. not giving access to service vehicles airside) and AAC making Archerfield (Airport prior permission required for aircraft over 5,700kg in the AIP Enroute Supplement.

Further the Chamber has been made aware from a multi- millionaire aviation user that approached AAC to build approximately $30Million dollars of hangars on the airport and was even prepared to fund runway upgrades, but AAC did not agree to provide access.

In the AAT case of *Steven Hammond v AAC* [41] supported by the Chamber because aircraft owners including visiting aircraft could not have their aircraft instruments and electrical systems engineer attend to their aircraft because of access issues. The Chamber's analogy is if your car was broken down in a carpark and you were paying for the parking and needed the RACQ to enter to provide mechanical assistance the RACQ should not be asked to pay a further annual commercial access fee to the carpark. The AAT decision however permitted the ALC to charge the annual fee even if access was a once off. We have seen the absurd situation where Mr Hammond was servicing aircraft on the airfield by parking his high precision diagnostic and calibrating analyser equipment test vehicle landside and passing the vehicles "umbilical cords" through the airport fence to closely parked helicopters/ aircraft.

The previous three paragraphs above illustrate access issues and likely non-compliance with the Commonwealth Lease.

Additionally, we have seen the loss of the multi city overnight air express operator Jetcraft whose base and centre of management was originally Archerfield Airport and also the departure of Macair Airlines administrative department from Archerfield.

More recently aircraft maintenance engineers Ian Aviation, made a commercial decision because of the high costs on Archerfield Airport and the management style of AAC to move its entire engineering operation onto private land near Atkinsons Dam with its own airstrip and now there is the ridiculous situation of aircraft having to fly away from Archerfield Airport which has historically been the centre of advanced aviation technology and excellence to a private airstrip for aircraft maintenance.

"Light Hands" Policy

At a meeting between Department heads and the Committee of the Chamber on the 22nd October 2009, Mr John Doherty (Executive Director Aviation and Airports), Karen Gosling, General Manager – Airports, and Luke Osborne (Section Head Queensland and Territories – Airports Branch) each stated when introducing themselves that they were career public servants and they had no aviation qualifications.

At the 22nd October 2009 meeting the Chamber warned the aforementioned persons that they needed to be careful that they were not running their department unlawfully.

There is no basis at law for any "light handed" administrative approach by the Federal Government in applying legislation governing the regulation of airport leasing companies.

[40] Refer Annexure A7-1 Statement of Captain Lindsay Snell paras 24-32
[41] Refer Annexure G7-AAT Decision_ Hammond-Archerfield 2007-1417

2011-2031 Master Plan

AAC, having been thwarted by the Chamber in all earlier plans to close / alter and diminish the 04/22 runway complex embarked on an elaborate plan of misleading and deceptive conduct to support closure of the 04/22 runway complex again in the 2010 PDMP. Despite over 900 objections to the plan the plan was approved by Minister Albanese and the Chamber commenced proceedings in the Administrative Appeals Tribunal.

AAC, had engaged the services of Randl Pty Limited ("Randl"), the Director and principal consultant being Mr Rodney Sullivan ("Sullivan"), a civil engineer and former Department of Aviation employee involved in the planning of airports (including Archerfield Airport when under departmental control and the FAC) and a Director of Burnie Airport Corporation in Tasmania preparing its master plan. Sullivan though an accomplished airport planner and academic had no pilot qualifications and runway paving was not his core engineering specialty.

Sullivan acknowledges[42] preparing technical papers/reports on:

- practical capacity of the proposed airfield layout;
- wind usability analysis;
- runway unserviceability and usability;
- RPT aircraft performance planning; and
- pavement strength

These reports/ technical papers were touted by AAC as a basis for closure of the 04/22 runway complex.

There was no name on the reports as to who had prepared them, their qualifications, the terms of reference of the engagement or any other identifying marks usual to technical reports.

Mr Clement Grehan has stated:

"None of the "Technical Papers" or "Technical Studies" described in the previous paragraph are identified as being produced by any qualified expert or by the person who has prepared and claims ownership to the documents, its content and certifies its professionalism. Any professional such as a qualified engineer would date and sign their technical report as their work, as would anyone who had reviewed and approved same. They would also include the name of the organisation involved, if any, and their position within that organisation"[43].

Engineer WC Whitney has stated:

> *"5. I note that Mr Sullivan alleges that he is qualified as a professional engineer but he fails to not mentioned whether he has membership of Engineers Australia or whether he holds registration with the Board of Professional Engineers in Queensland or any other State.*

[42] AAT Statement of Mr R Sullivan dated
[43] Statement of C Grehan dated 3 July 2013 para 6

> *6. The Professional Engineers Act 2002 (Qld) (PE Act) provides for the registration of professional engineers to practice in Queensland. The Act prohibits persons who are not registered from providing professional engineering services unless they practice under the supervision of registered professional engineers registered in the same area of engineering"*[44]

The Chamber alleges that Mr Sullivan illegally performed the engineering services related to the reports/ technical papers.

Post the AAT hearing, the Chamber lodged a complaint to the Board of Professional Engineers (Qld) which found Sullivan had likely provided professional engineering services breaching the PE act but was statute barred from prosecuting Sullivan[45]. If Sullivan had been a Registered Professional Engineer Qld (RPEQ) he would also have had to comply with their code of practice[46] that required him to consider, amongst other things, if he could accept the appointment, and direct consultation directly with users of Archerfield Airport (the Chamber for example) and other matters rather than producing documents solely to assist AAC to close the 04/22 runways complex.

The master plan was accompanied by a series of Fact Sheets prepared by Shac Communications – an aggressive marketing company used by developers – whose mantra as has been stated on its website is "Rules are not made to be broken; its knowing which parts to bend".

> *the Fact Sheets are not facts and that they contain a whole series of false statements*

The "spin-doctored" illogical arguments from AAC in their master plan was to the effect that the 04/22 grass runways were unusable 26.25% of the time due to "rain events" and that by "realigning" them, again as grass runways but to a 01/19 direction and shortening the runways lengths would somehow improve usability by an unremarkable 11.32 days per year. AAC also claimed the 04/22 Runways were flood prone however even the Brisbane 2011 floods did not result in any curtailment of air operations on the use of those runways during that period.

AAC's statistics about the lack of useability of the 04/22 runways has diminished credibility when Senior Air Traffic Controller Glen Shield stating to the Chamber that he was tired of lying in announcements over the airport automated terminal information service (ATIS) that the 04/22 runways were out of service due "works in progress" when this was not in fact the case. His written statement puts this in politer terms[47]

Sullivan performed a wind analysis, relying on "new data" which he has never made available to the Chamber and which purported to represent that the best direction, given a keeping of the 10/28 runway system (given a tolerance of aircraft to 10 knots of crosswind) would be a 01/19 runway direction. Even if Sullivan's work is accepted as unbiased scientific fact it could form no decision basis to changing the runway direction to improve usability because...

> *"The crosswind analysis has made a call on pavement suitability in its conclusions. This is a staggering assumption as it is not possible for an analysis of crosswinds to talk about pavements this is a topic for engineers and hydrologists…*
>
> *Clearly there is a problem with either the data collected or data is being misused for the purpose to present a certain point of view….*

[44] Statement in Reply CW Whitney dated 15 Nov 13 para 5,6
[45] Refer Annexure E2 Board of Prof. Engineers_ Let_15 May 2017 Re Sullivan
[46] Refer attachment N to reply statement of WC Whitney dated 15 Nov 13
[47] Refer Annexure A6 Statement of Glen Shield dated 13.11.2014

> *To really improve the accessibility of the grass runway the runway pavement should be sealed. Bituminous seal would be sufficient for the traffic you have today and compared to an ashphalt overlay not that expensive"*[48]

> *The Draft Master Plan is not proposing to seal the realigned runways and such a claim for an unsealed runway is ridiculous for those with experience with grass runways and those familiar with the rainfall and soil types in SE Queensland"*[49]

Sullivan's own report stated:

> *A number of potential solutions to alleviate the problem of runway closures involve levelling the runways, sealing them with asphalt, engineering sub-surface drainage around them and/or moving them to higher ground further to the eastern side of the airport. A combination of the aforementioned solutions would provide the highest possibility in reducing the likelihood of future closures due to rain events. However, an analysis of cost versus potential benefits would first need to be considered to determine the most appropriate course of action. T 2872*

Cost Benefit Analysis to aviation users was never prepared or considered in relation to the 2011-2031 Master Plan.

The net negative benefit, that is a NET COST of the 2011-2031 Master Plan being detrimental to aviation users in the sum of $88.95 Million including the loss of the multi-million-dollar control tower was estimated, and submitted in evidence[50].

Our Chamber's own survey of members revealed that they were prepared to pay for even an Asphalt surfacing of the 04/22 runways and that this could easily be paid for by a minimal increase in landing fees as the 04/22 grass runways were already runways with a subgrade[51].

Sullivan admitted late in the AAT proceedings to the effect that the reason for the runway change was not an aviation requirement but solely to enable a "freeing up" of aviation use land for commercial property development.

The "T" documents also highlighted that the Department was operating more as a post office for the ALC and it was only the Secretary of the Department in his letter of 6th July 2011 that seemed to have any clue as to the dangers to aeronautical capacity of the airport from the Draft Master Plan.

Looking only at past history of use and only as to runway lengths, though is no measure to prove an ability of downgraded runways to meet future aeronautical capacity.

As a consequence, a spreadsheet and report (also prepared by Randl Pty Ltd) called *GA Performance Planning* (November 2008) under the topic "length of proposed crosswind runways" (section14.6.2 of the 2011-2031 PDMP) used historical data of what aircraft types had landed on the 04/22 runways for three years from 2008 to 2011 and deduced that 04/22 runways of 900M would suffice. on that the analysis and decisions about this aspect (as evidenced by the T documents of the AAT case) involved a series of unqualified persons being involved in this process and technical failings by CASA in reviewing the data as to the actual use of 900 M runways in commercial air operations.

The History of this issue goes back to 1987/88.

[48] Refer Annexure A9-1 Statement of C Grehan dated 3. 7.13 para 26
[49] Refer Annexure A9-1 Statement of C Grehan para dated 3.7.13 para 20

[50] Refer Annexure A9-1 Statement of D Grehan para 25 and Attachment N thereto
[51] Refer Annexure A9-1 Statement of C Grehan Attachment L

Instead of designating a body of official, the Parliament appointed a Body Corporate (the CAA) to perform the aviation safety function. ….. The mandatory requirements for safety factors on runway distances for take-off were cancelled. This applied to Charter aircraft below 5700Kg. Then the same was done for runway lengths for landing – except that this applied to all private aeroplanes as well[52].

CASA merely "checked the calculations" of the aircraft historical types FAA flight manual prepared at certification and did not apply any overall safety factor. With no safety factors applied the even a test pilot at certification of each aircraft would have crashed 50 percent of the time on these distance calculations.

The Department "*Have merely asked Mr Neal from CASA to check the calculations of the environmental data against the manufacturer's Aircraft flight Manual data for the take-off and landing charts only. Mr Neal has not made any comment about the suitability of the shorter runways for compliant Australian Air Operations by an Air Operators Certificate holder or Private Operator*[53] "

Air Operators carrying passengers or freight (or conducting flying training) are required to have an Air Operators Certificate of approval from CASA and that includes an Operations Manual approved by CASA. CASA "*Civil Aviation Advisory Publication CAAP215-1(1)"* prescribes mandatory requirements including a compliance statement requirement that the safety factors must be applied, accelerate stop distances, and other safety factors related to wind (e.g. not more than 50% of headwind component and not less than 150% of reported tailwind component). Regulation 215 of the Civil Aviation Regulations 1988 provides CASA with this power. Air Operators personnel must comply with the Operations Manual under threat of statutory penalty (Reg 215(9)). The Senate on 20th May 2014 querying CASA on these issues and airport runways[54] and the mismatch between ICAO runway rules and air operator rules. (Also refer Annexure A13-1_History_Brief_Australia's Airport Rules)

What this all means is that AAC used unfactored data to convince the department their plan for short runways would not affect historical operations however Air Operators must apply safety factored criteria to use such runways. The proposed short runways being all but useless for passenger and freight operations.

Historical past use though is never an appropriate method to ensure provision for the current and future aviation requirements for use of the airport although it is clear from handsard[55] that the Secretary of DOTARS has held these misguided ill-informed views. This has been used inappropriately at Bankstown Airport to close a cross runway – refer Bankstown. This is a failing of government such that it is an ill-informed regulator and protector of the public interest.

What is required for planning for runways is provision of capability not use. An analogy related to cars is airbags – on the basis of the number of times you use them they are not justified, but, on the basis of capability they are invaluable.

Further if in regard to crosswind runways the FAA Airport Design Rules (which have previously been adopted by Australia refer annexure 13-1) had been followed for example AC 150/5325-4B[56] table 1B being 100% of the recommended runway length determined for the lower crosswind capable airplanes using the primary runway as per Figure 2.1 the minimum length required would have been 1158m (

[52] "Why we Regulate The Way we Regulate and Who Pays" AJ Emmerson (former Chief Engineer of the Civil Aviation Authority) pages 9 & 10

[53] Refer Annexure A11-1 Statement of CW Whitney dated 24.4.13 generally and para 15d

[54] Refer Senate Hansard Monday 26th May 2014 , Rural and Regional Affairs and Transport Legislation Committee Estimates pages 142-144, and Tuesday 27th May 2014 pages 2- 4, and answers to questions on Notice numbers 253 and 264.

[55] Refer Senate Hansard Monday 20 October 2014, Rural and Regional Affairs and Transport Legislation Committee Estimates

[56] Refer Annexure A13-2 FAA runway design rules AC 150/5325-4B

3800 feet) or Figure 2.2 the minimum length would have been 1341m (4400 feet) not the 900m that was "decided" from unfactored flight manual data.

During the AAT proceedings Deputy President Hack requested our Chamber to produce our own Master Plan. Attached is a copy of the Chamber's Master Plan[57] submitted to the AAT.

The Chamber's Plan recognises that many aircraft that currently operate in to Brisbane need to operate into Archerfield. Charter, private and freight aircraft capable of landing at the airport, operate under the instrument flight rules and therefore the plan reflects providing for this so that Archerfield can exist as an IFR destination airport without reliance upon Brisbane Airport and be a destination of reasonable reliability to such aircraft.

