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HOUSE OF REPRESENTATIVES

AIRCRAFT NOISE LEVY BILL 1995

AIRCRAFT NOISE LEVY COLLECTION BILL 1995

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for
Transport, the Honourable Laurie Brereton MP)

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AIRCRAFT NOISE LEVY BILL 1995
AND
AIRCRAFT NOISE LEVY COLLECTION BILL 1995

GENERAL OUTLINE

The purpose of these Bills is to establish a regime for the imposition and collection of an aircraft noise levy to apply at certain airports.

Under the legislation the levy is to apply to landings of jet aircraft at declared airports.

The rate of levy payable for each landing of a jet aircraft will be calculated on a basis that reflects the noise characteristics of the aircraft.

The levy will apply only at declared airports. An airport must be declared where the following conditions apply:

- there are residences or public buildings in certain specified noise affected areas around the airport;
- the Commonwealth is funding, or has funded, a noise amelioration program (that is, a program to reduce or compensate for the impact of aircraft noise around the airport);
- the levy liability for the airport is yet to meet the Commonwealth's expenditure on the program.

At this time, only Sydney (Kingsford Smith) Airport meets these criteria. However, the criteria are capable of being met by other airports in the future.

FINANCIAL IMPACT STATEMENT

The primary aim of the legislation is to seek to recover from aircraft operators the costs incurred in providing noise amelioration programs in the vicinity of airports.

This approach is consistent with the Government's response to the House of Representatives Select Committee on Airport Noise in its 1985 Report "Aircraft Operations and the Australian Community" and the recommendations of the Draft Noise Management Plan for Sydney (Kingsford Smith) Airport.

The rate of levy to be prescribed under the legislation will be designed to recover the costs associated with noise amelioration works currently under way in Sydney, with a target collection rate of \$32.2 million in the 1995/96 financial year.

This represents approximately \$3.40 per passenger landing in a jet aircraft at Sydney airport.

It is intended that the rate of levy will be adjusted in line with Consumer Price Index movements and with the overall aim of recovering the costs associated with the program over a period not more than ten years.

NOTES ON CLAUSES

AIRPORT NOISE LEVY BILL 1995

Clause 1 - Short title

This clause provides that when this Bill ("the Levy Bill") is enacted it will be known as the *Airport Noise Levy Act 1995*.

Clause 2 - Commencement

This clause provides that the Act will either come into effect on 1 July 1995 or when it receives the Royal Assent, whichever is later.

Clause 3 - Definitions

This clause ensures that the expressions used in both this Bill and the *Airport Noise Levy Collection Bill 1995* ("the Collection Bill") are consistent.

Clause 4 - Act binds Crown

This clause provides that this legislation will bind the Crown in right of each of the States and of the two internal territories. The Act will not apply to external territories.

Clause 5 - Imposition of levy

This clause essentially provides that the levy is imposed on the landing of a jet aircraft (defined in clause 3 of the Collection Bill) at an airport that is declared under the Collection Bill. This clause also provides that a levy will not be imposed if the aircraft making the landing:

- is a state aircraft as defined in the *Civil Aviation Act 1988* (that is: an aircraft of any part of the Defence Force - including any aircraft that is commanded by a member of that Force in the course of duties as such a member - other than any aircraft that by virtue of registration is an Australian aircraft; and an aircraft used in the military, customs or police services of a foreign country); or
- has an assessed noise of less than 265; or

if the landing relates to a flight made for certain prescribed purposes; namely:

- a prescribed purpose relating to the provision of emergency services; or
- a prescribed charitable purpose.

Clause 6 - Amount of levy

Subclause (1) sets out the method for calculating the amount of levy payable by a jet aircraft landing at a declared airport. The item on the right hand side of the multiplier accords with the formula proposed in the Draft Noise Management Plan for Sydney Airport. This item is designed to ensure that the amount of levy payable increases with the increase in noise levels of different aircraft.

Subclause (1) also defines the terms "assessed noise" and "levy unit". In particular, it defines a levy unit as the amount which is worked out in accordance with the regulations. The wording adopted by this provision is meant to encapsulate, amongst other things, regulations:

- providing a system of automatic indexation of the levy unit in line with CPI; and
- prescribing a particular levy unit.

Subclause (2) provides that regulations can provide a system for determining the assessed noise for a jet aircraft (for the purposes of the formula in subclause (1)). Normally this will be the sum of the three International Civil Aviation Organization noise certification levels for a given aircraft as appearing in the aircraft's documentation. If such information is not available the regulations will also set out alternative methods of determining the assessed noise figure based upon the type of aircraft involved.

Subclause (3) provides that the "levy unit" which is prescribed in regulations commencing in the financial year ending 30 June 1996 must not exceed \$180. For later financial years, this ceiling will be increased (irrespective of the particular value that the regulations may, at that time, attribute to a levy unit) at a rate of 10% for each financial year compounded.

