

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time

*(Transport)*

**AIRCRAFT NOISE LEVY COLLECTION BILL 1995**

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**A BILL**

FOR

**An Act relating to levy imposed by the *Aircraft Noise Levy Act 1995***

The Parliament of Australia enacts:

**PART 1—PRELIMINARY**

**Short title**

**1** This Act may be cited as the *Aircraft Noise Levy Collection Act 1995*.

**Commencement**

2. This Act commences on the same day as the *Aircraft Noise Levy Act 1995*.

**Definitions**

3. In this Act, unless the contrary intention appears: 5

“**AOC**” means an Air Operator’s Certificate or AOC issued under Part III of the *Civil Aviation Act 1988*;

“**Commonwealth authority**” means a corporation established for a public purpose by a law of the Commonwealth;

“**jet aircraft**” means an aircraft that is propelled by one or more turbofan engines, turbojet engines, unducted fan engines or rocket engines; 10

“**landing**” means a landing of a jet aircraft at an airport that is a leviable airport when the landing occurs;

“**late-payment penalty**” means penalty imposed by section 9;

“**leviable airport**” means an airport that is declared to be a leviable airport under section 7; 15

“**levy**” means levy imposed by the *Aircraft Noise Levy Act 1995*;

“**noise amelioration program**”, in relation to an airport, means a program undertaken or supported by the Commonwealth to do either or both of the following: 20

(a) reduce the impact of aircraft noise on occupants of public buildings, or residences, around the airport;

(b) compensate persons for the impact of aircraft noise on occupants of public buildings, or residences, around the airport;

“**operator**”, in relation to a jet aircraft, has the meaning given by section 4; 25

“**public building**” means:

(a) a hospital that provides health care to in-patients; or

(b) a nursing home; or

(c) a building used on an ongoing or regular basis wholly or mainly for one or more of the following activities: 30

(i) provision of formal courses of education;

(ii) provision of residential care for aged people;

(iii) provision of centre-based child care for groups of children;

(iv) religious services;

“**qualifying airport**” has the meaning given by section 6; 35

“**Secretary**” means the Secretary to the Department.

**Operator of a jet aircraft**

4. The “**operator**” of a jet aircraft making a landing is the person indicated in the following table:

Item	Source of authority for operation of the aircraft	Operator
1	AOC (regardless of whether there is also other authority for operating the aircraft)	Person who holds the AOC and operates the aircraft
2	Permission granted under section 27A of the <i>Civil Aviation Act 1988</i> (regardless of whether there is also other authority for operating the aircraft)	Person who was granted the permission and operates the aircraft
3	International airline licence issued under the Air Navigation Regulations (but not a permission under section 27A of the <i>Civil Aviation Act 1988</i> or an AOC)	Licensee or, if the aircraft is operated under an agreement with the licensee that has been approved by the Secretary under subsection 12(1B) of the <i>Air Navigation Act 1920</i> , the person who operates the aircraft
4	Permission under subsection 25(2) of the <i>Civil Aviation Act 1988</i> (but not a permission under section 27A of that Act or an AOC)	Person who was granted the permission
5	Permission under subsection 25(3) of the <i>Civil Aviation Act 1988</i> (but not a permission under section 27A of that Act or an AOC)	Person who was granted the permission
6	Permission under subsection 26(1) of the <i>Civil Aviation Act 1988</i> (but not a permission under section 27A of that Act)	Person who was granted the permission
7	None of the sources of authority mentioned in items 1 to 6 (inclusive)	Holder of certificate of registration of the aircraft (whether the aircraft was registered in Australia or a foreign country)

### Act binds Crown

5. This Act binds the Crown in right of each of the States, of the Australian Capital Territory and of the Northern Territory.



## PART 2—LEVIABLE AIRPORTS

### Identification of qualifying airports

5 **6.(1)** If an airport is a qualifying airport at the commencement of this Act, the Minister must publish a notice in the *Gazette* as soon as possible after the commencement, identifying the airport as a qualifying airport.

