Australian Government

Department of Infrastructure, Transport, Regional Development and Local Government

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Regulation Impact Statement

This Regulation Impact Statement (RIS) addresses the proposed introduction of new Regulations (the Regulations) under the *Air Navigation Act 1920 (Section 26).*

1. Problem Identification

1.1 What is the problem being addressed?

Noise from older, noisier (marginally compliant ICAO Chapter 3) aircraft types, whose operation (particularly at night), result in widespread complaints from communities surrounding airports.

Under the Air Navigation (Aircraft Noise) Regulations, aircraft operating in Australia are required to meet noise standards specified in the published international standards of the International Civil Aviation Organization (ICAO) Annex 16 Volume I (the Annex). All modern jet, and large non-jet, aircraft are required to meet the standards set down in Chapters 3 or 4 of the Annex.

Older aircraft such as the Boeing 727 model were originally manufactured to the less stringent Chapter 2 noise standards. Following the introduction of stricter Chapter 3 noise standards and the introduction of a phase-out of Chapter 2 aircraft operations by ICAO in April 1995, some Chapter 2 aircraft were mechanically modified (or "hush kitted") in order to achieve re-certification to Chapter 3 noise standards and thereby prolong their operating life.

These marginally compliant aircraft are much noisier in actual operation than would be expected (based on their certificated noise levels). Airservices Australia's Noise and Flight Path Monitoring System (NFPMS) indicates that marginally compliant aircraft, on departure, are the noisiest aircraft captured by the noise monitoring terminals. At Sydney Airport, a hushkitted Boeing 727 aircraft has been recorded at a noise level of 96 decibels, markedly louder than a larger modern aircraft such as the Airbus A380 which was recorded at 88 decibels. [1]

[1] *(70 decibels equates to a noise event likely to disturb conversation and/or listening inside a house with open windows. An external noise level of 60 decibels approximates to an internal level of 50 decibels with windows open, which is within the range in which sleep can be disturbed.)*

The level and character of marginally compliant aircraft noise has historically been a source of considerable concern to residents in communities around airports where they operate in Australia, particularly when they are used for freight operations at noise sensitive times (e.g. during the night).

Noise complaints relating to these aircraft have been registered with Airservices Australia's Noise Enquiry Unit, the Minister for Transport and the Department for many years. More recently, airport operators have sought Government assistance in managing these noisy aircraft in response to community pressure and continued noise complaints.

The total number of people exposed to noise from operations by these types of aircraft is not easily identified. However, the level of annoyance could be rated moderate to major. This arises from the noise emitted by marginally compliant aircraft and the fact that the majority of operations are undertaken during noise sensitive night time periods. Continued operation of these marginally compliant aircraft and the subsequent noise impact will ensure ongoing complaints from communities surrounding the airports from which they operate.

Failure to manage aircraft noise complaints regularly results in increased community calls for stronger operating restrictions on airports including curfews which have economic implications for these important national assets. While a small number of Australian Airports are already subject to curfew, aviation operations, in particular air freight, rely heavily on a curfew free network to allow for the distribution of time sensitive freight.

1.2 Current regulations

ICAO has left it to member States to manage aircraft noise consistent with the agreed Balanced Approach contained in the Annex.

While the Air Navigation (Aircraft Noise) Regulations do relate to aircraft noise they specifically relate to the noise certification of individual aircraft according to the standards contained in the Annex. This is not the appropriate mechanism for the application of environmental mitigation measures.

1.3 How significant is it?

While the number of these marginally compliant aircraft presently registered and in operation in Australia is relatively small (two), there are in excess of forty internationally registered marginally compliant aircraft approved to visit Australian airports. These airports include: Adelaide, Avalon, Brisbane, Broome, Cairns, Canberra, Christmas Island, Darwin, Derby, Edinburgh, Hobart, Learmonth, Melbourne, Norfolk Island, Perth, Port Headland, Pearce, Richmond, Rockhampton, Sydney, Tindal, Townsville and Williamtown.

The majority of these aircraft are used for freight purposes (scheduled services and ad hoc charters), while a small number have been configured to carry both freight and passengers. The potential impact of 40+ noisy aircraft on individuals and communities during noise sensitive times is considerable.

The World Health Organisation recognises that night time environmental noise does adversely affect human health. The night time movement of these aircraft compounds the noise problem. Globally, night time aircraft noise is weighted by a factor of four due to the lack of background noise and sleep disturbance impact. These older aircraft are also less fuel efficient than their more modern replacements and have a much larger carbon footprint.