The Chamber's Master Plan stated:

"There is forecast high demand for pilots in the Australasian region over the next 20 years and although Archerfield has had a fine history of flying training, it is a high cost centre, but the perfect location for flying training should their become an environment of an airport leasing company that encouraged aviation on the airport.
There is an exponential increase in demand for Charter and fly in fly out operations, to the regions particularly in support for Mining and these are flights being conducted under the instrument flight rules in turbine aircraft. The Chamber is aware of Q300 and Q400 Charter operations desired to be conducted at the airport[58]. Such aircraft and even the piston twin and single engine aircraft now GPS and ILS equipment for runway approaches – and the airport needs to catch up to meet their requirements.
The most common aircraft for mining charter is the King Air B 200 aircraft, after lessons learned in the 1980's with accidents in piston aircraft – small turbine aircraft replace the larger pistons aircraft except for mostly freight operations.
Future aviation activities include the increased Charter, Freight and Corporate aircraft traffic of code 3C or 4D already wanting to use Archerfield Airport because of the capacity constraints of Brisbane Airport (as is now evident) such that the airport requires to be preserved in its entirety as "SP6 aviation" to accommodate this demand. Aviation demands will increase in the coming years as the population in SE Queensland increases but no one can foresee the exact requirements into the next 50-100 years. Land cannot be permitted to be locked up for non – aviation purposes that would or reasonable will be required into the future.
The airport is a public utility and quasi –monopoly and the lessee must meet the requirements of users and accommodate the rights of operators to validly exercise the rights conferred upon them on their Air Operators Certificate to carry out those activities for the place certified in the certificate. Therefore this plan accommodates banner towing and tail dragger aircraft areas within the runway strip.
Flying training continues to be an important component of the airport and therefore the dual parallel runway system needs to be kept so that circuit training operations can co-habitat with arrivals and departures.
The airport needs to become a destination of high certainty of arrival of IFR aircraft and stand on its own without the routine need to hold Brisbane airport as an alternate.

The Chamber's plan showed that a 1600 m runway 04L would accommodate the larger aircraft operating together with the smaller training aircraft, was a very workable safe and economical plan only requiring a very short taxiway to a separate large aircraft parking area on the Northern side of the airport (and a secure small terminal facility if needed). The runway works in essence, needed only the grass removed to expose the subgrade, additional subgrade if necessary and Asphalt surfacing. The 04 runway would

[57] Refer Annexure F_ AACCI Alternative Master Plan Summary- 8 March 2013
[58] Refer Annexure 10 Statement of Captain W J Hamilton paragraphs 4-7

also take aircraft approach paths over the Oxley Creek catchment reserves being an existing flight path and already protected as to obstacles and also being an area devoid of human habitation.

AAC's plan of providing a 10/28 runway would have been more expensive and involve either digging up asphalt (not grass) then adding more subgrade or alternatively starting from scratch with a new runway in the 10/28 direction and a new system of taxiways for the heavier aircraft. Further the AAC plan would increase disparate circuit operations whereby smaller aircraft were more likely to be on a different direction runway and circuit at the same time increasing flight collision risk.

More details can be found in the Chamber's Alternative Master Plan annexure.

One of the legal arguments of the Chamber in relation to the 2011-2031 Master plan was that to be able to be approved by the Minister, a master plan for an airport must comply with the underlying interests in the land.

Further, that certificates provided to the Minister by the Second Respondent [T documents 5337 & 5338] made pursuant to sections 79(1B)b, 79(2)(b) and 80(2) of the Airports Act 1996 regarding underlying interests and consultation were incorrect[59].

The Chamber considered that the 2011-2031 Master Plan must be rejected by the Minister as regard for equitable interests in the land had not been complied with, e.g. non- aviation industrial land developments were planned over already aviation use tenanted land[60] whose lessees had an equitable interest in the land – that is were required to be renewed pursuant to a collateral agreement. "Interest' in the Airports Act was defined to mean both legal and equitable interest. As the AAT is not bound by the rules of evidence but "may inform itself on any matter in such manner as it thinks appropriate" the Chamber considered it appropriate to run the equitable interest evidence.

The Chamber also argued that existing tenant leases were in place prior to privatisation so how was it possible for there to be two concurrent leases over the same land.

(Refer the Chamber's hearing submissions as to equitable interests further at Annexure G2[61].)

The Interlocutory hearing on 16-17 April 2014 by Deputy President Hack in our view was so that he could decide whether equitable interests and any challenge to the ANEF should be excised from the Chamber's evidence. In summary in our view DP Hack decided to exclude admitting any evidence in relation to both, in essence because he was not prepared to decide a case in relation to equitable interest which he considered should be decided by a court not the AAT and particularly where there were no court cases commenced and that there was no statutory review possible in the legislation related to ANEF forecasts. In our view Deputy President Hack was incorrect as to no proceedings in other courts as the Sailco case[62] had already commenced in the District court of Queensland on 29th November 2011. It is noted that the precedent cases in relation to collateral agreements are *De Lascelle v Guildford [1901] 2 KB 214*[63] and warranties not being able to be excluded from contracts *L'Estrange v Graucob [1901]2KB215*[64] *)* and further that statutory requirements (e.g. *Property Law Act 1974 (Qld*)) do not apply to collateral contracts or equitable estoppel both of which are arguable in the absence of writing.

[59] Refer Annexure A7-1 Statement of Captain Lindsay Snell paras 33 & 34
[60] Refer Annexure A7-1 Statement of Captain Lindsay Snell paragraph 27 and objection letter
[61] Refer Annexure G2_AAC's Replies to Supplementary Hearing 16-17April14 re Underlying_Interest.
[62] Refer Annexure B9 Sailco Claim
[63] Refer Annexure L1_De Lassalle v Guildford.pdf
[64] Refer Annexure L2_ L'Estrange v Graucob.pdf

Attached as Appendix G1[65] is the interlocutory decision and reasons for decision of DP Hack who required the exclusion of all equitable interest evidence and ANEF evidence from the proceedings.

None of the parties could agree as to Facts and Contentions however the Chamber's versions of facts and contentions are attached in Annexure G3. The Chambers supplementary submissions are attached in Annexure G4

The Chamber's principal and final submissions[66] to the AAT apart from outlining the ordinary arguments for merits review introduced analysis along the lines of the Robertson SC Opinion in relation to the Head of Power. The Chamber submitted that

It is clear from both the Master Plan (General Industry Zoning) and advertisements placed by or on behalf of Archerfield Airport Corporation that these developments are intended to form part of Brisbane's industrial areas and are not incidental or ancillary to the operation of the airport. Nowhere in the DMP reference is made to any time period that these areas will be available for non- aviation use; and there is no demonstrated intention to return any of these areas to aviation use once a commercial development has taken place.

The Chamber's principal and final submissions at paragraph 7.5 entitled "Alternative Arguments" included distinguishing the Archerfield facts from the *Westfield vs BAC* case, in that the Archerfield Master Plan was displacing existing private aeronautical facilities with non-aviation industrial development rather than on previously undeveloped land as had occurred at Brisbane Airport in the Westfield Case. And secondly applying Robertson SC opinion head of power type arguments as applied to the Archerfield Airport master plan. However, as the case being relied upon by the AAT and Federal court was the Westfield Case and as there was no counter decision as yet in a higher court e.g. the high court in relation to the head of power, it would have been highly improbable for the AAT being subservient to the Federal Court to support the latter view.

Deputy President Hack's decision to affirm the decision was disappointing but not unexpected.

As DP Hack stated in his decision[67]

> *33. In Westfield, Cooper J explained the operation of s 32 and expressly rejected arguments identical to those advanced by the Chamber. His Honour's decision binds me and, in any event, is plainly correct*

DP Hack in our view incorrectly accused the Chamber of not coming to grips with the fact the airport has been privatised but we believe he did not understand it is the Chamber's view however that is the courts that have not yet tested / caught up with the limitations of the head of power as to permanent non-aviation development on a Commonwealth Place as per the Robertson SC constitutional opinion and our submissions were attuned to that rather than any non – acceptance of privatisation.

In summary the Chamber's take on the view of DP Hack's points were essentially that:

- A master plan is part of a business plan for an existing airport (so they can do pretty much whatever they want!).
- It does not matter if a Master Plan is in breach of the Commonwealth lease for the airport (e.g. downgrades the facility runways etc) as that will be considered in a Major Development Plan
- Individual disputes of aviation users on an airport will not be considered, the only consideration is the wider community

[65] Refer Annexure G1_AAT_Archerfield_Scouts_Underlying_Interest_Interlocutory_ Decision_24April_2014
[66] Refer Annexure G5_AACCI Principal and Final Submissions_20_2_2015
[67] Refer annexure G6_

- The AAT is no defacto Royal Commission

The Chamber prepared statements that could be used in an Inquiry or a Royal Commission deliberately as it was only going through the enormity of the task once. A decision in the AAT was a "free hit" and would bring to the fore the inadequacies of the airports regulatory regime, the limitations of AAT as a review mechanism, the limitations of the legal system as to precedent, and failure to protect ordinary hard-working aviation small businesses and community organisations from catastrophic sovereign risk and abuse of market power arising from privatisation.

During the AAT process the T documents revealed that the ALC and the department in our view acted to malign and discredit the Chamber describing it as a lobby group and that many objections to the DPMP were "templated" and therefore by implication valueless. It is the Airports Association, of which the ALC is a member that is a lobby group and having a full-time secretariat in Canberra to do so.

The Airports Act contains no legislative provision in respect of a Master Plan that an ALC shall comply with its Commonwealth Lease. There is only a requirement in the legislation that an ALC shall comply with its Commonwealth Lease in respect of a Major Development Plan. A Major Development plan is required for a runway change.

Clause 9.2 of the Commonwealth Lease states:

"The Lessee must maintain the runways, taxiways, pavements and all parts of the airport for safe access by air transport to a standard no less than the standard at the commencement of the lease"

Assurances from former Minister Truss and others about the Commonwealth Lease protecting the existing infrastructure are proving hollow as the Chamber has received disturbing reports that the Federal Department is seeking to have clause 9.2 of the Commonwealth Leases "reinterpreted" such that "Air Transportation" is to mean only "RPT Airline Operations". This would mean the ALCs at the Secondary Airports could then potentially carve up the runways that were not "essential to RPT airline operations" as opposed to "Air Transportation" operations which presently includes preserving the infrastructure for non-scheduled GA operations in smaller aircraft. That is the ALC would then procced via a major development plan to implement its Master Plan in regard to runways closure and downgrading.

This is a segue into the topic of the non-legislated "regulation" of Airports Act airports. There are five documents for each airport and these are the documents listed in yellow boxes in the Privatisation Regime diagram in this submission. The Commonwealth Lease[68] is but one. The concern here is that these documents are between the Commonwealth and the Airport Leasing Company as parties and can be varied or changed by executive government, that is the Minister. Parliament has no say in the matter, there can be no debate or checks and it creates an environment for possible corruption and lobbying away from public view or parliamentary scrutiny or debate. Further there is no legal right for aviation users affected by the changes to have any recourse as they are not a party to the agreement but are profoundly affected by any change.

All "protective clauses" in the Commonwealth Lease such as

Clause 9.2 as to preservation of aviation infrastructure

Clause 3.1 as to providing access to Intrastate and Interstate Air Transportation

Clause 13.1 as to development of the airport

should be duplicated into legislature immediately so that parliament has a review for any changes and aviation users can have some rights in the courts, or an aviation ombudsman with effective powers as a

[68] The Commonwealth Lease for Archerfield Airport is reproduced as Annexure H2

low-cost alternative. We have already seen Ministers bend to ALC's and lobbying by the Airports Association in extending the Commonwealth leases with the public and aviation users only reading about it in the newspaper after the event.

Fuel Farms -Abuses of Monopoly Power and unconscionable conduct by AAC

Pre-privatisation under the specific direction of the FAC, the fuel farms of BP, Mobil and Shell were moved away from other buildings for safety and more into the centre of the airfield with individual ground leases. There was major investment in private underground and above ground infrastructure by the lessees with each fuel company providing both JetA1 and Avgas refuelling by individual fuel company trucks and separate company 24-hour self-serve card bowsers.

The lessees were each provided with specific fuel farm 20-year leases and it was warrantied to them in accordance with FAC renewal policy that they were entitled to three times renewal (collateral agreement).

The Leases contained provisions whereby four months' notice was required to be able to remediate the site due to the extensive works required.

Pegasus Aero Fuels Pty Ltd trading as Archerfield Refuelling Services ("ARS") was refuelling agent originally for Mobil since 1980, then as fuel sales started to fall at the airport in line with falling aircraft movements (refer movement graph), ARS also became agent for Shell in 1992. Market competition was still maintained though as customers could specify which fuel company brand they wanted.

Mobil, in January 2016, as part of its divestment of all retail operations in Australia, sold its Archerfield fuel farm and operations to World Fuel Services. Similarly Viva in December 2017 acquired the assets of Shell on Archerfield but retained the right to use the "Shell" trademark on its bowsers etc. Leases were assigned to the respective new entities.

Each fuel company sought renewal of their 20-year leases for another twenty-year term from AAC in accordance with the collateral agreement. AAC informed the fuel companies their leases would not be renewed and that AAC would be the supplier providing fuel on the airport in the future.

ARS in relation to the World Fuel site was told AAC would be taking over World Fuel's fuel farm and the choices provided were

(i) the lessee could remediate the site at the lessee's expense or
(ii) accept a "sale of the improvements" at about 10 percent of their market value. In other words, another asset strip made under duress following similar lines to the asset strip and eviction flowchart in this submission.

As remediation costs could have been $.5 to $1million the "under duress" sale proceeded.

ARS removed its fuel trucks from the airport and the former World Fuel site is vacated and closed.

The AAC newsletter of October 2018 advised in rather euphemistic terms

"*The fixed Assets of World Fuel have been acquired and negotiations are being held with existing suppliers*"

It is the Chamber's belief that Viva is in a similar position to World Fuel Services excepting they are resisting accepting a forced sale of their assets, in all likelihood but may end up being the supplier of fuels to AAC when they own all fuelling assets on the airport..

It is our understanding that BP is currently in "holding over" under its former lease prior to having to fully remediating the site and exiting Archerfield. BP presently has the only Avgas fuel truck on Archerfield which is temporary during holding over then there will be no Avgas refuelling trucks on the airport unless AAC purchases Viva's trucks.

The Chamber notes that in formal "consultation" records submitted to the Department by AAC in relation to the 2011-2016 master plan that in response to Air BP fuel farm operator Ray Maltby's question:

> *He was concerned that the re-alignment of the 01/19 runways may impact on the fuel farms.*
>
> *11/3/2011*
>
> *Advised that preliminary surveys had Indicated that there would be no concerns with the fuel farms in their current locations. Also advised that in depth studies would be required before proceeding if the proposal was given the go ahead.*

The reason therefore that AAC is not renewing the fuel farm leases is to acquire their businesses or remove them from the airport as a competitor – there can be no claims it is to do with "planning requirements".

AAC will become the only provider of fuel on the airport and therefore there will be no competition, and this will lead to price increases or alternatively deny operators from setting up their own fuelling. (Refer "Competition in the Market" below).

The spin doctoring of AAC in their publicly releases is that they are "improving fuel services" and words to the effect that it was inefficient having three fuel companies, two lots of staff and fuel trucks and that airport pavements would be protected "through better fuel truck use".

AAC have altered leases to prohibit tenant's options of bringing in any external supply for their operations as clauses in their new lease document prohibit tenants from bringing any fuel onto the airport or using any other supplier other than the "preferred fuel supplier" of AAC or on a strict reading of the clauses are prohibited from even re-fuelling the tenant's own aircraft!