Subclause (4) ensures that there is only one amount of levy unit for all leviable airports at any time.

Clause 7 - Person liable for levy

This clause imposes the liability to pay the levy on the operator of the relevant jet aircraft. A definition of operator is found in clause 4 of the Collection Bill.

Clause 8 - Regulations

This clause enables the Governor-General to make regulations for the purposes of sections 5 and 6 the Act.

NOTES ON CLAUSES**AIRPORT NOISE LEVY COLLECTION BILL 1995****PART 1 - PRELIMINARY****Clause 1 - Short title**

This clause provides that when this Bill ("the Collection Bill") is enacted, it will be known as the Airport Noise Levy Collection Act 1995.

Clause 2 - Commencement

This clause provides that this Bill will come into effect on the same day as the Airport Noise Levy Act 1995 - which will be either on the day on which that Act receives the Royal Assent or on 1 July 1995, whichever is later.

Clause 3 - Definitions

This clause defines the terms used in both this Bill and, by virtue of clause 3 of the Levy Bill, the Levy Bill as well.

Clause 4 - Operator of a jet aircraft

The comprehensive definition of operator contained within the table in this clause ensures that the operator who is liable for the levy pursuant to clause 7 of the Levy Bill can be identified with certainty in all cases.

Although all aircraft operators that operate regular public transport services will fall within Item 1 of the table, there are a number of alternative licences or sources of permission (other than Air Operator Certificates or AOCs) which may be held by operators of other aircraft. These are covered by Items 2 to 6 in the table.

In the unlikely event that none of the circumstances outlined in Items 1 to 6 applies, liability attaches to the holder of the certificate of registration of the aircraft under Item 7.

Clause 5 - Act binds Crown

The clause binds the Crown in the same manner as set out in clause 4 of the Levy Bill.

PART 2 - LEVIABLE AIRPORTS**Clause 6 - Identification of qualifying airports**

Subclauses (1) and (2) require the Minister to identify and notify in the Gazette as a qualifying airport an

airport where the following conditions (set out in subclause (4)) apply:

- there is either a residence or a public building (as defined in clause 3) within, respectively, the 30 and 25-unit Australian Noise Exposure Forecast (ANEF) contours; and
- the Commonwealth is funding, or has funded, a noise amelioration program - that is, a program to reduce or compensate for the impact of aircraft noise on occupants of residences or buildings in the vicinity of the airport.

Under the scheme set out in subclauses (1) and (2), an airport must be the subject of a notice even if the airport ceases to meet the criteria of a qualifying airport (and even if the cessation is before the notice is published in the Gazette).

Because the Gazetteal of the identification under subclauses (1) and (2) relate to matters of fact, subclause (3) prevents the identification from being revoked or amended. This is reinforced by subclause (5) which provides that once an airport becomes a qualifying airport, it remains so even if it no longer meets the criteria set out in paragraph (4)(a).

Subclause (6) further defines the concept of an ANEF (over and above that provided in paragraph (4)(a)). Specifically, it requires that the ANEF be endorsed by the Civil Aviation Authority or Airservices Australia, as the case may be. While the Civil Aviation Authority currently endorses ANEFs, when Airservices Australia is established under the Air Services Act 1995, that body will endorse ANEFs.

Clause 7 - Declaration of leviable airports

This clause, essentially, is the mechanism that triggers the levy in relation to a particular qualifying airport.

Subclause (1) provides that the Minister may, by publishing a notice in the Gazette, declare that an airport which has been identified as a qualifying airport (see clause 6) is an airport at which the levy will be collected (for the period set out in the declaration).

Subclause (2) provides the Minister with the ability to amend a declaration (in order to change the period set out in the declaration) or to revoke a declaration.

Subclause (3) clarifies the effect of subclause (2) by displacing, for the purposes of this section, the application of subsection 33(3) of the *Acts Interpretation Act 1901* (which essentially provides that when an Act confers a power to make, grant or

issue an instrument, the power is to be construed as including a power to repeal, rescind, revoke, amend or vary the instrument).

Under subclause (4) the Minister is required when exercising the power provided to him or her under this section to make sure, as far as practicable, that: the "adjusted levy liability" (defined in subclause (5)) for an airport, at any given time, does not exceed the "Commonwealth expenditure" (defined in subclause (6)) on a noise amelioration program for the airport up until that time; and, in the end, the ratio of adjusted levy liability for an airport to the Commonwealth's expenditure on the program at that airport is the same for each airport.