The actual noise impact of these aircraft is significant in terms of both decibels and level of disturbance. They are an ongoing source of aircraft noise complaint and perhaps of greater concern is the continued operation of these older noisy aircraft results in increasing calls from communities for more stringent controls (eg curfews) to be placed on the airports from where they operate.

1.4 Why is government action needed to correct the problem?

In Australia there is currently no means, legislatively, technologically or administratively for the Government or airport operators to reduce the noise impact from these marginally compliant aircraft or to address the complaints received from those individuals and communities most affected.

The industry in Australia has largely addressed the problem through upgrading fleet mixes to more modern aircraft. However, for remaining operators, there is little incentive to upgrade their aircraft while the purchase value of a hushkitted Boeing 727 is in the order of (USD) $2.5 million, compared to Boeing 737 at (USD) $10 million, or a Boeing 757 at (USD) $25 million. Modern technology produces lower variable costs per kg, but this is unfortunately outweighed by the difference in aircraft acquisition costs.

Civil Aviation Safety Authority (CASA) aircraft registration information indicates that the marginally compliant aircraft exiting the Australian fleet are not being retired but are instead sold on to overseas operators and often return to Australian airports as part of the international freight fleet servicing Australia.

Under the current Federal and State regulatory frameworks the capacity of airport operators' to mitigate aircraft noise is very limited. Federally leased airports (ie the 21 airports which fall under the jurisdiction of the Airports Act 1996) are required, under their lease, "to provide for the use of the site as an airport and to provide for access to the airport by intrastate, interstate and international air transport". They have limited power to regulate noise on the airport site only, through aircraft ground running rules. The airport operators have no power to regulate what aircraft types use their airport or what runways aircraft use.

Aircraft operations in Australia are regulated by Federal Government agencies. CASA is responsible for designating airspace and issuing aircraft operational certificates as well as the overall safety of aviation. Airservices Australia is responsible for determining flight paths around airports; Air Traffic Controllers allocate runway usage; and the Federal Government through the Department of Infrastructure and Transport is responsible for the implementation and monitoring of airport curfews.

In the past, proposals have been developed by the European Union (EU) (1998) and Australia (2001) through ICAO for a national phase out of marginally compliant Chapter 3 aircraft from service in response to complaints received. However, strong opposition to these proposals was raised by several ICAO Member States. Protracted negotiations between the United States and the EU led to ICAO developing and adopting the policy of an airport-by-airport approach to the management of aircraft noise.

This was embodied in ICAO's *Balanced Approach to Noise Management*, approved at the 33rd ICAO Assembly in 2001. Legislation implementing the approach has subsequently been introduced in the United Kingdom and other EU States.

Internationally, regulatory action has been taken in a number of jurisdictions consistent with the Balanced Approach, to restrict the operations of these marginally compliant aircraft.

2 Objectives

2.1 What are the objectives of government action?

On 2 December, 2008, the Australian Government released an Aviation Green Paper which is the second of three steps in the development of Australia's first ever comprehensive national aviation policy. The process began with the release of an Issues Paper in April 2008 and will be finalised in the latter half of 2009 with the release of the Aviation White Paper.

The aim of the White Paper will be to address the impacts associated with air transport and airport development on the environment and the wider community, maintain and improve Australia's excellent air safety record, and provide for greater planning and investment certainty for the aviation industry.

The Government is proposing a number of initiatives to ensure the impact of aircraft noise on communities living near airports and under flight paths is considered as part of the growth plans of Australia's aviation industry and State and local government.

The Government's policy is to balance the economic importance of airports as critical economic infrastructure with better management of the impact of aircraft noise on communities in the vicinity of airports and under flight paths.

Limiting the operation of older noisy aircraft types – particularly during noise sensitive times, will assist in addressing adverse noise impacts on communities surrounding major airports. The flow on effect of this action will be a reduction in public pressure for night time curfews thus ensuring the continuation of airports as key economic infrastructure in Australia.

3 Option Identification

Option 1 - Do nothing

Doing nothing would mean a continuation of noise complaints from affected communities; calls for stronger operation restrictions on airports; and it would see a continued reliance on aircraft operators, who have minimal incentive, to phase out these noisier aircraft.