Example clauses introduced into new lease documents are:

> *The Tenant and the Tenant's Associates must not unless otherwise specifically permitted or allowed in the lease:*
>
> *Use store or handle any Hazardous Contaminant (such as fuel or oil) in the Premises or otherwise on the Airport without the prior written approval of the Landlord. ….*
>
> *Engage the services of any external contractors other than the Landlord's preferred supplier for security, rubbish removal or fuel supply*;

The above restrictive trade practices clauses are masquerading as safety matters. Pilots and operators attend to fuelling and oils and additives and hydraulic fluids etc all day into aircraft on the airport and aircraft in hangars contain many hundreds of litres of fuel on board. If these clauses are not accepted the tenant is denied a lease. The Chamber believes that as AAC now (or will soon own / control) all airport asset improvements this effectively restricts access to the airport unless agreeing to same.

Competition in the Market and Provision of Jet (and other Fuels) at Archerfield Airport & Nationally

In the past prior to the non – renewal of the fuel farm company leases (see above), each fuel company had "in-ground" storage facilities for Jet A 1 and Avgas plus JetA1 and Avgas fuel trucks. It is the Chamber's observation that the prices for Jet A1 (and Avgas) on Archerfield Airport would be set by each fuel company and advised to the respective fuel agents on 1st of each month and be valid for the month. This practice has occurred for decades. It is also the Chamber's observation that there would be very little difference in fuel prices between the fuel companies – e.g. 0.5 of a cent per litre. Fuel prices at the time of writing this submission were approximately $1.90 per litre for Jet A1 and $2.30 per litre for Avgas which is high. It is the Chamber's belief that such small pricing differences are unlikely to have occurred over decades without collusion by the Oil companies.

By comparison if an operator / tenant was permitted generally to bring onto the airport or their lease containerised fuel (a shipping container or half container double lined for aviation fuels) the Chamber's believes fuel could be bulk handling delivered (e.g. 22,000 litres per delivery) to such containers for approximately $1.10 per litre for Jet A1[69] achieving a saving of approximately 80 cents per litre for Jet A1. The Chamber observes that the state government-controlled operations on the airport e.g. Police, EMQ helicopters are to the Chamber's knowledge, the only operators that have been permitted by AAC to have their own above-ground containerised Jet A1 fuel and this has been in place for some years.

With respect to Avgas, it is the Chamber's understanding that Avgas is only supplied to all Eastern Australia by Viva Energy from their Geelong refinery and BP in Western Australia from their Kwinana refinery. Avgas is a special fuel because it contains lead and needs dedicated production use, storage, and dedicated delivery infrastructure / facilities compared to unleaded fuel. Avgas supply is in effect a duopoly with no real competition and it is the Chamber's belief that General Aviation is being price gouged because of it. A major issue to effective competition is storage and access. The USA has approximately 11 refineries producing Avgas and pricing is competitive, sufficiently so such that refined avgas could be shipped from the USA at a significant saving to Viva's pricing – if it could be stored. We understand that World Fuel is considering a study into investing in storage facilities in Australia or a group rental of bulk storage facilities in 2019 to try to lower pricing – however World Fuel is no longer on Archerfield Airport.

Chinese aviation gasoline RH- 95/130 and RH-100/130 is approved as an alternative fuel to Avgas in some USA manufactured aircraft (which are the main types flown in Australia) and could be imported as refined fuel if bulk storage facilities were available.

There are STC (supplemental Type Certificate) approvals issued by the FAA (and recognised by Australia pursuant to acceptance by Australia of USA Federal Aviation Administration STC's) for 48 engine types and over 100 aircraft types[70] to use Mogas (e.g. Unleaded Premium 98 Petrol) although the required quality delivery standards are not generally in place to airport to effectively use these fuels in Australia – but some operators have been bringing onto Archerfield Airport Mogas fuel in 20 litre fuel containers for use in small training aircraft – being sports recreational aircraft (operating at the airport under exemption) rather than VH registered aircraft.

The retail price of Premium Unleaded 98 at a petrol station is approximately $1.50 per litre (which includes 39.5 cents per litre that should not be applicable to an aviation fuel such as UL91) saving at least 80 cents per litre over Avgas 100LL. The financial savings to flight training of pilots, passenger, freight costs and aviation generally are obvious. To the Chamber's knowledge there has been no Mogas shipping container tanks ever permitted on Archerfield Airport although we note that private airfields such as Lethbridge in Victoria has Premium Unleaded Mogas, Avgas 100 and JetA1 in containerised fuel storage available – refer picture below.

[69] Based upon actual bulk delivery of Jet A1 onto private helipad facilities off airport on private land and with their own above ground Jet A 1 tanks or tanker - in the Brisbane area all to the Chamber's knowledge .
[70] Refer http://www.autofuelstc.com/

Air operators should be entitled to bring onto an airport the fuels or oils of their choice or that are mandated or specified for use in their aircraft by the manufacturer and or type certificate issued by the country of certification or are licensed by the regulator to use, according to law and all without obstruction / refusal to grant access or contractual restraint in airport rental lease documents.

Generally, Avgas powered aircraft are approaching crisis point in Australia. The USA are in a final phasing out of all leaded fuels, General Aviation, having had an environmental exemption for many years in the USA, mainly because the turbocharged larger Avgas powered aircraft (which are involved in extensive freight and passenger operations and other operations important to the nation interest – e.g. agriculture) all require tetraethyl lead ("TEL") to achieve the required minimum octane rating for the aircraft. (See About Tetraethyl Lead and its replacement - FAA and FAA Avgas Replacement Program Updates & Reports). The FAA has stated that "*First and foremost, the use of leaded fuels is an operational safety issue, because without the additive TEL, the octane levels would be too low for some engines, and use of a lower octane fuel than required could lead to engine failure*." We are now at the stage where there is only one producer in the world (excluding China) left that produces TEL so the Avgas production situation and fuel security position in Australia is precarious. Finding a replacement "drop in" fuel in the US has taken many decades of research with unsatisfactory results until recently but trials are not yet complete. The USA FAA Piston Aviation Fuels Initiative (PAFI) was required to have candidate fuels considered and gradually reduced by elimination and a decision by 2018 but this has stalled and been deferred to mid-2020. The Chamber is aware that some developers of "drop in fuel" alternatives in the US have not been involved with the FAA PAFI program, regarding it as mis-managed and instead are obtaining their own STC for their fuel (e.g. GAMI GUL100 which the patent holders claim can be produced by any refinery with minimal changes).

Lycoming Engines (one of the major piston engine manufacturers in the USA) has advised in its technical bulletins that seventy percent of the piston engine avgas aircraft fleet (which would include nearly all pilot training aircraft) do not in fact need Avgas 100 LL, and which the Chamber is aware is actually harmful to such engines e.g. as regards lead deposits issues, as the TEL lead percentage in the Avgas 100LL is higher than the engine type requirement. The EU has solved this issue by their aviation regulator approving any aircraft whose engine is approved by the manufacturer to run on Mogas (e.g as defined by Lycoming as:

- 93 AKI for detonation margin (hot day OAT and 500F cylinder heads).
- Vapor pressure Class A-4 to prevent vapor lock.
- No ethanol and maximum 1% oxygenates.
- ASTM D4814 Revision 09b and EN228 Revision 2008:E)

to automatically be approved[71] by standard change form [Standard Change CS-SC202b] to use unleaded aviation fuel "Avgas UL91" (which is basically Premium Unleaded Motor Gasoline delivered in a more controlled process than to petrol stations) even though there may not be an airframe STC approval in place in the USA the country of manufacture. This Avgas UL91 fuel can be made by any refinery – without dedicated leaded facilities and is relatively cheap and meets the quality standards[72] of the engine manufactures for Mogas (e.g. as defined above by Lycoming). Note that existing aviation piston engines cannot run with any form of ethanol mix.

Unlike the EU, in Australia and the USA, in order to use Mogas (as specified by the engine manufacturer) in an aircraft there needs to be both a Mogas regulatory approval for the engine[73] and a Mogas STC approval for the aircraft airframe type. Because of the research effort cost in the USA of now obtaining approval per aircraft type – Mogas STCs aren't effectively being pursued any longer as they are uneconomic to apply for and only historic FAA approvals remain. Also, as US motor gasoline now has a mandated ethanol component in it – Mogas without ethanol isn't as readily obtainable in the USA as it has to be specially made for aviation so there is a reduced push for new STCs in the USA for mogas.

No auto fuel ethanol percentage is mandated by Australian regulation though - fortunately.

If CASA adopted the EU regulatory approach to approve all aircraft types whose engine has a manufacture's approval to run on Mogas (that is approve a fuel from the "pump gas" production sources that is controlled well enough to provide predictable behaviour on the engine - "mogas."[74]) and encourage for example UL 91 (or similar) production – this would allow any refinery to produce the fuel. It could be readily transported because it is not a leaded fuel and no dedicated transport and storage equipment requirement would be required and it would introduce competitors into the market. Unlike the USA which pumps its fuel all around the USA through a pipe network, Australia trucks it or ships it – so Australia is capable of having more than one type of piston aircraft fuel at airports.

The Chamber believes, based upon reports from our specialist members involved in aero-engine overhaul that Viva Energy fuel chemists have been "varying" their formula for production of 100LL at the Geelong Refinery more towards the limits of the Avgas 100LL fuel Defence Standard 91-090 AVGAS. More specifically, allegedly lowering the TEL content 20 percent and increasing the aromatic content in 100 LL to from 2 percent to about 12 percent.

There has been an alarming increase in frequency of major engine damage and failures to predominantly Robinson R-22 and R-44 helicopters, but also to some turbo-charged fixed-wing aircraft, involved in passenger operations (e.g. Cessna 402 commuter passenger aircraft) and possibly others The BP

[71] Refer EASA mogas approvals
[72] Refer Lycoming Unleaded Fuels Part 2
[73] Refer Lycoming Unleaded Fuels Part 1
[74] Refer Lycoming Unleaded Fuels Part 3

Kwinana refinery has historically been producing Avgas 100/130 and had supplied fuel to the Northern Territory(NT), and such issues have been unknown to occur up to five years ago.

It is the Chamber's understanding that the NT is now supplied by Viva Energy Geelong refined fuels. Our speciality member engine overhaul technician has joined the Northern Fuels Stake Holders Investigation Group (NFSHIG) which was formed in mid 2018 attributes the engine failures in the NT to both the switch to Viva Energy fuel and varying the formula – the same appearing not to be compatible in the very hot conditions of the NT. Although CASA has issued air worthiness bulletin AWB 85-024 and AWB 85-023 CASA is not responding to emails from our member engine experts and appears incapable or alternatively reluctant to resolve this issue. CASA seems to be preferring to have engineers earning revenue (paid fees for service work) rather than its regulatory task that do not bring in revenue.

Avgas inhalation in Indigenous Communities has been well reported by the ABC. It is noted that Avgas 100/130 has volatile aromatics of less than 1 percent so the fuel has historically been of no interest for inhalation. (refer Comgas report which is Avgas 100/130).

It has been well known for a long time that it is important to keep Aromatic compounds to very low levels to discourage people from partaking in the inhalation of fuel vapours for enjoyment. The level considered to be a safe maximum is about 5%..... It is not difficult to produce ASTM D910 conforming Avgas 100LL with Aromatics levels of below 5%,[75]

Fuel inhalation issues also have potential impacts on aviation safety, with people tampering with aircraft in order to obtain Avgas. Significant damage has occurred to aircraft during o fuel theft. Since it is impossible to secure all aircraft operated into remote areas across our country so as to prevent fuel theft, and it is operationally impractical to have a grade of Avgas in the market that can't be flown into remote communities, all Avgas sold in Australia needs by regulation to be 5% maximum Aromatics.

As regards the larger turbo-charged aircraft requiring as a minimum Avgas 100 LL (with TEL) it is unlikely given the size of the Australian Market compared to the USA of Australian refineries making unique boutique STC fuels and delivering same all-around Australia unless the regulator specified an unleaded aviation specification fuel to replace Avgas 100LL or Avgas 100/130 by regulation.

The current issues would appear to be able to be solved in the short term by a UL91 fuel or equivalent for 70 percent of the fleet and 100-130 Avgas for the remainder of the fleet until an unleaded replacement can be tested in Australian conditions and proven fit for purpose.

CASA as a matter of urgency should be directed by the Federal Government together with industry experts to implement a strategic directive taskforce and process towards verifying, testing and eventually approving a cost effective reliable alternative to Avgas and not either do nothing or rely on the USA – FAA PAFI program.

The claimed "drop in" fuel replacement GAMI G100UL[76] (which is claimed interchangeable with Avgas 100LL and 100/130 according to the manufacturer) might for example be considered to become approved nationwide rather than an STC per aircraft type so that the General Aviation Industry can be rescued from the duopoly of Avgas production in Australia to a new unleaded fuel that is proven to work for all piston avgas engines, including the larger turbocharged engines and can be produced by any refinery. It is noted that GAMI G100UL has no aromatics and if adopted would solve the issue of aircraft fuels being stolen for "inhalation".

[75] Source Murray Wilks – Senior Fuels Chemist / Aviation Technical writer and Commercial Pilot
[76] Refer GAMI G100UL website

The Avgas dilemma is of major nation economic importance to implement to arrest out of control aviation avgas costs and also for fuel security as TEL production could cease overnight leaving the entre GA fleet stranded.

It is noted that the Chamber's investigations show that the cost to obtain a Commercial Pilot's Licence in the USA is approximately one third of the cost of an Australian a Commercial Pilot's Licence (even after taking into account the extra costs of accommodating oneself in the USA). Australia is just not internationally competitive as to pilot training and fuel cost compared to the USA is just one of the reasons.

Airports Act Case Study - Jandakot

Jandakot airport is the secondary airport pair supporting the Perth primary capital city airport by removing the aeromedical, agricultural, charter, aerial surveying, photography and other airborne work in both normal and transport category aircraft that would otherwise choke operations at Perth airport and is the primary training airport.

Jandakot Airport privatisation issues mirror Archerfield Airport with land developer difficulties. JAH changed hands and was sold to Ascot Capital, a real estate developer, in January 2006. The 2006 Ascot capital had plans to completely close the Jandakot airport site and move it 30 kilometres south so Jandakot airport could be calved up for real estate. This however was rejected by the then Federal Transport Minister Mark Vale in March 2009 – refer The Australian 17th March 2009.

Jandakot Airport Chamber of Commerce ("JACC"), in similar circumstances to the Chamber, made objection to the Jandakot Airport 2014 Master Plan in the Administrative Appeals Tribunal regarding failure to provide for future aeronautical infrastructure requirements because of a mega commercial and residential complex within a couple of hundred metres of Jandakot's runways. The JAAC argued that

> *"the development of Precincts 6 and 6A will effectively prevent further aviation-related expansion to meet future expansion of non-airline air services in Western Australia, Jandakot being unique in servicing the private, non-airline and pilot training needs of the State and international operators*[77]*"*

JAH argued that the Master Plan was a (business) "planning instrument" and not an "operational document".