(2) If an airport becomes a qualifying airport after the commencement of this Act, the Minister must publish a notice in the *Gazette* as soon as possible after the airport has become a qualifying airport, identifying the airport as a qualifying airport.

10 (3) A notice under this section cannot be revoked or amended.

(4) An airport is a “**qualifying airport**” at a particular time if:

(a) at that time there is:

15 (i) a public building within a 25-unit contour shown on an Australian Noise Exposure Forecast previously prepared for the area around the airport for a date after that time; or

(ii) a residence within a 30-unit contour shown on an Australian Noise Exposure Forecast previously prepared for the area around the airport for a date after that time; and

20 (b) the Commonwealth is funding at that time, or has funded before that time, a noise amelioration program for the airport.

(5) Once an airport has become a qualifying airport, it remains a qualifying airport even if it no longer meets the description in paragraph (4)(a).

(6) In this section:

25 “**Australian Noise Exposure Forecast**” means an Australian Noise Exposure Forecast that has been endorsed by the Civil Aviation Authority established by the *Civil Aviation Act 1988* or by Airservices Australia established by the *Air Services Act 1995*.

### Declaration of leviable airports

30 **7.(1)** The Minister may, by notice in the *Gazette*, declare that an airport that has been identified as a qualifying airport is a leviable airport for the period specified in the declaration.

(2) The Minister may, by notice in the *Gazette*:

35 (a) amend a declaration to change the period for which the airport is a leviable airport; or

(b) revoke a declaration.

(3) Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply in relation to this section.

(4) The Minister must exercise his or her powers under this section to ensure that:

- (a) each qualifying airport is declared a leviable airport as soon as practicable after it is identified as a qualifying airport; and
- (b) as far as practicable, the adjusted levy liability for an airport at any given time does not exceed the Commonwealth expenditure on the noise amelioration program for the airport up to that time; and
- (c) as far as practicable, the ratio of the adjusted levy liability for an airport to the Commonwealth expenditure on the noise amelioration program for the airport is ultimately the same for each leviable airport.

(5) The “**adjusted levy liability**” for an airport at a particular time is the sum of the amounts of levy for which operators of jet aircraft have incurred liability as a result of landings of those aircraft at the airport before that time (whether or not any of those amounts are due for payment and whether or not any of those amounts have been paid) minus the amount spent up to that time on collection of levy on landings at the airport.

(6) The “**Commonwealth expenditure**” on a noise amelioration program for an airport is the sum of:

- (a) amounts spent by the Commonwealth under one or more appropriations on the implementation (including administration) of a noise amelioration program for the airport; and
- (b) a reasonable allowance in the nature of interest on amounts spent as described in paragraph (a).

### PART 3—PAYMENT OF LEVY AND PENALTY FOR LATE PAYMENT OF LEVY

#### When levy becomes due for payment

8. Levy becomes due for payment in accordance with the regulations.

#### 5 **Penalty for late payment of levy**

9.(1) If levy payable by a person remains unpaid after it has become due for payment, the person is liable to pay (in addition to the levy) a prescribed penalty on the unpaid amount of levy, calculated from the day the levy became due for payment, and compounded.

10 (2) The regulations must not prescribe a penalty exceeding the equivalent of 1.5% of the amount of unpaid levy for each month or part of a month during which it is unpaid.

(3) Subsection (2) does not require the penalty to be calculated on a monthly basis.

15 (4) The fact that a judgment is entered or given in a court for the payment of levy, or of a composite amount that includes levy, does not of itself cause the levy to stop being unpaid for the purposes of subsection (1).

(5) If the judgment debt bears interest, the penalty payable under subsection (1) is reduced by the following amount:

$$\text{Interest on judgment debt} \times \frac{\text{Levy component of judgment debt}}{\text{Judgment debt}}$$

#### 20 **Remission of late-payment penalty**

10.(1) If late-payment penalty is payable in relation to levy on a landing, the Secretary may remit some or all of the late-payment penalty in any of the following cases:

25 (a) the Secretary is satisfied that the operator of the jet aircraft that made the landing did not contribute to the delay in payment and has taken reasonable steps to mitigate the causes of the delay;

(b) the Secretary is satisfied that:

(i) the operator contributed to the delay but has taken reasonable steps to mitigate the causes of the delay; and

30 (ii) having regard to the nature of the things that caused the delay, it would be fair and reasonable to remit some or all of the penalty;

(c) the Secretary is satisfied that there are special circumstances that make it reasonable to remit some or all of the penalty.