Option 2 – Airports to regulate the operation of marginally compliant aircraft types

The Government could introduce a regulatory framework that would allow airport operators to regulate marginally compliant aircraft using their airport.

Implementing this option is likely to require changes to the leases of those Airports Act airports wishing to impose restrictions; amendments to the Airports Act 1996; and the development of Regulations under the Air Navigation Act 1920.

Option 3 – Industry to self-impose a phase-out of these aircraft

The cooperation of the air freight industry could be sought to assist with the phase out of marginally compliant aircraft. The Australian freight industry's position in 2005 was that, in Australia, use of these aircraft would be 'phased out over next 5 years' due to natural attrition. Despite this affirmation, there are still a number of marginally compliant aircraft in operation in Australia and a larger number operating overseas.

Option 4 – Introduction of regulations to impose a national ban on marginally compliant aircraft operation

New Regulations could be introduced to ban the operation of all marginally compliant Chapter 3 aircraft at Australian airports. As a Member State of ICAO, Australia would be required to lodge a statement with ICAO outlining the reason for this difference to ICAO adopted policy.

The number of marginally compliant aircraft operating in Australia is relatively small and while all marginally compliant aircraft are noisy and less fuel efficient than their more modern equivalent, not all are subject to ongoing noise complaints.

Option 5 – Introduction of regulations to enable airport-by-airport restrictions

This Option would allow measures to be put in place by the Minister to minimise the noise impacts of marginally compliant aircraft on a case by case (airport by airport) basis. Operating restrictions would be put in place in response to an aircraft's complaint history; an approach from industry; a business case made by an airport operator; a request from an airport's Community Consultation Committee; or similar triggers.

4 Impact analysis – costs, benefits and risks

4.1 Who is affected by the problem and the proposed solutions?

The parties affected by the problem and the proposed solutions are:

- individuals and communities who are exposed to and affected by the noise from the operation of marginally compliant aircraft;
- airport owners and operators who are pressured by communities to manage the noise problem associated with marginally compliant aircraft;
- the owners and operators of marginally compliant aircraft particularly overnight air freight operators;
- the users of (including those who charter) marginally compliant aircraft;
- companies utilising air freight services ;
- the Department.

4.2 How will the proposed options affect existing regulations?

Option 1 - has no implications for any existing Regulations – however, the unresolved problem of continued aircraft noise exposure of communities in the vicinity of airports may lead ultimately to a requirement for the application of Curfew Acts and/or Regulations at airports which are currently curfew-free (for example at Brisbane Airport).

Option 2 - would require amendment to the leases governing the 21 Airport Act airports; amendment to the *Airports Act 1996* to provide for airport operators to limit the operations of (marginally compliant) aircraft; and development of Regulations possibly under existing Air Navigation (Aircraft Noise) Regulations.

Option 3 - would have no impact on existing regulations but may require development of policy and guidelines by industry.

Option 4 - would require new Regulations under the Air Navigation Act and a notification to ICAO of differences between Australia's national regulations and practices and the International Standards and Recommended Practices of Annex 16, Volume I.

Option 5 would require the drafting of new Regulations under the Air Navigation Act.

4.3 Expected impacts of proposed options

Advice from Australia's overnight freight industry representative Overnight Airfreight Operators Association (OAOA), is that the impact of Options 2-5 on users of these services would be negligible as there is excess carrying capacity in current freight fleets, and ready availability of substitute operators.

There are two international companies operating into Australia that do not have alternate aircraft available in their fleets. One of these companies, Trans Tasman Freight, employs 30 staff in New Zealand and operates a daily scheduled return freight service between Auckland and Sydney four days a week in conjunction with DHL. These services carry parcels, manufacturing components, electrical goods, livestock and perishable fish supplies (for human consumption) to Sydney. The return

flight to Auckland carries no livestock or perishables. Trans Tasman advises it is aware of the noise concerns of this aircraft type and has been considering its replacement options for some years. At this stage, it has not sourced a suitably configured and affordable aircraft.

Trans Tasman acknowledged that were it unable to utilise its freight aircraft to Australia, the impact on its customers would be negligible as there are other freight operators able to service this route. Any immediate gap in their freight service could be filled by empty 'cargo hold' capacity on existing Emirates and Qantas passenger services. In addition, Qantas already provides existing freight services, in fully compliant aircraft, between Sydney and Auckland on a daily basis. The timing and logistics of transporting perishable freight direct to Sydney could present challenges to businesses using Trans Tasman's freight service, however the peak industry representative group advises there could be little risk of any significant cost implications to the customers of such freight services.