The decision[78] in the Administrative Appeals Tribunal, being to re-affirm the Minister's decision to approve the Jandakot Airport Holdings 2014 Master Plan, relied upon the Westfield Decision and the Archerfield Airport Chamber of Commerce AAT decision in the relation to the 2011 Master Plan.

Westfield Management Ltd v Brisbane Airport Corporation Ltd (2005) FCA 32

Archerfield Airport Chamber of Commerce Inc and Minister for Infrastructure and Regional Development [2015] AATA 489

The Westfield decision however, by agreement between the counsels of the parties, did not address the head of power issues. Again the Robertson SC opinion, raised in detail earlier in this submission, when

[77] Refer Jandakot Airport Chamber of Commerce Inc and Minister for Infrastructure and Regional Development [2016] AATA 385 (3 June 2016) Paragraph 28

[78] Refer Jandakot Airport Chamber of Commerce Inc and Minister for Infrastructure and Regional Development [2016] AATA 705 (12 September 2016)

applied to the Jandakot plan would suggest it was beyond power to approve the non-aviation development.

The Chamber also understands from advices from the Jandakot Airport Chamber of Commerce that during their AAT case, tenants reported that they were allegedly threatened, in that if they joined the JACC their leases would not be renewed by the Airport Leasing company JAH.

Airports Act Case Study – Bankstown Airport

Bankstown Airport is the secondary airport pair for Sydney's Kingsford Smith primary airport. Bankstown's aviation infrastructure has been damaged by closure of the 18/36 runway, inappropriate industrial development, and the flood plain interfered with by land fill allegedly contrary to state law.

The closure of runway 18/36 was with disregard to the needs of aviation safety and such safety being relegated below the Bankstown Airport Corporation's plan for super-profits from non- aviation industrial land development. Closure was "justified" on the basis of low "use" which shows convenient ignorance of why runways of more than one direction are required.

> *"Aircraft are generally required to take off or land into wind…..*
> *An unavoidable fact of the law of physics is that the slower the airspeed of an aircraft, the more affect the wind has on "drifting" that aircraft.*
> *Aircraft preferred for ab initio training, (that is to obtain a pilot's license) are very slow aircraft by necessity to allow the trainee adequate time to be able to cope with the aircraft's performance. General Aviation Aircraft (excepting business jets) do not travel at the speeds of Jet Liners and therefore General Aviation aircraft and slower ab initio training aircraft have very much greater vulnerability to drift from wind not aligned with the runway's direction ("crosswinds"). The consequences of loss of control in crosswind landings are that aircraft could be damaged or destroyed by side loads on the aircraft or the aircraft could drift off the runway with possible consequential injury to occupants and others. Aircraft have a demonstrated crosswind component that is a limit of capability of that*
> *aircraft type. For example if the crosswind component of the aircraft is 15 knots and the crosswind component of conditions of the main runway is 18 knots or the aerodrome forecast is in excess of 15 knots the aircraft cannot legally conduct that flight (without making provision for additional fuel to be carried, if that is possible, of an amount to safely fly to a suitable alternate aerodrome where the component would be lower) thus affecting a flight…. In summary the unavailability of an adequate number of suitable cross runways is unacceptable to the conduct of all categories of Commercial Air Operations (Training Charter and Business)[79]"*

The 18/ 36 runway at Bankstown was particularly needed in strong cross-wind conditions (such as southerly busters). The closure of Hoxton Park airport, being the only other secondary airport that had a 16/34 similar direction runway in the Sydney basin (16/34) has meant that there are now none and distressed pilots would need to declare an emergency and divert to Mascot which was a "highly dangerous situation where distressed pilots, unfamiliar with Kingsford Smith Airport, may put lives in danger in the event of interference with large jet operations[80]."

The Industrial Development has impacted severely helicopter training operations at Bankstown.

> *"Bankstown helicopter training schools conduct their circuits at 700' AMSL inside the fixed-wing circuit but always with clear forced landing areas available to them. Due to airspace congestion and inappropriate structures built by the Airport Leasing Company [ALC], such as the Toll Distribution Centre, Bankstown helicopter*

[79] Refer Annexure A12_1 John Appleton – paragraphs 10-23.
[80] Refer "The Australian" website

training providers now have to conduct 50% of their circuit training at Camden Airport[81]*"*

Airports Act Case Study – Moorabbin

Moorabbin is the secondary airport pair in Melbourne. The Moorabbin Airport Chamber of Commerce Inc.["MACCI"] has reported that there are safety concerns arising from Moorabbin Airport industrial developments affecting runways reduction in length and building proximity issues.

Moorabbin Airport Corporation [MAC] proposed a Major Development Plan development in 2013 originally involved the construction of a retail shopping complex to be leased by members of the Wesfarmers Group at the north-eastern portion of the Airport. The proposed shopping complex was to consist of a supermarket, a discount department store (DOS), a packaged liquor outlet, an office supplier and an auto service centre. The Federal Minister rejected the major development plan and MAC commence a review proceeding in the AAT with the Kingston City Council and City of Greater Dandenong as joined parties[82]. The rejection decision was upheld based on the effect of the proposed development on the local and regional economy (adjoining councils), not on any grounds related to the damaging affect to aeronautical facilities. The north east area of the airport was subsequently developed but with no shopping complex with alleged degradation of aeronautical facilities. MACCI did not have the financial backing or legal resources to be represented in the AAT case.

Airports Act Case Study – Brisbane Airport

Brisbane Airport is a Commonwealth T1 airport that has been subject since the 1970's to schedule co-ordination, then in April 2010 to domestic terminal slot allocation and from November 2012 to runway slot co-ordination - a Runway Demand Management Scheme ("RDMS"), provided for under the Airports Act legislation and run by Airport Coordination Australia. It is the Chambers belief that any airport where a RDMS has been implemented is an airport that has not provided the required infrastructure to meet the aviation demand for access and use of that airport.

The RDMS affects access and creates disruption to normal operations of air operators and therefore in consequence competition, choice and operator cost. Ultimately it adversely affects the purpose of air travel which is its time saving utility and its cost to passengers or for freight. Time saving performance of an airport should be a key performance indicator (KPI) of an airport.

Refer Courier Mail 5.7.2012 – Hours of delays, Sky High Traffic Jams. Air schedule chaos.

Operator's request slots to land and take off from the airport up to one year in advance. With inadequate slots, the reason for the RDMS means is there are losers.

"The essence of the RDMS is that slots will be allocated firstly on the basis of historic precedence. However, the Local Guidelines limit the eligibility of 'Non-RPT Operations' (defined in paragraph 4 of Part 4 of the RDMS) to secure historical precedence. Non-RPT Operations include fly-in fly-out (FIFO) services, charter and freight operations"[83].

[81] Refer Annexure A7-2 reply statement of Captain Lindsay Snell – paragraph 13
[82] Moorabbin Airport Corporation Pty Ltd and Minister for Infrastructure and Regional Development and Kingston City Council and City of Greater Dandenong (Joined Parties) [2015] AATA 77 (17 February 2015)
[83] RAAA submission to the ACCC 15th January 2013 – page 2

Additionally, private passenger carrying operations can usually only operate to and from the airport as the lowest priority (generally the middle of the day) and this adversely affects the flexibility and utility of operator's investment in aircraft.

Pilot training operations have also been affected by this because access to the Instrument Landing System was effectively terminated by the RDMS creating a critical issue affecting general aviation operations in SE Queensland. Pilots being tested for initial issue of instrument ratings must conduct the test on an actual ILS. Training schools, approved test officers, and pilots needed 90 day ILS currency and cannot get access to the Brisbane ILS, rarely the Amberley Airforce base ILS or the Royal Australian Army Oakey Airbase ILS. This is why in the AAT case of the Chamber an ILS was included in the Chamber's Alternative Master Plan. Without appropriate access to required facilities it is little wonder that pilot training hours have been in decline as is represented in BTRE reports.

Operationally, extra holding fuel is mandated for aircraft arrivals due to traffic congestion or the aircraft must be able to fly to an alternate if landing is unavailable at the time intended. This adversely affects the economics of flights to Brisbane as the weight of extra holding fuel reduces the commercial freight payload that can be carried and therefore the profitability of the airline route. Additionally, it costs many thousands of dollars per flight hour to operate an aircraft therefore holding is a massive extra expense for the operator and is an unsustainable cost that cannot be absorbed.

Our Chamber became aware that Cathay Pacific Airlines was seeking Federal Government permission to access Amberley Airforce Base as an "alternate aerodrome" to Brisbane Airport so it could eliminate required traffic congestion holding fuel requirements for flights into Brisbane Airport.

Our Chamber was also aware that Cathay Pacific Airlines wanted more slots for airfreight flights taking Australian produce to Asia but could not obtain the necessary flight slots out of Brisbane.

The frustration with the lack of access to Brisbane Airport was the driver behind Brisbane Wellcamp Airport West of Toowoomba being built on private land as a privately-owned airport. It was the Chamber that has been responsible for bringing together Cathay Pacific Airlines international freight operations direct from Wellcamp airport – being a unique situation from an airport without any control tower or controlled airspace.

Prior to the RDMS being implement at Brisbane Airport, IFR aircraft intending to arrive at Archerfield Airport could hold Brisbane Airport as their "alternate". This was needed as Archerfield does not have any precision approach system (e.g. ILS) that permits operations with low cloud and low visibility. The RDMS therefore has had significant secondary impacts on flights into Archerfield as well – either being cancelled in poorer weather or aircraft having their payloads affected by requiring alternates to airports hundreds of nautical miles away.

The Chamber's understanding is that actual BAC infrastructure development on Brisbane Airport is approximately twenty-five years behind the FAC demand projection analysis for Brisbane Airport – e.g. the second parallel runway. Further that the present Brisbane Airport was meant only to be temporary as even with the second runway FAC demand projection will eventually surpass the two parallel runways capacity.

The Airport Leasing Company's Commonwealth lease clause 13.1 states

> "13 *DEVELOPMENT DURING TERM OF LEASE*
> *13.1 Development of airport site*
> *Throughout the Term of the Lessee must develop the Airport Site at its own cost and expense having regard to:*
> *(a) the actual and anticipated future growth in, and pattern of, traffic demand for the Airport Site;*
> *(b) the quality standards reasonably' expected of such an airport in Australia; and*
> *(c) Good Business Practice*."

It has not just been the intransigence of Brisbane Airport Corporation ("BAC") in the past to build the second runway that has been to blame here, it is the "light hands" approach of the Federal Government permitting the failure to develop the airport, even though the Federal Government had all the tools in paragraphs 13.2 to 13.11 of the Commonwealth Lease to enforce the construction of the secondary parallel runway infrastructure. It was not until finally former Transport Minister Anthony Albanese threatened publicly BAC that BAC proceeded with the runway construction – which required at least another 5 years just for the earthworks to settle – and decades behind schedule.

A second Brisbane Airport site (near Jacobs Well between Brisbane and the Gold Coast) of approximately 4200 hectares plus a noise control zone of 11,000 hectares (total 15,200 hectares) has been provided for in the South East Queensland Plan 2021 for years by the Queensland State Government with residential building restriction on the land.

The plans for this airport are well known to the Chamber. It is an airport that would meet the growing needs for the future for Brisbane and the Gold Coast for passenger and freight operations with no curfew, would be the largest air freight airport in the south hemisphere and the only airport in Australia to have a code "G" runway (which is required for the new High Speed Suborbital Airliners). It would also have the only CAT III runway in Queensland for landing all weather.

Additionally, it would be an airport permitting freehold purchase of land or leasehold at the operator's discretion eliminating the leasing issues on Commonwealth Airports. This second Brisbane airport project has at various times had State Government approval but no funding, then funding and no-state government approval with change of government and currently approval but no funding. It is not surprising that BAC would be actively opposing it as it would upset their monopoly profits by creating competition / choice. Further the Chamber is aware of land developer's active opposition to the SEQ2021 plan so that they can access the airport reserved land for their residential property development.

Further it is the Chamber's understanding that Qantas is planning on building $400 million of new hangars for aircraft maintenance but not upon any Australian Commonwealth Leased Airports. The Hangars will be in the United States of America which is an indictment of the environment to conduct aviation business on Australian Privatised Federal Airports. Qantas's pilot training academy will be located at the privately owned Wellcamp Airport with facilities built upon the freehold land.

All Major Capital City Airports excepting Tullamarine have not had runways and taxiways compliant to code "F" standards required for the larger airliners e.g. A380 and have been operating under a (flawed) concession. The upgrade to Brisbane Airport however will be to code 4 F. The Federal Government is a signatory to ICAO but has been prepared to bend the safety rules related to airports to cover up the fact that aviation infrastructure in our capital cities has not been up to standard.

ALOP Airports

"Following the Pacific War (1941-45), the Australian Government spent heavily in upgrading and maintaining its major airports and by the 1980s it became apparent that the Department of Civil Aviation "could scarcely cope with the growth in traffic brought by the jet age" of the 1960s and 1970s Lee (2003). The government had found itself spending more and more maintaining its nation's aviation infrastructure with relatively mixed success. The Federal Government owned 81 airports and contributed to the maintenance of another 436 small aerodromes. And in only recovering 55 percent of the costs directly from aviation it became apparent that the administering of Australia's airports needed to change (Bosh , Hudson and Linehan, 1984). To reduce the fiscal burden on the Federal Government, airports were handed over to local governments and private consortia via the Airport Local Ownership Programme (BITRE, 2008), shifting the funding of maintenance and development to local owners (and in turn rate payers)"[84].

In 1990 to 1993 ALOP Airports were "Gifted" to local councils (and some other bodies e.g. mining companies) by Federal Government – subject to a "reservation" – A Deed of Trust.

The Trust deed is made at "common law", is an "equity law" concept with the Federal Government as a "legal person", not under any act of Parliament.

Attached as Annexure I1 is a list of the Commonwealth ALOP airports transferred during the period 1990 to 1993.

Attached as Annexure I2 is the Transfer Deed for the Evans Head airport executed 29th July 1992 (whose clauses are the same for other ALOP airports excepting minor exceptions) and releasing / decoupling the Federal Government from providing development and maintenance grants. The ALOP Airports came with a "dowry" from Federal Government, that is, some maintenance funds. The local authority pursuant to the transfer deed clauses 2(a) to 2(r) was to operate and maintain the aerodrome to public use, permit open unrestricted and non-discriminatory access to the aerodrome airline and aircraft operators on reasonable terms and conditions, allow all operations and air traffic movements at the aerodrome, create land use zoning around the aerodrome to prevent residential and other incompatible development in areas affected by aircraft noise, and prevent introduction of activities likely to create a hazard to aircraft amongst other things.

The Federal Government felt that decisions about airstrips and therefore aviation were best determined by local government which in the Chambers view is entirely wrong. Local Government with no specialised aerodrome design engineers, runway pavement engineers or other aviation experts on staff had been handed airports, without the technical capabilities to satisfactorily and faithfully comply with the terms of the transfer deed. The Federal Government's increasing abandonment of its federal responsibilities in relation to RRR airports has resulted in inevitable losses of regional airports and diminishment of airport infrastructure.