35 (2) The operator may apply to the Administrative Appeals Tribunal for review of a decision of the Secretary.

(3) The Secretary may delegate his or her power under subsection (1) to:

- (a) a Senior Executive Service officer in the Department; or
- (b) an officer, member or employee of a Commonwealth authority.

The delegation must be in writing.

5

(4) In exercising the delegated power, the delegate is subject to any directions given by the Secretary.

### **Manner of payment**

11. Levy and late-payment penalty must be paid in the manner prescribed by the regulations.

10

### **Recovery of unpaid levy and late-payment penalty**

12.(1) Unpaid levy on a landing and related late-payment penalty may be recovered as a debt in any court of competent jurisdiction by the Secretary suing on behalf of the Commonwealth.

(2) The Secretary may delegate to a Commonwealth authority the Secretary's power under subsection (1). The delegation must be in writing.

15

(3) In exercising the delegated power, the delegate is subject to any directions given by the Secretary.

### **Refund of overpayment of levy or late-payment penalty**

13. An amount of levy or late-payment penalty that is overpaid by the operator of a jet aircraft may be credited against a liability of the operator to pay levy or late-payment penalty, and must be refunded to the extent that it is not credited.

20

## PART 4—POWERS TO GATHER INFORMATION RELEVANT TO COLLECTING LEVY

### Authorised officers' powers to seek information

5 14.(1) An authorised officer may give a person a written notice requiring the person:

- (a) to give the authorised officer specified information on matters relevant to the operation of this Act within a reasonable time specified in the notice; and
- (b) to verify the information by statutory declaration.

10 (2) The Secretary may authorise an officer in writing for the purposes of this section.

(3) The Secretary may delegate to the holder of a Senior Executive Service office in the Department the Secretary's power under subsection (2). The delegation must be in writing.

15 (4) In exercising the delegated power, the delegate is subject to any directions given by the Secretary.

(5) In this section:

“authorised officer” means:

- (a) the Secretary; or
  - 20 (b) an officer authorised by the Secretary for the purposes of this section;
- “officer” means an officer of the Department or an officer, member or employee of a Commonwealth authority.

### Offences in relation to returns etc.

25 15.(1) A person must not, without reasonable excuse, refuse or fail to give information or a return that the person is required to give under this Act or the regulations.

Penalty: 60 penalty units.

(2) The offence created by subsection (1) is an offence of strict liability.

30 (3) A person is not excused from giving a return or information on the ground that the information, or giving the return, might tend to incriminate the person. However, any information or return given, and any information or thing (including any document) obtained as a direct or indirect consequence of the giving of the return or information, is not admissible in evidence against the person in:

- 35 (a) criminal proceedings other than proceedings for an offence against subsection (1) or (4); or
- (b) proceedings for recovery of an amount of late-payment penalty.

(4) A person who knowingly presents a document, makes a statement or gives a return or information, that is false or misleading in a material particular, to a person carrying out functions under this Act is guilty of an offence punishable on conviction by a term of imprisonment not exceeding 12 months.

5

**Conduct by directors, servants and agents**

16.(1) Subject to subsection (2), in proceedings against a body corporate for an offence against this Act:

- (a) any conduct engaged in by a director, servant or agent of the body corporate within the actual or apparent scope of his or her employment or within his or her actual or apparent authority is taken to have been engaged in also by the body corporate; and 10
- (b) it is taken to be established that conduct (the “**relevant conduct**”) was engaged in by the body corporate knowingly if it is proved:
  - (i) that the directors of the body corporate knowingly engaged in the relevant conduct or expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in; 15  
or
  - (ii) that a servant or agent of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the body corporate knowingly engaged in the relevant conduct or expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in. 20