The other provider of scheduled services into Australia is HeavyLift Cargo. Its services are between Brisbane, Cairns, Honiara and Port Morseby. These scheduled services predominantly carry perishable fish supplies (for human consumption). The freight is brought into Australia on-forwarding to other overseas locations.

HeavyLift Cargo wet leases all its aircraft (i.e. crew and asset lease) and as such would need to source other wet lease aircraft providers if its current leased aircraft were subject to operational restrictions. The Department is unable to quantify any wet lease contract penalty costs, as they are commercial in confidence between the parties involved.

Should a new wet lease provider be introduced to meet any future noise based restrictions applying to the industry as a whole, the impact on downstream users of these services would be negligible. Generally, the existing freight service arrangements should prevail with the only difference being a different aircraft may be used to provide an existing, or similar service. Further, as previously mentioned, advice from OAOA is there is existing excess carrying capacity in current freight fleets to meet changes in demand, and a ready availability of substitute operators.

In addition to these two scheduled international operators, there are many ad hoc freight charters that operate into Australia. Given the occasional nature of these operations, the impact on downstream users of these services cannot be quantified.

Option 1 – Do nothing

Ministerial correspondence received from airport operators and the public indicates that continued inaction is increasing pressure from some communities for the introduction of strong operation restrictions including night-time curfews at airports where these aircraft operate.

There is currently a disincentive for owners and operators of marginally compliant aircraft to commit to purchase or operate more modern, quieter aircraft, when there is a possibility that their operations could be undercut by other operators using old, fully-depreciated, marginally compliant aircraft.

Costs:

- Noise from marginally compliant aircraft will continue to have adverse effects on individuals' health and social well being.
- Despite the small number of offending aircraft, noise will continue as will complaints with consequent resource cost to government and stakeholders responsible for aircraft noise management.
- No action to address the noise complaints will result in increased calls for operational limitations at airports including blanket curfews at currently curfew free airports (eg Brisbane) or extended curfews at airports like Sydney. This outcome would have far greater economic impact in the event a curfew is applied or extended.
- No action will impact on the Government's relationship with airport operators and airport communities who are seeking assistance with dealing with the problem.
- There will continue to be no incentive for aircraft operators to acquire modern, quieter aircraft.

Benefits:

- Continued use of marginally compliant aircraft and their lower capital costs may result in reduced freight costs, or reduced fares if the aircraft is used for passenger service, in comparison to those for more modern, quieter aircraft.
- The lower capital costs will be offset by increased operating costs for fuel and aircraft maintenance. For example, for a given flight operation, the Boeing 727-200 (the most common marginally compliant freight aircraft in Australia) uses approximately 30% more fuel than the more modern Boeing 757-200.

Option 2 – Airport operators to regulate the operation of marginally compliant aircraft types

This proposal identifies a solution in the event it is established that a noise problem exists at a particular airport. It allows measures to be put in place to minimise the noise impacts through operational restrictions including the times such aircraft can operate at the airport and the runways that can be used, e.g. take-off over water. It would require airport operators to consult with affected communities and develop a full business case in consultation with all stakeholders to justify the restrictions.

A framework would need to be developed through Regulations to allow airport operators to apply to the Minister for approval to impose restrictions or limit the operation of marginally compliant aircraft at their particular airport. Applications would need to be supported by evidence of ongoing noise problems; steps taken to try and address these problems and a strong business case for restrictions.

Costs:

- Government resources and costs associated with changes to current leases with Federally leased airports; amendments to the Airports Act 1996; and development of the required Regulations to give effect to such a framework.

- Airport operators would need to meet the compliance costs for resources associated with the application process including all stakeholder consultation and establishing the required business case (no fee would apply).
- For marginally compliant operators any restrictions resulting from this process may vary from minimal cost impacts (marginally compliant aircraft using different runways at different times) to increased landing fees if time changes result in accessing different slots (for Sydney only).
- For operators with only a single aircraft, cost of replacement with a quieter aircraft (purchase price for a second-hand freight configured Boeing 737 the cost is around (USD) $10 million, or a Boeing 757 (USD) $25 million. Leasing costs for similar aircraft is around (AUD) $3 million per year).
- Minor increases to freight costs may result if industry chooses to pass on any increased operating costs.