With respect to RRR airports in Australia the new policy steering airport ownership and investment has taken its toll. No less than 30 RRR airports closed between 2000 and 2005 (BITRE, 2008) which Doenehue et al. 2012,5) have described as a function of the decoupling of infrastructure investment from any kind of guaranteed associated income stream. That is many RRR airports were and still are, reliant on subsidies for airport maintenance and development…….. Identifying and understanding the primary concerns for the ongoing sustainability of RRR airports , be they large , medium , small or rural, will

[84] "Regional and Remote Airports Under Stress in Australia, research in Transport Business and Management Baker, Douglas C & Donnet, Timothy (2012)

provide a valuable starting point for rethinking policy, governance and management for the RRR airports.

The Federal Government abandonment continued a decade later such that on 29th April 2003 DOTARS former Minister John Anderson signed off on allowing a "relaxation" of the transfer deeds such that the Commonwealth would no longer require compliance with clause 2(p) of the transfer deeds, that is the ALOP owner could close , lease, sell or otherwise dispose of all or any part of the land required for aerodrome purposes, excepting a hand written addition by the Minister Anderson that an ALOP airport could not be closed without the approval of the Secretary of the Department.[85] A standard letter DOTARs sent to all ALOP airport owners on 13/1/2004 by the Acting First Assistant Secretary Mr Nick Bogiatzis reference number L2002/1883 stated:

> " *The Australian Government now waives its right to enforce the relevant clause of the transfer deed that requires aerodrome owners to seek consent from the Secretary of DOTARS for alternative use of their aerodrome , except in certain circumstances. These circumstances are where the alternative use will:*
>
> - *Result in the closure of the aerodrome, or*
> - *Result in the aerodrome no longer continuing to operate as an aerodrome*
>
> *In all other circumstances owners need not contact the Department for approval*"[86]

Billions of dollars of federal airports were therefore permitted to be carved up or sold by former Minister John Anderson without such decision having had any federal parliamentary or (to the Chamber's knowledge) any federal cabinet oversight / scrutiny or payment to the Commonwealth. Further, the document that the Minister signed off on 29th April 2003 stated that the Aircraft Owners and Pilots Association (AOPA) and the Regional Aviation Association of Australia (RAAA) and the Australian Airports Association had been written to on 21st November 2002 yet both AOPA and RAAA have advised that the Minister did not contact them about the "alternative use" of the ALOP airports.

The aviation community was never really consulted about the future use of ALOPs. The changes were driven by a few local governments that wanted to be able to carve up and sell off their aerodromes for real estate development

The "relaxation" of the transfer deeds "invited" an environment for corrupt behaviour, and/or for councils to carve up their local airport for real estate as a means to balance their local council books or for councillor's personal gain.

Some examples of ALOP airport issues follow:

Caloundra Airport

The Caloundra City Council had plans before 2005 to close the Caloundra Airport by 2014 but did not even bother to tell the Federal Government. The Federal Government wrote to the Caloundra City Council on 8th September 2005 advising that the Caloundra City Council was bound by the ALOP deed terms. Again in 2010 with allegation in the press the Sunshine Coast Regional Council was getting too close to land developers the tenants had a battle on their hands to save their aviation businesses and the airport. Caloundra Airport is a small but important airport for helicopters and fixed wing pilot training and aviation maintenance and supply facilities.

Maryborough Airport

[85] Refer Annexure I3_Relaxation of Deed of Transfer.
[86] Refer Annexure I3 page 5

The Fraser Coast Regional Council is another council that also tried to close its Maryborough Airport however former Federal Transport Minister Warren Truss while Minister intervened refusing to permit closure. It is noted that the airport was in his federal electorate.

Kempsey Airport

The Kempsey Counsel announced in 2009 it wanted to close Kempsey Airport and turn it into land development however only after a fly in visit / protest from 50 aircraft including Dick Smith was that quashed. Click here

Moree Airport

Councils have used the "dowry" funds for other purposes in breach of the ALOP Transfer Deed e.g. Moree airfield – the funds for a resurfacing of the runway were used to build a new Council Chambers building.

Casino Airport

The Richmond Valley Council on Casino Airport has inappropriately permitted a nursing home at the end of the runway, which is not only directly contrary to the ALOP transfer deed but a trojan horse to have the runways closed due noise. This is a well-known tactic of developers. Casino, upon ALOP transfer on 1.3.1992 to the Council of Casino was a fully license aerodrome with RPT air services however post development the runway is now truncated, and the airport has been reduced to an ALA "authorised landing area. The RPT terminal was sold for a fraction of its market value in a deal made behind closed doors with a private developer out of the public view. Additionally, contrary to the ALOP deed Car Drag Racing is permitted on the runway and model aircraft flying. Aviation businesses have been clearly compromised by these actions.

Evans Heads

The Richmond Valley Council wanted to build a retirement village (again like Casino at the end of a runway being a trojan horse for runway closure). The council tried to restrict operations to only small aircraft that is ultra-light and single engine aircraft as there would be a smaller Australian Noise Exposure Forecast (ANEF) so it could build a retirement village. However correct interpretation of the transfer document is that all aircraft that are capable of using the runways must be granted access to land there.

Further in clause 2c of the Transfer Deed "Operators" was incorrectly being interpreted as "Commercial Air Transport Aircraft (Charter and RPT) whereas the correct interpretation is any aircraft including private aircraft.

The Council wanted their retirement village on the airport land even though it is totally inappropriate per ANEF and potential future aviation use of the airfield, and directly contrary to clause 2(h) (i) of the agreement which requires them to take such action as within their power to create land use zoning around the aerodrome which will prevent residential and other incompatible in areas which are or may be adversely affected by aircraft noise. Council had to rezone the land to accommodate the retirement village and resolved to do so even though the majority of the land was incompatible for such a purpose and Council knew so. Political pressure by the developer and council at state government level lead to the rezoning of the land and the community objection was ignored. Representation by the local aerodrome committee to a joint consent authority at state level was refused by the director of the authority.

Council's intention for many years has also been to make the entire airport "residential" as has been evidenced by public claims by council and in draft documents about the future uses of the airfield

notwithstanding the fact that it is the nearest "emergency landing field" for the RAAF and its Weapons Range to the south of Evans Head, and is used extensively for water bombing by the RFS in Section 44 Bushfire Emergencies with up to six fixed wing aircraft and 4 helicopters. It has also been used for flood relief on a number of occasions during major flooding events. It is crucial aviation infrastructure for northern NSW. Council's LEP fails to identify the aerodrome as a separate 'infrastructure' facility on the instruction of NSW Planning, which means it has no protection from further inappropriate development afforded by an infrastructure listing. The Evans Head Memorial Aerodrome Committee Inc. has detailed evidence of all three levels of government involvement in development at the aerodrome and has the view that there could not be a more direct breach of the intent of the Transfer Deed, that is to retain the airfield for aviation purposes.

It should be noted here that Council also attempted other means of degrading the airfield. For example it proposed to irrigate the airfield with effluent from a nearby sewerage treatment plant in such a way that the drainage system would have been destroyed and run-off areas for aircraft along runways compromised by 200mm high covers over drainage grates. An enquiry showed that the proposal would indeed compromise the aviation capacity of the airfield and the proposal was dropped. Those involved in preparing the report for the irrigation had no expertise in aviation nor had they visited the airfield for assessment.

Recently the state government's Joint Regional Planning Panel (JRPP) approved yet another development, a Manufactured Homes Estate, on aerodrome land at the end of the original main runway notwithstanding objection from the local aerodrome committee and others including a proponent for aviation development at the aerodrome whose evidence was ignored. The JRPP approved the development based on an evaluation report provided by council. Council had a conflict of interest in the development as owner of the land. There are now problems with flooding of the airfield itself as a result of inappropriate residential development. The flooding will affect the integrity of the airstrips. Council destroyed the drainage system as part of the consent process, a drainage system built in World War II to deal with the flooding problem.

The Evan Heads Memorial Aerodrome Committee ("EHMAC") have confirmed to the Chamber that they hold evidence supporting allegations that allegedly…

> "At least 200 blocks of land were also sold by council, in breach of deed and for which no approval was obtained from Secretary of the Department of Infrastructure in breach of the transfer deed. Some of the land was sold to relatives of Councillors. Further that Council Minutes show resolutions of council with names of councillors (2) involved in the sell-off of that land and that the names of those who purchased land who were children of these councillors. One of these 'children', being a builder who is now a councillor. Additionally, regarding the status of aerodrome land which was done out of the public view and without council resolution to advantage a real estate deal. A local real estate agent asked the local state member and council GM to have the heritage curtilage and requirement for heritage support to be removed from the southern end of the Aerodrome so that land could be sold. The argument was that these were impediments to sale. The GM made the case to the NSW Heritage Council for these changes to which they agreed in July 2017. The public didn't know until November, after the fact. The land was sold contingent on development approval and then was sold again five months later for much more putting pay to the notion that heritage was an impediment. The critical aspect is that so much was done behind closed doors without it being brought to public attention involving public monies. It looks increasingly as if councillors also knew about what was happening in council 'workshops' out of the public view."

Moranbah Airport

Moranbah, a licensed ALOP airport was handed over to BHP Australia Coal Pty Ltd on 1.6.1992. In order to fly into Moranbah the pilot of an aircraft has to now make an application to a low level administrator of BHP Billiton Mitsubishi Alliance "Airport Scheduling - Rail, Port and Infrastructure" at least three days in advance, explain why the aircraft needs to land at the airport, hand over insurance certificates with a minimum specified cover of $20million and advise the requested time of arrival and departures so a "slot" can be "allocated". This is inappropriate from many levels.

Firstly, clause 2(a) of the transfer deed specifies that the recipient of the airport shall operate and maintain the aerodrome open to public use…. And shall permit access to the aerodrome to persons authorised either under the Air Navigation regulations or the Civil Aviation Regulations. Further clause 2(c) states "shall permit open, unrestricted and non- discriminatory access to the aerodrome by airline and aircraft operators on reasonable terms and conditions consistent with the physical limitations of the aerodrome".

There should be no "slot times" at such a remote airport and in any case an arrival or departure can vary according to weather, passenger turn up on time and a lot of other technical issues. What is happening here is that the airport operator is trying to control the flow of air traffic. It is pilots, who are the responsible persons at law for separation of their aircraft with other air traffic and is something they are trained to do and use those skills every flying day. It is noted that there has never been a mid-air collision in uncontrolled airspace in Australia (except Moorabbin which is usually controlled).

The operator is also trying to control the airspace above the airport by specifying no night operators are permitted except for the airlines. They are not the federal government. They publish in En-Route Supplement Australia (ERSA) that the airport is a private airport and that prior permission is required for all operators and allow at least three days.

Non-Scheduled Charters (for example to send a technician crew to fix a complex item of plant) are a time critical exercise needing immediate flight action. The air operators need immediate access to the airport and should not have to spend hours on the phone trying to chase down the administrative officer of the operator (often tied up in meetings). Again this is not the granting of public access, is not timely, is unreasonable and is a breach of the transfer deed clauses.

Further, it is the air operator's business on how much liability cover they deem appropriate or indeed it is their choice to either insure or self-insure and not the business of the airport operator.

The Chamber has also received recent member reports of a passenger aircraft making an "in-flight" diversion to Moranbah because the pilot determined that a medical urgency on board of a passenger required such diversion. It is the Chamber's belief that upon landing at Moranbah the pilot was castigated for landing without an approval or slot and threatened with trespass and told the airport is a private airport now.

Moranbah Airport is a certified airport of high certainty of arrival because it has standby-power for runway lights and published instrument approaches. As stated at the beginning of this submission the airspace system needs to operate as a whole and an airport capable of being a suitable alternate 24/7 can not only be a lifesaver but can mean the difference of whether a flight between two other airports is able to proceed. Airports when operated as individual fiefdoms such as Moranbah diminish the utility of the airspace system as a whole. This is unacceptable economic control and over-reach. It is worth pointing out that it is the Australian Taxpayer that paid for the initial facilities of Moranbah airport.

Broom Airport

The Broom International Airport is an ALOP airport that was previously operated by the Commonwealth, has an airport tower, fire services and customs and quarantine for international operations and is serviced by regional jets of the major and regional airlines thru to piston engine non-scheduled air transport operations based on Broom Airport.

"*In 1991 the Commonwealth Government offered the Broome Airport to the Shire of Broome as part of "rationalisation of the regional airport policy".*

The Shire of Broome with the then Shire President Ron Johnson "SOS" indicated that the running of the airport would be difficult and passed the airport up for sale to their mates. There was no tender process and the general feeling from the Broome residences was against this proposal"[87]

Annexure I 1 to this submission, being a list of transferees of ALOP airports prepared by the Commonwealth records Broom International Airport being transferred to Wallace Emery and Associates[88] on 19th April 1991.

Annexure I5 to this submission, being a copy of the transfer and restrictive covenant dated 20th March 1992 records the sale of the airport to Airport Engineering Services Pty Ltd for the sum of $2,848,571.00.

The restrictive covenant states that

> *" the Transferee:-*
>
> *1. shall not carry on or permit to be carried on any portion of the land above described any trade or business whatsoever that contravenes the conditions of operating a licensed aerodrome under the provisions of the Civil Aviation Act 1988 (Cth) or is a hazard to aircraft saf'ety or would cause interference to either of' the Civil Aviation Authority's navigational aids or the Commonwealth Bureau of Meteorology's weather recording facil1t1es; and*
>
> *2. shall not introduce any rules or regulations or conduct itself in a ·manner which would operate to restrict or discriminate in respect of access to the land above described by airline and aircraft operators except: where this would be inconsistent with the Civil Aviation Authority Safety standards and conditions published in the Enroute Supplement Australia"*[89]

Before transfer Broom Airport had a main runway complex and a cross runway complex being part of the aeronautical infrastructure of the airport. Below is an aerial picture, showing the airport with both runway complexes.

[87] Source: King Leo Aviation Submission to the Inquiry
[88] Refer Annexure I1 page 5
[89] Refer Annexure I5_Broom Airport Transfer and restrictive CovenantE817698T page 5

Before Runway Closure:

Below is a more recent google earth picture showing the cross runway is now closed post sale with extensive land development to the north (upon on the cross-runway land) leaving only the main runway complex available for aircraft to land. After Closure:

One of the aviation consequences of the loss of this runway is that the smaller non-scheduled passenger and freight air services no longer have any choice of runway and when the wind component of cross-wind on the main runway is more than 15 knots (the demonstrated cross wind capability of certain Cessna aircraft[90]) such passenger and freight services need to be cancelled, whereas before the closure such services would not need to be cancelled as taking off from the cross runway eliminated a cross wind component or reduced it to within – limits of the aircraft capabilities.