PART 3 - PAYMENT OF LEVY AND PENALTY FOR LATE PAYMENT OF LEVY

Clause 8 - When levy becomes due for payment

The clause requires regulations to prescribe when the levy becomes payable. This aspect has been left to the regulations in order to provide a degree of flexibility in allowing the due date for the payment to be tailored (and readily changed as necessary) to coincide with the administrative charging arrangements which a levy collector (for example a Commonwealth authority) may have in place.

Clause 9 - Penalty for late payment of levy

Subclause (1) provides for penalty interest to be applied if the levy remains unpaid after its due date.

Subclause (2) limits the level of penalty that can be set in regulations to the equivalent of 1.5% of the unpaid amount of the due levy for each month or part of a month during which it is unpaid. This approach is consistent with subsection 66(9) of the *Civil Aviation Act 1988* and subclause 55(2) of the *Air Services Bill 1995*. It is expected, that in the short term at least, the levy will be collected by Airservices Australia, or if that body has not yet been established, by the Civil Aviation Authority.

Subclause (3) makes it clear that the penalty need not be calculated on a monthly basis.

Subclause (4) and (5) spell out how outstanding amounts of unpaid levy and penalty interest are to be treated in circumstances where there has been a court judgment relating to payment of levy. Subclause (4) provides that just because a judgment is entered or given in a court for the payment of levy, this does not, in itself, mean that the levy is no longer unpaid for the purposes of subsection (1) of this section. Subclause (5) provides for the situation where a judgment debt bears interest - by providing a formula by which the

penalty payable would be reduced in light of the interest on the judgment debt.

Clause 10 - Remission of late-payment penalty

Subclause (1) provides a list of situations where it may be possible to remit some or all of a late-payment penalty. These situations are specifically where:

- the person did not contribute to the delay and took reasonable steps to mitigate the delay;
- the person contributed to the delay, but took reasonable steps to mitigate the causes of the delay and, in light of the factors which caused the delay, it would be fair and reasonable to remit;
- there are special circumstances that make it reasonable to remit.

A decision under subclause (1) is reviewable by the Administrative Appeals Tribunal.

Subclauses (3) and (4) deal with the delegation of the Secretary's power to remit. The Secretary may, by way of a written instrument, delegate his or her power to a departmental SES officer or an officer or employee of an authority of the Commonwealth. It is envisaged that, in the short term at least, the Secretary will only delegate the power to remit to officers of Airservices Australia, or if that body has not yet been established, to officers of the Civil Aviation Authority. Subclause (5) provides that the Secretary may issue directions to the delegate, and, moreover, the delegate must comply with those directions.

Clause 11 - Manner of payment

This clause provides that regulations may prescribe the manner of payment of the levy and late-payment penalty. Moreover, the clause requires that the levy and penalty must be paid in the manner so prescribed.

Clause 12 - Recovery of unpaid levy and late-payment penalty

This clause provides that an unpaid levy and penalty may be recovered as a debt in court.

Under subclause (2) the Secretary may delegate his or her power to sue (afforded under subclause (1)) to an authority of the Commonwealth. It is envisaged that, in the short term at least, the Secretary will only delegate the power to sue to Airservices Australia, or if that body has not yet been established, to the Civil Aviation Authority.

Subclause (3) provides that the Secretary may issue directions to the delegate, and, moreover, the delegate must comply with those directions.

Clause 13 - Refund of overpayment of levy or late payment penalty

This clause provides that if there has been an overpayment then the amount of the overpayment may be credited against the levy-payer's liability, and a refund should be made to the amount which has not been so credited.

PART 4 - POWERS TO GATHER INFORMATION RELEVANT TO COLLECTING LEVY

Clause 14 - Authorised officers' powers to seek information

Subclause (1) provides the power to an authorised officer (authorised by the Secretary under subclause (2) and subject to any directions issued by the Secretary under subclause (4)) to issue a written notice to a person requiring that person to provide information on matters relevant to the operation of the Act, and to verify that information by way of statutory declaration.

Under subclause (3) the Secretary's power of authorisation can be delegated to a departmental SES officer.

Clause 15 - Offences in relation to returns etc.

Subclause (1) makes it is an offence for a person who is required to give information or a return under the Act or regulations to refuse or fail to give such information or return. The maximum penalty for breaching this provision is 60 penalty units (which currently corresponds to \$6,000). This is a strict liability offence which allows reasonable excuse as a defence.

Subclause (3) provides that the person is not excused from providing information or a return on the ground that giving the information or return might tend to incriminate him or her. This provision further provides that the information or return provided by the person (as well as any information or thing which is obtained as a direct or indirect result of the information or return provided) is inadmissible in evidence against the person in criminal proceedings other than in proceedings relating to an offence under subclause (1) or (3) or in proceedings relating to the recovery of an amount of a late-payment penalty.