Benefits:

- Airport operators would be empowered with some control over the use of airports by aircraft.
- Positive environmental benefits of reduced noise and CO2 emissions.
- More cooperative relationship between airports, communities and industry.
- Increased reliability of service delivery standards for consumers due to less maintenance downtime through modernisation of fleets.

Option 3 – Industry to self regulate and encourage a phase out of marginally compliant Chapter 3 aircraft

In light of industry's prior support (2005) of a co-ordinated, controlled phase-out approach there may be scope for industry to develop relevant environmentally friendly policies and guidelines encouraging the transition to a quieter, cleaner and more fuel efficient air transport fleet.

However, there is no national industry body best placed to take such a role and any guidelines introduced by OAOA would only be applied to Australian registered marginally compliant aircraft.

The international industry body, International Air Transport Association has developed industry guidelines on night time aircraft operations and various policies supporting the Balanced Approach in response to operating restrictions put in place by the EU. These have not been effective in controlling marginally compliant aircraft operations in Australia.

Costs:

- The industry resources required for the development of polices and guidelines and the limitations on control of foreign registered marginally compliant aircraft.
- Voluntary nature of self regulation could see continuation of current situation with some operator reluctance to replace older aircraft.

- Self regulation could open up the opportunity to benefit certain operators at the expense of others or consumers.

Benefits:

- An environmentally conscious air freight industry.
- Increased competition opportunity given current excess air freight capacity.
- Industry's ability to be more responsive to market circumstances.

Option 4 – A National Ban

This approach is actually supported by a number of Australian airport operators, however, such action would not be consistent with the ICAO Balanced Approach.

A blanket ban could be seen as undermining the use of the Balanced Approach and may have adverse impact on Australia's relationship with ICAO and its member states. A blanket ban would also prohibit the operation of all of these marginally compliant aircraft from any Australian airport and have subsequent economic impacts on airports, aircraft owners, operators and users even though there may be no associated noise problem.

It is difficult to accurately estimate the likely cost of a total ban for each operator as there are only a limited number of regular scheduled services provided by marginally compliant aircraft in Australia. Many are run on an ad hoc charter basis. Industry advice is that there is currently excess airfreight capacity available in Australia with no shortage of fully compliant (as opposed to marginally compliant) replacement aircraft available to fill the void if a marginally compliant operator leaves the market.

Costs:

- A total ban will have some economic implications for marginally compliant aircraft owners and operators as well as current users but the quantum would vary across the industry, (keeping in mind the numbers of marginally compliant aircraft are only a small proportion of the air freight industry).
- The two Australian registered marginally compliant aircraft that are currently operating regular schedules are part of a larger fleet and the option would be open to owners/operators to replace any banned aircraft with a quieter more modern aircraft.
- Replacement costs for similar type aircraft, for operators not part of a bigger fleet and with limited options, vary – for a second-hand freight configured Boeing 737 the purchase cost is around (USD) $10m and for a Boeing 757 (USD) $25m.
- Leasing costs for aircraft are around (USD) $2,500 per hour for a Boeing 757 and (USD) $1,000 per hour for a Boeing 737.
- Minor increases to freight costs could result if industry chooses to pass on any additional operating costs.
- Possible impact on Australia's position in the ICAO Council and with other member states given this approach is not consistent with the Balanced Approach.

Benefits:

- A total ban would eliminate the noise problem caused by marginally compliant aircraft; would be well received by airport operators and strongly supported by those individuals and communities affected by the noise problem.
- Increased reliability of service delivery standards due to forced modernisation of fleets.

Option 5 – airport-by-airport restrictions

This option has the potential to be more effective and efficient than a total ban with far less economic impact on the small number of marginally compliant aircraft operators currently operating in Australia. It would allow the Minister to place restrictions on the operations of marginally compliant aircraft on an airport by airport basis, consistent with the ICAO balanced approach, based on an aircraft's complaint history; an approach for action from industry or airport operators; a request from airport Community Consultative Committees; or a business case supporting an ongoing noise problem.

It would require consultation with affected communities and airports and encourage airport operators, aircraft owners and operators, and affected communities to work together to address the noise problem.

Regulations to restrict the operations of marginally compliant aircraft would also provide some industry incentive, for freight operators in particular, to use more modern, less noisy aircraft.

Recent industry advice suggests the economic impact on Australian operators would be negligible in light of current excess air freight capacity and any reduction in operations by marginally compliant aircraft could readily be filled by available, more modern, less noisy, fuel efficient aircraft.