The closing of the cross runway is a hazard to aircraft safety – particularly aircraft arriving in the circuit at Broom finding adverse wind conditions and having no suitable runway to land on and is discriminatory as to access to the airport for smaller or slower aircraft – more affected by the vector forces of crosswind. Residential land development similarly is inconsistent with the operations of an aerodrome and also appears inconsistent with the restrictive covenant made with the Commonwealth of Australia. Placing residential land development on the airport is a "trojan horse" method of shutting down an airport because residents complain of noise even though they know they bought a cheap block of land on an airport contrary to noise standards, that would be reasonably expected to have aircraft noise. Curfews on the use of the airport have been imposed post residential development. On 10th December 1997 there was a public meeting in Broom to discuss a draft plan to relocate the airport.

The statement of Former Aviation Minister Peter Morris at paragraph 12 has stated

"*privatisation has allowed the monopoly position of the Commonwealth Airports to fall into private hands, and for land developers to bring their lobbying activities from adjacent airport land onto airport land itself. Privatised airports are not meeting the true requirements of users and new airports are not being built*[91]*."* We submit that this is also true for ALOP airports of which Broom is a poignant example.

Federal Government Oversite on ALOP airports

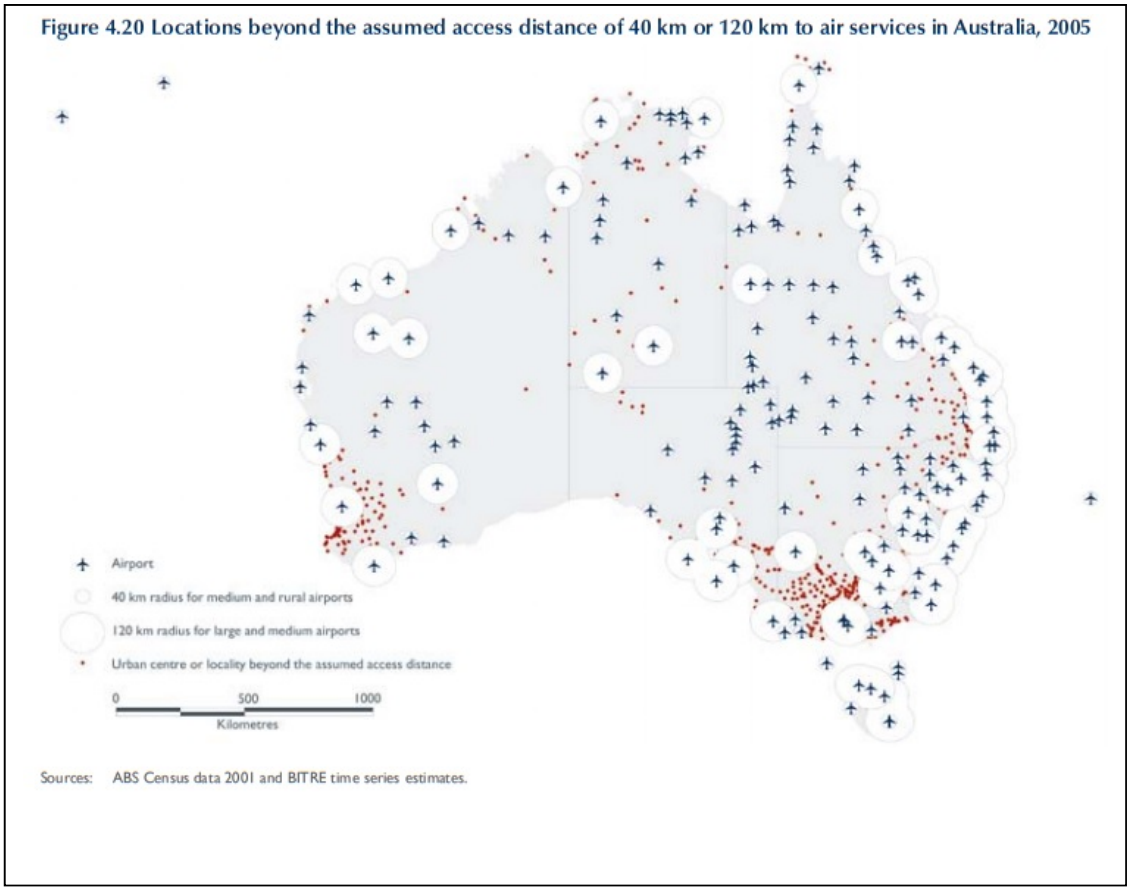
From the example airports in this submission it is evident that the Federal Government has not been enforcing the restrictive covenants or transition deed clauses (except as to closure). There can only be three possibilities occurring here. Either the Federal Government is not being run competently or is permitting a "light hands" approach to regulatory or government contracts or there is official corruption and collusion occurring. Aviation is not a party to the deeds or restrictive covenants and therefore has no or limited rights as to enforcement unless the Federal Government is prepared to enforce them. This is one reason why legislation needs to be specifically implemented in relation to the ALOP airports.

The Chamber has on several occasions had briefings with Martin Ferguson when he was formerly a shadow Minister for Transport. He expressed the view that handing the control of ALOP airports to local government was a mistake as local government would not be acing in the national interest and subject to influence from local and financial pressures and land developers, did not have airport expertise and it was better if the airports were run from Canberra – in the national interest and a long way away from such local issues.

[90] Cessna 210, 6 seat passenger aircraft flight manual

[91] Annexure B3_Peter Morris_Statement_dt 30 March 2013+ attachments – para 12&13

Below reproduced is a BITRE Figure[92] of locations beyond the assumed access distance of 40 and 120



klms to air services in Australia.

"*For these regional and rural communities, air transport is not just a convenience for business or leisure but also a link to more specialised services such as health and education, and to critical functions such as emergency services. The critical role that airports play in RRR communities suggest that airports should be fostered and protected yet airports appear to be difficult infrastructures for RRR communities to maintain*".

It is clear that many such airports cannot survive on regional airline fees or general aircraft landing fees and the federal governments abandonment policy of these airports will ensure their continued demise.

The Chamber is aware that local councils do not have access to the specialist technical expertise to design and maintain aerodromes and are muddling through ignorant of the Federal MOS part 139 and aviation's unique requirements. A few examples.

Murwillumbah Aerodrome grass runway needed maintenance of filling in depressions and some levelling. The council's road engineers took on the task allegedly not seeking expert aerodrome engineer advise. The council, well intentioned, and with minimal budget proceeded with using gravel as fill on the centre line of the grass runway ignorant of the fact that it would be picked up by aircraft propellers potentially causing tens of thousands of dollars of damage per aircraft to their aircraft propellers. Roads are not runways. Additionally, one section of the council approved industrial buildings at the northern end of the runway without the knowledge of those in the council responsible for the aerodrome. The

[92] BTRE Air Transport Services in Regional Australia Trends and Access Report 115 page 129 (2008)

result being that the developments at the end of the runway reduced the effective operational length of the runway because of no Runway end safety area [RESA] and endangerment to the occupiers of the industrial building. Further one section of the council provided a development approval on the race course for a parachuting operation, yet this was on the middle of the downwind leg of the required wide circuit for the airport for noise abatement for the hospital and a safety conflict with normal air operations at the aerodrome.

The Port Macquarie airport and runway upgrade proposed by the local council was deficient in that the proposed runway width was not compliant with the Manual of Standards for the category of aircraft proposed to land at the airport (Boeing 737-400 a code 4 aircraft), nor was there any public safety area at the ends of the runways. The council was building the runway to the concession that CASA had provided other airports and not to the MOS standard itself. It was not until challenged that the council's plans were partially corrected, however Port Macquarie runway 03/21for Boeing 737-400 aircraft is published in AIP[93] as a code 4 airport with an inner edge Width of 150 metres whereas the code 4 requirement is an inner edge width of 300M.

The Federal Government needs to accept responsibility for oversight and maintaining ALOP airports, arrest the depletion of these national assets and prosecute councils or transferees for breaches of covenants or transfer terms and for the costs of rectification and refer corruption activity to a Federal ICAC or equivalent.

The ALOP airports were originally acquired for defence purposes and still have a defence purpose. Billions of dollars each year is spent on defence, yet the defence budget is not funding such ALOP airports. The entire township of Theodore in Queensland, was evacuated by air[94] by military and civil helicopters in December 2010. If the Theodore airport has been adequately maintained regional airliners would have been able to perform the evacuation for considerably less federal expenditure than military helicopters. St George, whose airport has proven a lifesaver was evacuated in February 2012, with RAAF Hercules aircraft evacuating St George hospital patents to Brisbane and the Gold Coast. It was the general aviation fleet including helicopters that enabled the larger portion of the general evacuations all from the St George airport.

Additionally, the Federal Government might like to also consider the funding model of the USA Airport and Airways Trust Fund whose source of funds is in part a 7.5 percent Airline Ticket Tax for flights throughout the USA. The Airport and Airways Trust funds certain airport facilities and equipment, research, engineering and development, and operations.

[93] Refer ERSA (Enroute Supplement Australia) Runway distance supplement 8 November 2018 Port Macquarie
[94] https://www.abc.net.au/news/2010-12-28/residents-airlifted-from-flood-zone/1887830

Inquiry Recommendations

Aviation, the Aviation Industry and particularly General Aviation has not been served well by the Federal Government's "abandonment of federal responsibility" approach to airports. Australia is a vast country – the size of mainland USA with a tyranny of distance. General Aviation should be prospering and growing with its costs lowering but it is not and the reason it is not rests firmly with the Federal Government. Billions of dollars federally are spent on public roads and rail infrastructure with vast kilometres of roads and highways linking towns and cities yet making sure there is at least one kilometre of MOS Part 139 compliant pavement and protected approaches in each town – called an airport, has not received equal attention or funding.

" 11.Starting with the notorious Review of Resources ("ROR") around the time of the CAA vesting successive Federal Governments have continued the deskilling process in the aviation portfolio and we are now at the point that the Australian Government is acting as an uninformed regulator, standards setter, purchaser and protector of public interest.

12. The Federal Government agencies including CASA, The Department of Transport and Infrastructure and A TSB are de-skiIled and devoid of airports skilled professionals and has bureaucrats in key positions not technocrats, which is highly evident from the T documents as Departmental officers appear not to have asked all relevant questions and it is my belief they do not have relevant aviation qualifications and backgrounds.[95]"

To the Chamber's Knowledge there is

- No Airport Lighting Engineer
- No Fuel Quality Personnel
- Only one Airport Engineer with minimal credentials[96]

within CASA. Clearly there needs to be a reversal of the deskilling process.

The Head of Power issue needs to be clarified with certainty as raised in the Robertson Opinion and referred to the High Court.

Secondary Airports should ideally be brought back into public control.

Tenants equitable interests in leases need to be recognised and renewed on similar terms as existed pre-privatisation with any buildings / hangars asset stripped by reversion returned to them with compensation, and/or substituted buildings if the building has been demolished.

An "National Aviation Infrastructure Security Act" ["NAISA"] (which may need mirroring state legislation) is needed to legislate the protection of airport infrastructure including.

- Disclosure of Airport Protected areas on all property survey plans – similar to easements etc
- The restrictive covenants over all ALOP airports legislated.
- The terms of each Commonwealth lease particularly clause 13 clauses as to the protection of the airport made into legislation.
- Making it an offence to close a runway or attempt to close a runway on an airport, downgrade an airport or lobbying activities of individuals or corporations to try to close a runway (e.g. for property development financial gain.).

[95] Refer Annexure A2-1 para 11&12 and Annexure A2-2 para1
[96] Refer Annexure A2_2 para 4

- Right of airport access provisions requiring all airports not subject to a federal RDMS to accept any aircraft for the code number rating of the airport – that is the airport must be open to public aviation use and be a participant of the whole airspace system (e.g. as to alternates etc).
- Providing extensive powers for the ACCC to act for tenants or aviation users regarding
    - Lease issues including valuations and renewal and changes to use and unreasonable conditions not conducive to competition (e.g. not permitting aviation users to bring their own fuel and oils onto the airport or having to use the ALC's preferred supplier.)
    - Aeronautical access to the airport and dealing with any rejection for access or failure to allow aeronautical facilities for aviation businesses on the airport.
    - Unconscionable conduct on and off the airport
    - Abuse of market power by the ALC.
    - Reasonable Pricing of Services (including requiring each ALC to publish their financial statements and be subject to special purpose audit or investigation)
    - Users requirements
    - Abuse of on-airport control regulations powers by ALCs or off airport developments
- Requiring all airport engineering consultants to be registered professional engineers, apply a code of conduct similar to the Queensland RPEQ legislation with mandatory exclusion requirements where there is a conflict of interest and to publicly disclose the terms of reference of any engineering work engagement by ALC's.
- Set mandated infrastructural improvements requirements in accordance with national intertest requirements and a timeline for implementation.
- All master plans or major development plans to be subject to independent technical review by a new independent body of skilled highly qualified airport registered engineers (design, pavement, lighting, and noise specialists) plus experienced aviators with civil aviation backgrounds all such members requiring mandated endorsement by the aviation industry e.g. AOPA, RAAA Airport Chambers of Commerce etc.
- Any assessments of the usability of runways to be based upon the actual laws that an air operator needs to comply with – e.g. as to factoring, balanced field length in the event of engine failure etc, not raw flight manual data - unfactored.
- Report to the Commonwealth Parliament Public Works Committee who may also make directions under the NAISA.
- Development of a "Airport Land Use Planning Handbook" (similar to the California Airport Land Use Handbook)
- Consider readoption of the FAA Advisory Circular 150/5300-13 (Airport Design) published by the United States Federal Aviation Administration (FAA) (Refer Australian history of this in Annexure 13), and in particular for General Aviation Chapters 2 and 3 of AC 150/5325-4B related to airport design for small aircraft (<5700kgs) and aircraft > 5700 but < 27200 kg and in table 1.3 and figure 2.1 and 2.1 .

Some of the changes needed to be made to the Airports Act 1996 and Regulations:

- Clarify beyond doubt that the present" underlying interests in the land" certification for master plan approval is required to include both legal and equitable interests.
- Require Master Plans to be in compliance of Commonwealth lease terms, not just Major Development plans.
- No decision by the Minister in relation to approving a master plan under the Airports act presently constitutes deemed approval of the ALC's master plan. This needs to be repealed.
- Airport Master Plans are produced every five years looking forward to the next twenty years. This is too short a time-frame. Use of the airport well into the future is required to provide for the expected growth of aeronautical facilities. Further ALCs must be able to show any non-aviation use proposed on an airport will be able to be readily repurposed back to aviation use to meet long term aeronautical expansion of the airport asset.