When formulating this provision consideration was given to whether it could be drafted so as to distinguish between the power to seek returns or information from a

potential levy payer for the ordinary purposes of collecting the levy and the power to seek information from a person for the purpose of investigating breaches. It was considered that, from a drafting perspective, drawing such a distinction would be very difficult, if not impossible. Moreover, to hedge the power to require information with qualifications would make it more difficult to use the power for the ordinary purposes of collecting the levy: if, whenever a request for information were made, the authorised officer could be required to justify his or her actions as being within stated criteria, the provision would, in practical terms, be of little use.

Subclause (4) makes it an offence (punishable by a maximum term of imprisonment of 12 months) for a person to knowingly make a statement or provide a return or information which is false or misleading in a material particular.

Clause 16 - Conduct by directors, servants and agents

Subclauses (1) and (2) provide that any conduct engaged in on behalf of a body corporate by a director, servant or agent (within the scope of his or her actual or apparent authority) is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate. In particular, it is deemed that the body corporate engaged in such conduct knowingly (note that this is the only mental element attributed to an offence provision in this Bill) if:

- the directors knowingly engaged in the conduct or tacitly or impliedly authorised or permitted the conduct to occur; or
- a servant or agent of the body corporate, essentially having ostensible authority, knowingly engaged in the conduct or tacitly or impliedly authorised or permitted the conduct to occur (unless, as provided in subclause (2), the body corporate can prove that it exercised due diligence to prevent the conduct).

Subclauses (3) and (4) fundamentally provide that any conduct engaged in on behalf of an individual by a servant or agent (within the scope of his or her actual or apparent authority) is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the individual unless the individual can establish that he or she exercised due diligence to prevent the conduct.

Subclause(5) has the effect that an individual is not liable to imprisonment where he or she would not have been convicted but for subsections (3) or (4).

Subclause (6) makes it clear that a reference in this provision to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Subclause (7) defines the term "director", and also provides that a reference to an offence against the Act encapsulates an offence against section 6, 7 or 7A, or subsection 86(1), of the *Crimes Act 1914* (which deal with accessories, attempts to commit an offence, inciting or urging the commission of an offence and conspiracy).

PART 5 - MISCELLANEOUS

Clause 17 - Agreement for collecting levy and late-payment penalty

This clause provides that the Minister for Finance can enter into an arrangement with a Commonwealth authority for the collection and/or custody of the levy and/or late-payment penalty. It is envisaged that such an arrangement can specify conditions for the payment of money to the Commonwealth, and may include conditions relating to the timing of the authority's remission of payments to the Commonwealth.

Subclause (2) provides that the Minister for Finance may, by written instrument, delegate to an SES officer the power to enter into these arrangements; and subclause (3) further provides that the delegate must comply with any directions issued by the Minister for Finance.

Subclause (4) provides that when such an arrangement has been entered into, section 22 and paragraph 64(1)(b) of the *Audit Act 1901* do not apply to money collected as the levy. By way of explanation:

- section 22 of the *Audit Act 1901* provides that, except as otherwise provided for in that Act, every accounting officer must, in accordance with the directions of the Minister for Finance, transmit or pay, daily or at such other intervals as the Minister directs, all public moneys collected or received by him or her to: the Minister; into the Commonwealth Public Account; to such other person as the Minister directs; or to the credit of another account with a bank as directed by the Minister; and
- paragraph 64(1)(b) of the *Audit Act 1901* provides that an accounting officer must not pay any public moneys into his own private account at any bank.

Clause 18 - Evidentiary certificates

Subclauses (1) and (2) provide that the Secretary can issue a certificate stating when and where a particular jet aircraft landed, the name of the aircraft's

operator, the assessed noise of the aircraft or whether the landing was not exempted under subsection 5(2) of the *Aircraft Noise Levy Act 1995*; and that such a certificate is *prima facie* evidence of the matters contained in it.

Under subclause (3) the Secretary can delegate (by way of a written instrument) this power to either a departmental SES officer or to an officer, member or employee of an authority of the Commonwealth. It is envisaged that, in the short term at least, the Secretary will only delegate this power to officers of Airservices Australia, or if that body has not yet been established, to officers of the Civil Aviation Authority.

Subclause (4) provides that when the delegate exercises this power he or she must do so subject to any directions issued by the Secretary.

Clause 19 - Agreements etc. by Commonwealth authorities

This clause empowers authorities of the Commonwealth to enter into, and give effect to, the agreements provided for in clause 17, as well as to exercise powers delegated under the legislation. This power is provided irrespective of whether or not the authority's functions and powers (excluding those provided by this clause) cover the matters set out in the agreement or delegation.

Clause 20 - Annual report

This clause requires the preparation of an annual report on the operation of the two Acts, including information on breaches of the Acts, and the tabling of the report in both Houses of Parliament.

Clause 21 - Regulations

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