The economic impact on foreign registered marginally compliant aircraft authorised to operate in Australia is more difficult to measure given that majority are ad hoc charter operations. The option to restrict operations on an airport by airport basis would allow the Minister to take into consideration the economic impact on a case by case basis and, where it is established the services are essential, minimise the limitations to the extent possible on a least cost basis by regulating operations through time and runway restrictions.

The Balanced Approach is based on the principle that local environmental issues are best resolved at the local level. Noise management at an airport should be tailored to suit the specific requirements of the airport, its stakeholders and the surrounding community.

Costs:

- Government resources to establish a framework through Regulations; industry consultation; advertising new arrangements to all stakeholders.
- Time and effort on the part of stakeholders (airports, individuals, community consultation committees) in establishing the business case for restrictions based on evidence of associated noise problems.
- Change to business arrangements if restrictions are imposed and potential loss of business by operators of marginally compliant aircraft types in the event time restrictions impact on the service provided.

- In a worst case scenario, costs to aircraft operators of acquiring quieter aircraft to replace those whose operations may be restricted or prohibited.
- Minor increases to freight costs could result if industry chooses to pass on any incurred increased operating costs.

Benefits:

- Framework available to assist stakeholders impacted by adverse noise levels to seek Ministerial action to restrict the operations of marginally compliant noisier aircraft at particular airports.
- Demonstrated action to improve the environment helps reduce community animosity towards aircraft operations at the airport and assist with the long term future of the airport as an economic asset.
- The ability of the Minister to impose restrictions on an airport by airport basis should act as an incentive to aircraft operators to provide freight operations with modern, quieter aircraft without fear of being undercut by operators of marginally compliant aircraft.
- Environmental benefits achieved by restrictions at any airport flow on to other airports on the operators' networks.
- Greater fuel efficiency of modern aircraft replacing marginally compliant types has greenhouse benefits and local air quality improvements.
- Increased reliability of service delivery standards where operators choose to modernise fleets.

5 Consultation

In 2005, the then Department of Transport and Regional Services (now Department of Infrastructure, Transport, Regional Development and Local Government) released a discussion paper relating to operations of marginally compliant aircraft and the introduction of the ICAO Balanced Approach concepts with the view to limit/restrict the operations of marginally compliant aircraft from Australian Airspace. This process attracted a total of 32 submissions, of which 18 supported the proposed phase-out. At the time there were 13 marginally compliant aircraft registered on the Australian Register.

The paper was distributed to airports, aircraft operators, express freight operators and government agencies and made available on the Department's website.

Responses from the express freight industry and aircraft operators were generally not supportive of the concept put forward in the Discussion Paper. Their main concerns were:

- There should be no distinction between 'marginally' compliant and compliant Chapter 3 aircraft;
- Proposed phase out was not consistent with the ICAO Balanced Approach;
- The likely flow on impact on the express air freight network of phase out on an airport by airport basis.

While the freight operators did not support the proposal, they indicated that the marginally compliant Boeing 727 aircraft currently being used in the Australian air freight industry were likely to be phased out and replaced by more modern aircraft within the next five years. In their view, this would resolve the issue without requiring any regulatory action.

Of the specific air freight operators strongly opposed to the proposal in 2005, that is TOLL Transport Group, Heavy Lift, Asian Express Airlines (DHL) and National Jet Systems, TOLL and National Jet Systems no longer operate marginally compliant aircraft, HeavyLift Cargo Airlines are not operating domestically, and Trans Tasman Cargo Airlines (DHL) operate one Boeing 727 on a daily Sydney to Auckland run.

Responding airport operators were generally in favour of the proposal, although some wanted to see a uniform national approach initiated by the Australian Government rather an airport-by-airport approach initiated by the airport operator.

The State Government agencies were also generally supportive of the proposal, with the exception of the Tasmanian Department of Infrastructure, Energy and Natural Resources concerned about possible network effects if restrictions were imposed at one or more noise sensitive airports. Current advice from industry indicates marginally compliant freight aircraft are no longer being used on scheduled freight services to Tasmania.

In 2008 and 2009, as part of the Australian Government's development of a *National Aviation Policy Statement* an 'Issues Paper' and subsequent 'Green Paper' were released by the Government for public comment.