- Objections to Master Plans need to be made to the Minister's office not the Airport Leasing Company deal with them and fob them off.
- The Minister needs to refer objections to an independent reskilled expert technical body potentially formed under for example a "National Aviation Infrastructure Security Act" and ditch the present system where departmental bureaucrats merely act as a post office and have no skills to assess airport plans technically. This could be funded by levying filing fees for the submission of master plans or major development plans plus billing ALCs on an hourly fee basis for the expert assessment / review of the plan, investigating objections submitted in relation to the draft master plan, providing reports in relation to such objections and oversight prior to communicating to the minister such bodies recommendation about the Master Plan.n g.
- Presently there can be no objection to a noise exposure forecast prepared by an Airport Leasing company. This needs to change to allow same.
- Presently the Minister is deciding about Master Plans and Major Development Plans as an ordinary person not as an expert. Approval of master plans and major development plans needs to be made only after recommendation of an independent reskilled expert technical body formed as defined above – which can accept input from aviation user bodies such as AOPA, RAAA and the Chambers of the respective airports.
- If Airport leasing companies want to repurpose existing aviation land where aviation businesses are operating they should pay compensation at market values and factor that into their costs similar to any developer on state land.
- Each Airport be subject to an aviation user's representative body report card every two years – such report to operate outside of the interference of Airport Leasing Companies, be confidential and submitted to the National Aviation Infrastructure oversight group and the technical group as part of ongoing monitoring of the airport's performance in meeting the actual aviation needs and the national interest.

Australian Government
Australian Transport Safety Bureau

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ATSB TRANSPORT SAFETY REPORT
Aviation Safety Issue investigation AI-2008-038
Final

Instrument departure procedure design

Abstract

Following the construction of a new hangar adjacent to runway 28 right (28R) at Archerfield Airport, Queensland, the Australian Transport Safety Bureau (ATSB) received a number of submissions asserting that the building infringed safety standards or reduced flight safety.

Drawing on an independent third-party review, the ATSB determined that the building does not breach obstacle limitation surfaces. The ATSB also conducted an initial examination of the instrument departure procedure from runway 28R. The ATSB found that the procedure complied with the extant instrument departure design requirements, but identified an ambiguity in the guidance for designing instrument departure procedures.

The ATSB assessed that this ambiguity could lead to inconsistent expectations about the extent of clearance from obstacles provided to aircraft when pilots were following an instrument departure procedure. This had the potential to increase the risk of a collision with an obstacle. In response, on 30 May 2008, the (then) Executive Director of the ATSB commenced a safety issue investigation in accordance with sections 21 and 23 of the *Transport Safety Investigation Act 2003*.

As a result of that investigation, the Civil Aviation Safety Authority and Airservices Australia have, in consultation, reviewed their understanding of how the design standards for instrument departure procedures should apply in Australia. They have also re-examined the runway 28 instrument departure procedure at Archerfield in the light of that review and have advised that they intend to amend the requirements for instrument departures from runway 28R.

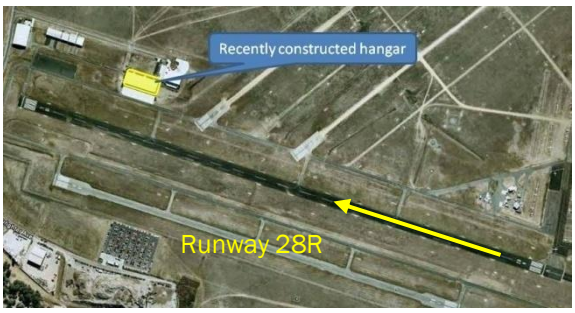
The potential for inconsistent interpretation of the instrument departure procedure design requirements has also been notified to the International Civil Aviation Organization instrument flight procedures panel, which monitors the international standards for the design of instrument procedures.

FACTUAL INFORMATION

Background

In early 2008, the Australian Transport Safety Bureau (ATSB) received a number of submissions that questioned the separation assurance of aircraft from airport obstacles when conducting instrument departure procedures from runway 28 right (28R) at Archerfield Airport, Queensland. In particular, the reporters expressed concern with the clearance from a recently-constructed hangar to the right of the runway flight strip (Figure 1).

Figure 1. Runway 28R, showing the recently-constructed hangar



The ATSB conducted an initial examination of the standards for instrument procedure design as they applied to the instrument departure procedure for runway 28R. The ATSB found that the procedure complied with the extant design requirements but also identified a potential for inconsistent interpretation of the available instrument departure procedure design standards.

In response, on 30 May 2008, the (then) Executive Director of the ATSB commenced a

safety issue investigation in accordance with Sections 21 and 23 of the *Transport Safety Investigation Act 2003*.

Runway obstacle clearance requirements

Zones that are free of obstacles are established at airports to allow aircraft to take off and land without the risk of colliding with an obstacle during normal operations. A runway's obstacle-free zone is defined by a series of obstacle limitation surfaces (OLS) surrounding the runway (Figure 2). The location of the surfaces is dependent on the code[1] of the runway.

The standards and requirements for the establishment of an OLS are defined under International Civil Aviation Organization (ICAO) Annex 14[2], and in Civil Aviation Safety Regulations (1998) Part 139 and the Civil Aviation Safety Authority (CASA) Manual of Standards (MOS) Part 139. A transitional surface extends out at an angle from the edge of the runway strip, allowing for aircraft to drift laterally during the climb after takeoff, or as they approach the runway to land.

An independent review by a third-party consultant of the OLS requirements affecting runway 28R at Archerfield Airport determined that the OLS was not infringed by any obstacles.

Obstacle clearance requirements for a published instrument procedure

Archerfield Airport runway 28R also had an omnidirectional Standard Instrument Departure (SID)[3,4] procedure that allowed instrument flight rules (IFR) aircraft to take off when the weather was below visual meteorological conditions. Guidance for the design and construction of instrument departures, including SIDs, was contained in ICAO document 8168[5] (PANS-OPS).

The MOS Part 173 stated that the instrument flight procedure design standards used in Australia were contained in PANS-OPS, unless there was a difference in the MOS, in which case the MOS requirements would prevail. The requirements affecting the design of the Archerfield Airport runway 28 omnidirectional SID were based on the PANS-OPS Omnidirectional Departure criteria.

Under PANS-OPS, the design of each instrument departure procedure has its own set of obstacle identification surfaces (OIS)[6] that are required to meet the criteria as defined in PANS-OPS. Risk mitigation procedures are required if any obstacle penetrates an OIS, in order to manage the potential risk of collision of an aircraft with an obstacle when the aircraft is flown in accordance with the instrument flight procedure. The OIS include provision for an aircraft to make a turn as/when required by the inclusion of a Turn Initiation Area (TIA)[7] (Figure 3).

1 Runways are assigned a code between 1 and 4 under the Manual of Standards Part 139, Chapter 7: 7.1.3.5. In general, larger aircraft require runways with a higher runway code for an instrument departure.

2 International Civil Aviation Organization, Annex 14 to the Convention on International Civil Aviation: Aerodromes.

3 A designated instrument flight rules departure route that linked an aerodrome or specified runway with a specified point, from where the en route phase of a flight was commenced.

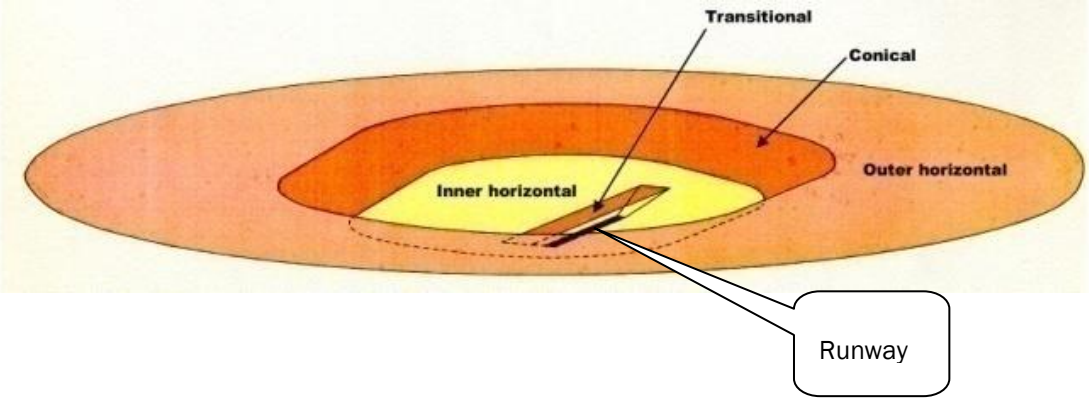
4 In the case of an omnidirectional SID, there was no track guidance to a certain point, from which an aircraft could turn and depart in any direction.

5 International Civil Aviation Organization Document 8168 OPS/611: *Procedures for Air Navigation Services: Aircraft Operations*. This document is commonly known as PANS-OPS.

6 For ease of understanding, **OLS** refers to general runway requirements that apply to all runways, as described in MOS Part 139, and **OIS** refers to the requirements for specific instrument procedures, as described in PANS-OPS.

7 Turn Initiation Area. An area from which a turn may be initiated during a SID. It is defined in PANS-OPS vol 2, 3.3.2.1 as starting at a point 600 m from the commencement of the runway, unless the departure chart prohibits a turn prior to the departure end of the runway (DER), in which case the TIA starts at the DER.

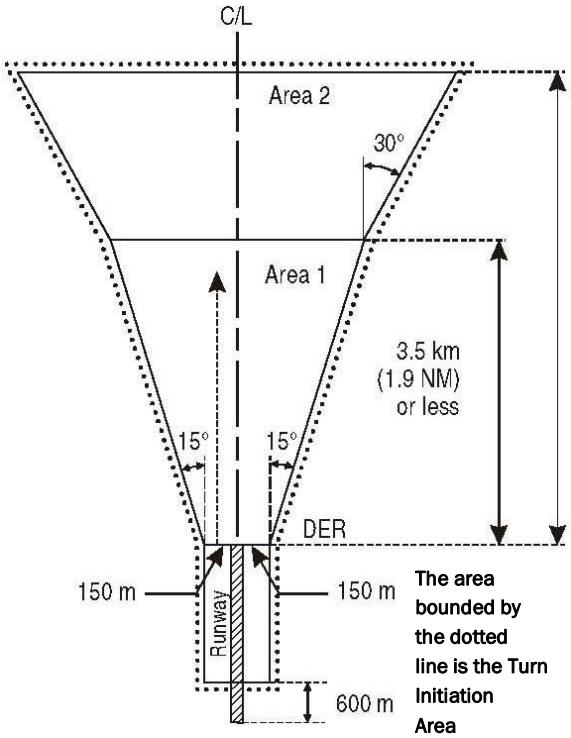
Figure 2: Runway obstacle limitation surfaces



A TIA includes two components:

- Initially, two rectangular areas are established on either side of the runway, commencing 600 m along the runway from the runway threshold and continuing to the departure end of the runway (DER). These areas extend out 150 m on each side from the runway centreline. PANS-OPS does not specify a height for the two rectangular areas, and they are not described in the procedures as 'OIS'.
- The OIS for the Archerfield RWY 28 instrument departure commenced at the DER at a width of 300 m and a height of 5 m, initially widened out at 15° from each side of the runway edge, and climbed at a gradient of 2.5 %. The OIS then widened at an angle of 30° beyond a distance no greater than 3.5 km from the DER. The OIS continued to an altitude from which a turn could be made safely in any direction.

Figure 3: OIS and TIA (plan view) for an omnidirectional instrument departure procedure



For turns after takeoff, PANS-OPS stipulates that an aircraft cannot initiate a turn until it has climbed to at least 394 ft to ensure obstacle clearance if no significant obstacles exist, and higher if significant obstacles do exist.

The intent of the areas beside the runway, as defined in PANS-OPS Vol II, 3.3.2.1, is that an aircraft conducting an instrument departure would initiate a turn from not below 394 ft and at least 600 m along the runway from the runway threshold. However, few IFR aircraft could climb 394 ft from a stationary position in a distance of 600 m. The purpose of the areas may have been

contemplated as OIS for turns that commenced before the DER; however, there is no height specified in PANS-OPS for those areas to be considered as constituting OIS.

Implications for an instrument departure procedure

The opening paragraph to ICAO Document 8168, Volume II, Part 1, Section 3, Chapter 1 stated that:

> (a)… [a] departure procedure designed in accordance with this section provides obstacle clearance immediately after take-off until the aircraft intercepts the en-route segment.

Chapter 2, section 2.3.1.1 of that document stated that:

> The departure procedure begins at the departure end of the runway (DER), which is the end of the area declared suitable for take-off (i.e. the end of the runway or clearway as appropriate.)

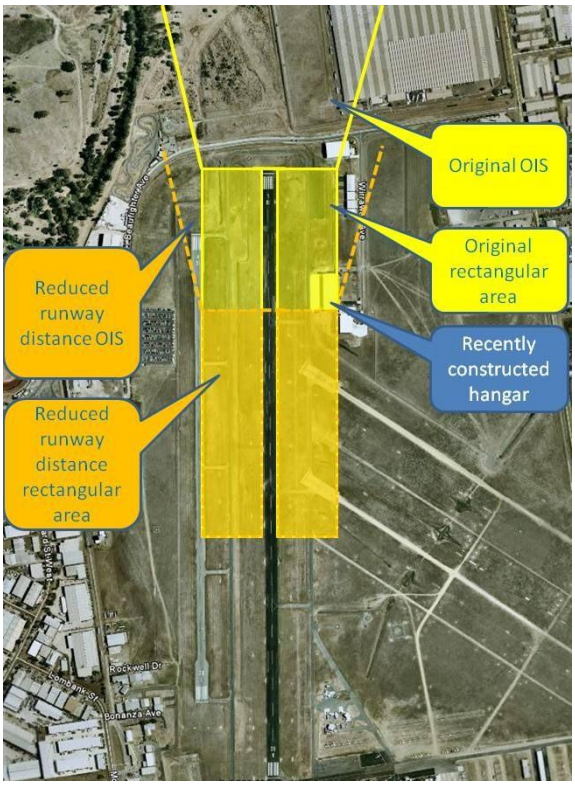
Aircraft were required to be airborne before the DER when taking off, so the two statements provided for different starting points for an instrument departure procedure.

Archerfield Airport runway 28 SID

The Archerfield Airport runway 28 SID required an aircraft to continue tracking on the runway heading until the aircraft had climbed to 900 ft above mean sea level (AMSL) (a height of 837 ft above the runway), and had passed the DER; which was originally 1,479 m from the runway threshold. Few IFR aircraft could climb 837 ft from a standing start in less than 1,500 m, so a departing aircraft could be expected to normally continue tracking on the runway heading until some distance after the DER.

Airservices Australia (Airservices) was the responsible agency for designing the Archerfield Airport runway 28 SID procedure. When Airservices became aware of a potential ambiguity in the PANS-OPS procedural requirements, the runway 28R SID procedure was redesigned to ensure it complied with a 'conservative approach' to the interpretation of the PANS-OPS requirements at that time. As a result, Airservices issued NOTAM[8] C250/07 on 15 October 2007, to implement the redesigned procedure. The NOTAM reduced the take-off run and distance available on runway 28R for instrument departures from over 1,400 m to 1,095 m. The reduced runway length ended abeam the start of the recently constructed hangar, which was located to the north of the runway strip (Figure 1). Shortening the available runway excluded the hangar from the 150 m rectangular area associated with the SID design requirements (see Figure 4).

Figure 4: OIS and TIA (plan view) for Archerfield runway 28 SID before and after the issue of NOTAM C250/07



Following a request from Airservices, the modification was agreed to by the Civil Aviation Safety Authority (CASA).