(2) Subparagraph (1)(b)(ii) does not apply if the body corporate proves that it exercised due diligence to prevent the relevant conduct. 25

(3) Subject to subsection (4), in proceedings against an individual for an offence against this Act:

- (a) any conduct engaged in by a servant or agent of the individual within the actual or apparent scope of his or her employment or within his or her actual or apparent authority is taken to have been engaged in also by the individual; and 30
- (b) it is taken to be established that conduct (the “**relevant conduct**”) was engaged in by the individual knowingly if it is proved that a servant or agent of the individual with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the individual knowingly engaged in the relevant conduct or expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in. 35

(4) Paragraph (3)(b) does not apply if the individual proves that he or she exercised due diligence to prevent the relevant conduct. 40

(5) If:

- (a) an individual is convicted of an offence against this Act; and
- (b) the individual would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

5 the individual is not liable to be punished by imprisonment for the offence.

(6) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

(7) In this section:

10 “**director**”, in relation to a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory, means:

- (a) a constituent member of the body; or
- (b) if the body does not have any members—a member of the board or other group of persons responsible for the administration or management of the affairs of the body;

15 “**offence against this Act**” includes an offence against:

- (a) section 6, 7 or 7A of the *Crimes Act 1914*; or
- (b) subsection 86(1) of that Act because of paragraph (a) of that subsection;

that relates to an offence against this Act.



## PART 5—MISCELLANEOUS

### Agreement for collecting levy and late-payment penalty

5 **17.(1)** On behalf of the Commonwealth, the Minister for Finance may enter into an agreement with a Commonwealth authority for the receipt or custody of levy or late-payment penalty on behalf of the Commonwealth.

(2) The Minister for Finance may delegate his or her power under subsection (1) to the holder of a Senior Executive Service office. The delegation must be in writing.

10 (3) In exercising the delegated power, the delegate is subject to any directions given by the Minister for Finance.

(4) Section 22 and paragraph 64(1)(b) of the *Audit Act 1901* do not apply to the receipt or custody of amounts of levy or late-payment penalty under an agreement under this section.

### Evidentiary certificates

15 **18.(1)** The Secretary may give a signed certificate stating that:

(a) a particular jet aircraft landed at a particular airport at a particular time; or

(b) a particular person was the operator of a particular jet aircraft at a particular time; or

20 (c) the assessed noise (as defined in subsection 6(1) of the *Aircraft Noise Levy Act 1995*) of a particular jet aircraft was a particular number; or

(d) a particular landing is not covered by subsection 5(2) of the *Aircraft Noise Levy Act 1995*.

25 (2) A certificate is *prima facie* evidence of the matters stated in it.

(3) The Secretary may delegate his or her power under subsection (1) to:

(a) a Senior Executive Service officer in the Department; or

(b) an officer, member or employee of a Commonwealth authority.

30 The delegation must be in writing.

(4) In exercising the delegated power, the delegate is subject to any directions given by the Secretary.

### Agreements etc. by Commonwealth authorities

**19.** A Commonwealth authority may:

35 (a) enter into, and give effect to, an agreement under this Act; or

(b) exercise a power delegated under this Act;

whether or not the authority's powers and functions (apart from this section) include matters covered by the agreement or delegation.

**Annual report**

**20.(1)** As soon as practicable after 30 June in each year, the Secretary must prepare and give to the Minister a report on the working of this Act and the *Aircraft Noise Levy Act 1995* during the year ending on that 30 June.

**(2)** The report must include a report on any breaches of either Act that are known to the Secretary. 5

**(3)** The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

**Regulations**

**21.(1)** The Governor-General may make regulations prescribing matters: 10

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act. 15

**(2)** The matters that may be prescribed under subsection (1) include, but are not limited to:

- (a) requiring operators of jet aircraft to make and keep records of their operation of jet aircraft; and
- (b) requiring operators of jet aircraft to give returns or information for the purposes of this Act; and 20
- (c) rules of procedure in proceedings for recovery of levy or late-payment penalty; and
- (d) prescribing penalties, not exceeding a fine of 10 penalty units, for offences against the regulations. 25