Both documents canvassed the proposal to limit the operations of, and phase out, marginally compliant Chapter 3 aircraft on an airport by airport basis. Over 220 submissions were received for the Green Paper alone. While there was general support for operating restrictions on older noisy aircraft there were no submissions that dealt in detail with the proposal for limiting the operations of marginally compliant Chapter 3 aircraft.

6 Conclusion and Recommended Option

The recommended option is to introduce Regulations under the *Air Navigation Act 1920* to enable the Minister to limit the operations of marginally noise compliant (ICAO) Chapter 3 aircraft at a particular airport by:

- restricting the operations of particular aircraft to certain less sensitive hours;
- limiting operations of particular aircraft to certain runways; or
- preventing operations unless supported by a fully developed business case including community support.

The intention is for the framework to be implemented on an airport-by-airport basis and the aircraft noise mitigation measures developed for this purpose will be based on methodologies outlined in the ICAO document *Guidance on the Balanced Approach to Aircraft Noise Management (2nd Edition - 2008).*

Implementation and Review

Proposed Regulatory Framework

The proposal is to establish a framework under legislation which enables the Minister for Infrastructure, Transport, Regional Services and Local Government to impose limitations on, or restrict the operations of, marginally compliant Chapter 3 aircraft where it has been established such aircraft are creating a noise problem at a particular airport.

If the Minister agrees to limit operations, these will be promulgated through a notice Gazetted under the Regulations identifying the airport; the aircraft affected; and the operational restrictions imposed.

Process

Where the Minister is satisfied that the operations of (a) marginally compliant aircraft are creating a significant noise problem at a particular airport, he or she will provide notice in writing to the operator of the offending aircraft advising an intention to impose restrictions on operations; the type of restrictions proposed; and providing 28 days for the aircraft operator to advise why such restrictions should not be imposed.

Scope of the Regulations

Any restrictions introduced will apply to all relevant aircraft, whether domestic or foreign registered operating at the particular airport where it has been established there is a noise problem as the result of the operations of marginally compliant Chapter 3 aircraft.

The Regulations would provide for the Minister (or Delegate) to apply penalties for non-compliance with published operating restrictions.

Restrictions will be published under Special Procedures in Airservices Australia's En- Route Supplement Australia and also in the Departure and Approach Procedures manual.

Irrespective of any Gazetted operating restrictions, the Regulations will make provision for a marginally compliant aircraft to be operated in exceptional/emergency circumstances.

Potential Restrictions

Restrictions on the operation of marginally compliant Chapter 3 aircraft may include:

- no addition rules (to prevent the aircraft operator from replacing existing aircraft or introducing additional marginally compliant Chapter 3 aircraft to his/her fleet);
- limits on the number of movements;
- restrictions on the times of movements;

- direction on the runways and flight paths to be used;
- a controlled phase out of the current movements over time (e.g. the number of movements by each operator to be reduced each year by a certain percentage of their values at the date of the Gazetted announcement of the Minister's approval of the restrictions); and
- prevent operations.

Decision Criteria

In considering whether to impose operating restrictions on large, marginally compliant aircraft at an airport, the Minister (or Delegate) will take into account:

- consultations with the airport operator and the airport's Community Consultation Committee (if it exists);
- whether the proposed restrictions are reasonable;
- whether the aircraft type(s) to be affected falls within the definitions of 'large' and 'marginally compliant' as described in section 4; and
- whether the restrictions comply with ICAO Guidance on the Balanced Approach.

Review of decisions

Application may be made to the Administrative Appeals Tribunal for a review of a decision by the Minister to impose operating restrictions on large, marginally compliant Chapter 3 aircraft.

Airports, industry and other key stakeholders will be advised in writing of the proposed Regulations. This information will also be made available via the 'Aircraft Noise' page on the Department's website, articles in the media and any other form of face-to-face consultation that may be deemed necessary. As the organisations representing the interests of the air freight industry, the Overnight Air Operators Association and the International Air Transport Association will be key points of liaison to ensure this information is distributed to all potentially affected parties. The Regulations would come into effect on the Gazettal date.

To ensure a smooth transition, administration of the new regulatory regime will be monitored continuously. Monitoring will focus on feedback from the major stakeholders, administrative costs and the overall effectiveness of the new regulatory regime.

Should problems arise in any of these areas, the Department will liaise with stakeholders and review the regime and the supporting arrangements. The Regulations will be scheduled for review on a five-yearly basis in line with Australian Government Best Practice Regulation requirements.