CASA has since provided a letter to Airservices clarifying the interpretation and application of the standards when designing instrument departure procedures. CASA indicated that it considered the

8 A NOTAM is a 'Notice to Airmen'. It is widely disseminated to give information on the establishment, condition or change in any aeronautical facility, service, procedure or hazard.

areas beside the runway as a 'protected area'[9], and that a surface was to be considered as existing at a height of 5 m above ground level (AGL). CASA also provided a procedure for ensuring the avoidance of obstacles that penetrated the OIS for an instrument departure, by requiring that:

- Obstacle avoidance was to be based on visual separation by the pilot.
- The standard take-off visibility minima could not be reduced.
- Increased visibility minima were to be specified as follows:
  - the cloud ceiling was to be higher than 110% of an infringing obstacle's height
  - the horizontal visibility was to be greater than 110% of the distance between the runway threshold and an infringing obstacle.
- The obstacle would be lit in accordance with the requirements of the MOS Part 139.
- The obstacle would be charted and the specific visibility minima published on the applicable departure chart.

Airservices has since incorporated the CASA requirements into its instrument departure procedures design requirements.

ANALYSIS

During takeoff, an aircraft may be at risk of colliding with obstacles in the vicinity of the departure runway if it drifts laterally immediately after takeoff. This risk is managed for takeoffs under both the visual and instrument flight rules by the application of transitional Obstacle Limitation Surfaces (OLS) as specified in *Civil Aviation Safety Regulations (1998)* Part 139 Manual of Standards (MOS Part 139).

With respect to instrument flight rules (IFR) departures, the rectangular areas on each side of the runway, as stipulated in International Civil Aviation Organisation (ICAO) document 8168 (PANS-OPS), form part of the Turn Initiation Area. However, it is not clear whether they also have a purpose with respect to obstacle clearance for IFR departures.

It was apparent that ambiguities existed in the ICAO PANS-OPS guidance material for application in the design of omnidirectional Standard Instrument Departure (SID) procedures. The ambiguities included differing guidance regarding the starting point for a SID, and the unclear purpose for the rectangular areas beside the runway for a SID.

Those ambiguities allowed different interpretations of what could be expected from an instrument departure procedure. This may have led to an increased risk of a collision with an obstacle during an instrument departure.

FINDINGS

From the evidence available, the following findings are made with respect to the potential for ambiguity that was identified in the available guidance for designing instrument departure procedures, such as at Archerfield Airport, Queensland. They should not be read as apportioning blame or liability to any particular organisation or individual.

Contributing safety factors

- Ambiguities existed in the guidance used in the design of omnidirectional Standard Instrument Departure procedures. Such ambiguities may lead to an increased risk of inconsistent procedure design or application and an increased risk of collision with obstacles for aircraft following an instrument departure procedure. *[Minor safety issue]*

Other key findings

- The obstacle limitation surface requirements affecting runway 28 right at Archerfield Airport, Queensland were not infringed by the recently constructed hangar.

SAFETY ACTION

The safety issues identified during this investigation are listed in the Findings and Safety Actions sections of this report. The Australian Transport Safety Bureau (ATSB) expects that all safety issues identified by the investigation should be addressed by the relevant organisation(s). In

9 A protected area provides an aircraft with protection from obstacles when its pilot is complying with an instrument procedure.

addressing those issues, the ATSB prefers to encourage relevant organisation(s) to proactively initiate safety action, rather than to issue formal safety recommendations or safety advisory notices.

All of the responsible organisations for the safety issues identified during this investigation were given a draft report and invited to provide submissions. As part of that process, each organisation was asked to communicate what safety actions, if any, they had carried out or were planning to carry out in relation to each safety issue relevant to their organisation.

Inconsistent interpretation and application of the design standards

Minor safety issue

Ambiguities existed in the guidance used in the design of omnidirectional Standard Instrument Departure procedures. Such ambiguities may lead to an increased risk of inconsistent procedure design or application and an increased risk of collision with obstacles for aircraft following an instrument departure procedure.

Civil Aviation Safety Authority

As a result of this safety issue, the Civil Aviation Safety Authority (CASA) presented a submission to the International Civil Aviation Organization instrument flight procedures panel. The submission highlighted the potential for ambiguity in the interpretation of the standards for the design of omnidirectional Standard Instrument Departures. The intent of the submission was to raise awareness of the issue and to seek changes to improve the consistency of the relevant PANS-OPS guidance material.

In the interim, CASA has taken action to clarify the purpose of the rectangular areas to the sides of the runway and to provide additional procedures – including the provision of obstacle lighting to ensure obstacle clearance during instrument departures – to address the risk of a collision with obstacles.

ATSB assessment of CASA action

The ATSB is satisfied that the action taken by CASA will adequately address the safety issue.

Airservices Australia

As a result of this safety issue, Airservices Australia (Airservices) advised the ATSB that they had reviewed the Standard Instrument Departure procedure affecting runway 28 right (28R) at Archerfield Airport and, following clarification from CASA, that they intended to remove the requirements of NOTAM C250/07. In addition, Airservices will modify the instrument departure procedure to require that the hangar to the right of the runway 28R flight strip must be visible to a pilot before commencing takeoff.

Consistent with that modification, lighting will be required on the hangar to improve its visibility.

ATSB assessment of Airservices action

The ATSB is satisfied that the action taken by Airservices adequately addresses the safety issue.

SOURCES AND SUBMISSIONS

Sources of Information

The sources of information during the investigation included:

- Airservices Australia (Airservices)
- the Civil Aviation Safety Authority (CASA)
- Archerfield Airport Corporation.

References

ICAO Annex 14.

ICAO Document 8168.

Archerfield Airport runway 28 Standard Instrument Departure procedure chart.

Aerial images from Google Earth, Figures 1 and 4.

Submissions

Under Part 4, Division 2 (Investigation Reports), Section 26 of the *Transport Safety Investigation Act 2003*, the Australian Transport Safety Bureau (ATSB) may provide a draft report, on a

confidential basis, to any person whom the ATSB considers appropriate. Section 26 (1) (a) of the Act allows a person receiving a draft report to make submissions to the ATSB about the draft report.

A copy of the draft report was provided to Airservices, CASA and the Archerfield Airport Corporation.

Submissions were received from all of the parties. The submissions were reviewed and, where considered appropriate, the text of the report was amended accordingly.

[redacted]

Submission : GRAHAM BAILEY

INQUIRY INTO ECONOMIC REGULATION OF AIRPORTS.

My Background :

I started my career with the Commonwealth Public Service, as a Cadet Civil Engineer, with the (then) Commonwealth Department of Works (C.D.W.) I specialised in the field of Heavy Aircraft pavements, and joined the (then) Department of Civil Aviation (DCA), in 1971.

During my career with the CPS, I was involved in every facet of Planning, Design, Construction, Operation, and Maintenance of Aerodromes.

I wrote many of Australia's Aerodrome Regulations and Standards, represented the County at I.C.A.O., and was Counsellor Transport, with the Embassy of Australia, in Washington D.C, U.S.A. from 1977 until 1981.

In later years, I held Senior Executive positions within the Aviation Portfolio.

I am now retired ; but maintain a strong interest in matters concerning Australian Airports.

Deskilling in AIRPORTS.

In the context of this inquiry, it is important to understand the Australian Government is now virtually bankrupt of fundamental AIRPORT technical skills.

This situation started with the compulsory transfer of specialist staff from Melbourne to Canberra, soon after the demise of DCA and creation of the mega Department of Transport, circa 1975.

Re-organisation and disruption became the order of the day, until 'reform' became serious with the creation of the CIVIL AVIATION AUTHORITY (CAA) in 1988.

The infamous 'Review of Resources' followed, along with the rhetoric of self-regulation and affordable safety.

This period likewise saw the demise of the C.D.W. Design and Construction Engineering expertise.

The CAA was abolished in disgrace in July 1995; replaced by the Civil Aviation Safety Authority (C.A.S.A).

By then, deskilling was almost complete, with 1 or 2 remaining Airport Engineering Specialists soon departed.

From my technical perspective, the Australian Government is now acting as an uninformed Regulator, Purchaser, and Protector of Public Interest.

All of this is directly relevant to the Economic Regulation of our Airports. For example, the imposition of unjustified, unnecessary, or over-priced developments. (See example herein)

The Long-standing OCA/COW Corporate knowledge and skill-base is well gone .... possibly still retrievable.

Natural Monopolies.

Airports are natural monopolies; and the inquiry will no doubt hear about the numerous cases where this monopoly status has been exploited at the expense of Airport users and individuals.

In June 2016, Simon Bourke of Australian Airports Association wrote in the Australian newspaper about inappropriate land-use developments approved around Airports.

More to the point; former ACCC Chairman Graeme Samuel wrote in the same paper on 25th May 2018, urging the Regulator to 'rein-in' Airports using their monopoly position to earn excessive profits. Samuel was critical of the 'light-handed' regulatory model under which Airports operate.

As indicated by Samuel, it is clear that at this point, more effective regulatory pressure is required.

AIRPORT MASTER PLANS etc.

When I last checked the situation within the Department of the Minister representing Transport, there wasn't any staff with genuine Airport Engineering skills. In fact Policy Advisor roles in Airports were advertised by the (then) DOTRS in May 2005, at which time experience in a Regulatory or Aviation environment wasn't considered essential.

Notwithstanding this, and my comments above re deskilling; the AIRPORTS ACT 1996 has the Minister approving Master Plans, Development Plans and Environmental Protection Plans, for Australias 'Privatised' Airports. The question arises, how does the Minister look after Public Interest, without the need for specialist Airport Engineering people 'in-house'?

Master Plan approval is central to the Archerfield Airport case study, outlined later in this Submission.

PARLIAMENTARY STANDING COMMITTEE on PUBLIC WORKS. (P.W.C.)

The main focus of the PWC, is to examine proposed Civil Engineering and Building Works; including those on AIRPORTS.

In accordance with Sub-Section 17(3) of the Public Works Committee Act; in considering and reporting on a Public Work, the Committee shall have regard to:

" the stated purpose of the work and its suitability for that purpose; the necessity for, or advisability of carrying out the work; the most effective use that can be made

(Cont'd)

in the carrying out of the work, of the moneys to be expended on the work. Where the work purports to be of a revenue producing character, the amount of revenue that it may reasonably be expected to produce, and the present and public value of the work."

Without doubt, in the past, Master Planning and Development proposals were rigorously tested by this process.

PWC examination starts with the need, whether justified or not. From there, the proposed solution is evaluated and tested for cost effectiveness, and thoroughly examined in the details of design, construction, costing, timelines and environmental impact.

All public submissions including users and those otherwise affected, were genuinely considered, with bureaucrats such as myself, required to fully justify the position(s) taken with respect to issues raised.

Without a favourable PWC Report, the Project under Consideration could not proceed.

With the privatised airports, this reassurance is no longer available; supposedly because the PWC does not have jurisdiction.

I am not convinced about the lack of jurisdiction. For instance, these Airports are still Commonwealth owned, and the private sector Companies are called the airport lessee Companies.

Any movement area pavement work and major construction initiatives would have a residual benefit for the airport owner; ... the Commonwealth.

More to the point, there is still the matter of Public Interest to be considered / protected.

I believe that this matter is one that must be reviewed, as part of the Economic Regulation Inquiry.

Case Study: ARCHERFIELD AIRPORT Queensland.

Archerfield was privatised in 1998, the lessee being the Archerfield Airport Corporation. (AAC).

An updated Master Plan for Archerfield, was due to be submitted to the Minister by 18th November 2010. This didn't occur for various reasons, including a lack of serious consultation with the airport users.

The draft Master Plan (and Environmental Strategy) was eventually approved by the Minister on 24 May 2012.

The approved Master Plan raises a very wide range of issues affecting the aviation community; starting with a lack of genuine consultation (first meeting of the consultation group some 3 months prior to submission to the Minister, and the perception the Plan is "more focused on providing additional land for non-aviation activities, at the expense of current aviation needs, aviation businesses and aviation infrastructure". — part of the submission from Archerfield Airport Chamber of Commerce. (the users)

I believe many of the issues raised support the above, unfortunate contention, — for the purpose of this case study; I will focus on the secondary runways at Archerfield; namely 04/22.

- runway 04L/22R, 1,345 m long and 30 m wide.
- runway 04R/22L, 1,100 m long and 30 m wide.

Both of these runways are natural surface, and unrated.

The main feature of the Master Plan, is the proposed realignment of these grass runways, "to improve usability ....

More to the point of concern from the users, is that the proposed realignment does 'free-up' land for non-aviation activities.

Also, any change in the secondary runway direction would require demolition of the Air Traffic Control Tower, without defining the new location. The question arises, ... who will pay for the demolition and relocation construction?
No doubt, the taxpayer and/or the airport users.
The Fuel Farms and other existing businesses are also affected!

I find it difficult to understand how any serious Master Plan can envisage relocation of a Control Tower, without defining the new location; taking into account a thorough analysis in accordance with current Standards.

The Archerfield Chamber of Commerce made an Appeal before the Administrative Appeals Tribunal seeking a review of the approval decision by the (then) Minister for Infrastructure and Transport.

Surprisingly, the Chamber lost this appeal, with the Tribunal Deputy President finding there was no substance in the Chamber's 'criticisms' of the draft Master Plan.

But in my view, there was plenty of substance!

In particular.

One well respected individual reported in favour of the proposed runway useability, favouring the proposed realigned grass runways. However after some 20 or so pages, the individual concerned also said:

"I acknowledge that the difference in useability of the proposed and existing runway orientation is relatively minor."

This being the case, then other factors come into account namely those associated with Pavement Engineering.

The best way to improve runway useability is to improve the existing drainage situation, and seal the runways. No need to realign the runways, the cost effective option is to seal them.

I had made two statements to the Tribunal, firstly dated 9th June 2013 and then 26th November 2013. Later, I was asked to give evidence and answer questions by telephone, on 19th November 2014. In fact this appearance was very casual, disappointing, seemingly irrelevant 'non-event'. There was no significant questioning, and I didn't have the opportunity to elaborate on the points I had made in my statements.

To top off this charade, I noted the Applicant has the right to appeal the decision to the Federal Court of Australia, but such an appeal is limited to question of Law, and does not apply to errors of fact.

There we have it; the final decision in these matters is made by a person without any aviation credentials, and any appeal can not take into account errors of fact, or misunderstanding.

Recommendations for the Commission.

1. Examine the need to 'Re-Skill' the Commonwealth Agencies involved in Airport Safety and Regulation; enabling greater credibility for decisions made by the Minister, under the Airports Act, 1996. As indicated herein, I am referring to people with qualifications and genuine experience in Airport Planning, Design, Construction, Operations and Maintenance i.e Airport Engineers

2. Inquire into the jurisdiction of the Parliamentary Standing Committee on Public Works (P.W.C.), to include relevant oversight of the Privatised Airports, to ensure protection of Public Interest in the provision of airport services, etc. in particular Master Planning and Major Projects.

GRAHAM BAILEY OCT 201