**Archerfield** Airport Corporation
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Aviation White Paper Branch
Domestic Aviation & Reform Division
Department of Infrastructure, Transport, Regional Development, Communications and the Arts
GPO Box 594
CANBERRA ACT 2601

Sent by email: aviationwhitepaper@infrastructure.gov.au

Dear Review Committee,

Thank you for the opportunity to contribute some thoughts for your consideration. My perspective is that of a participant in the privatization of the former FAC airports, one of the few who has remained engaged in the industry these past twenty-five years.

To give support to my reflections, I have attached a couple of extracts from the many documents that embodied the visions conceived by the Hawk/Keating Government and implemented by the Howard Government. The first extract comes from "Phase 2 Federal Airports - Regulatory Framework - November 1997 ". I draw particular attention to Section 2.3, because I want to suggest that the flexibility afforded by non-core status has been overlooked/forgotten, and it can and should be resurrected.
The second extract comes from "Archerfield Airport Information Memorandum - November 1997." And again I draw attention to Section 2.4 "Provision of Services by Airservices Australia", because it illustrates a difficulty that persists with regard to Tower Services, and to which I will refer later.

I invite you to read them now to give substance to what follows.

.....

The privatization of the former Federal Airports became a model for similar divestments across the world. It freed capital expenditure from the vagaries of election cycles, and released a dynamic that is still palpable a quarter of a century later. By all reasonable yardsticks it has been a resounding success. So I hope my comments will be received as constructive encouragement, rather than despair.

The interlude after privatization was a golden period of endeavour and transformation. The Commonwealth found itself in a Private Public Partnership before the term even had currency. The Commonwealth became lessor/landlord of businesses with responsibilities to the lessees, and also the practical imperative to enable the lessees to maximize the potential that the Australian Government had entrusted to them. The role of facilitator was embraced

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by the Government with encouragement and goodwill. At the same time, the Commonwealth also became the regulator. This was more familiar ground. A wealth of experience and resources and procedures was at its disposal.

Balancing the two dynamics was always going to be problematic.

By an accident of politics and timing, the non-core airports Archerfield, Essendon, Jandakot, Moorabbin, Mt Isa, Parafield and Tennant Creek found themselves shoehorned in to the Airports Act, but with the assurance of a minimalistic, light-handed, supportive regime.

Somehow, somewhere, someone determined that it would be easier/ more efficient/ more convenient/ if the full force of the Airports Act applied to all regulated airports. The new determination began with bracket creep about 2004. Airport Environment Officers were directed to cease facilitating and confine their attention to regulating. Australian Noise Exposure forecasts went from being encouraged, to recommended, to required, to regulated. Formulaic documentation based on 'best practice' from major airports was demanded, with nil consideration of proportionality and burden. The accumulated result of multiple such demands has caused a diversion of focus and an erosion of staffing resources. Aspirations at the smaller scale airports have been thwarted and progress in the non-core airports has been unnecessarily hindered.

Th Australian Government Guide to Regulation issued in March 2014 notes among its policies that "regulation should be imposed only when it can be shown to offer an overall net benefit". Certainly, the current inclination to lump common demands on both Core and Non-Core Regulated Airports is administratively expedient, but does it justify the burden the Metro airports carry when Wellcamp, Toowoomba, Sunshine Coast, Rockhampton, Cairns, Caboolture, Redcliffe, Caloundra, and every other airport in Queensland bar Brisbane can operate successfully outside the compliance regime currently imposed on Metropolitan Airports? Did no-one notice and wonder when Cairns Airport was sold with the Information Memorandum highlighting the benefit that it was "Not a Regulated Airport"?

One size doesn't fit all and it certainly doesn't suit non-core airports. It was never envisaged that it would. There are many examples of the inappropriateness of the "one-size" model. An obvious one that illustrates my point is Wind Shear. The requirement to model wind-shear effect was introduced in response to an incident at Canberra Airport, and adapted from pioneer regulation at Schiphol International. But because of the relative footprint sizes of metro airports, and the mandated activation distances in the Regulations, almost all developments on Metro Airports are ensnared with attendant delays and costs, while the core airports (the target of the Regulation) are relatively unscathed. And when the disproportionality is brought to attention, the reaction is firstly surprise, and then a demure that it is for the common good. In a similar manner, the handling of PFAS contamination is causing disproportional burden at the bottom end of the airport chain. Those handling the matter seem unaware of the consequences of their zealotry. Finesse is foolishness when it leads to overkill. Several projects at metro airports are stalled/burdened because naturally occurring PFAS traces exceed current designated investigation levels.

My point is that Metro airports are important elements of Australia's aviation network, and they need to be freed from unnecessary oversight. They play a vital role in Training, and Maintenance, and Emergency Services. They have a central role to play in the emerging

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markets of eVTOL and UAM. And unless someone champions them, their potential can go unrealized. Now is the time to discuss whether they should be non-regulated, as was originally intended. Or light-handedly administered by a separate section of D.I.R.D.

Meanwhile, can I make a direct appeal for acknowledgement of Metro Airports lest they disappear from government consciousness? There have been many Regional Initiatives and Funding Schemes in recent years, and several Capital City supports. The Metropolitan Airports are often the only links between the Regions and the Capitals, but they have been excluded from eligibility. I'm sure it is not an intentional oversight, and I hope my observation might help to correct it.

And finally, I direct attention to the matter of Tower Services that I mentioned at the introduction. The notion of a government agency acting as doorman to a private enterprise was obviously at odds with the concept of privatization. An undertaking was given to ameliorate the detriment within twelve months of privatization. But twelve months later, the public enthusiasm for privatization was waning. And with the threat of industrial action ahead of the Sydney Olympics, the matter was quietly shelved. The result has been an uneasy compromise that has been generally abided. Inevitably, a few Tower Services individuals have pursued personal agendas to the disadvantage of the host ALC, but in general, prudent leadership has minimized such occurrences. A bigger disconnect has been in areas of pricing policy and hours of operation. But now we have a crisis on our hands and no one seems to be aware of the consequences that are playing out. For whatever reason Tower Services emerged from Covid with a staffing shortage. As a coping mechanism, restricted slot allocations have been imposed for training circuits. A direct consequence is that circuit training has been pushed outside Tower hours. Our Fly Neighbourly policy has been undermined, and disaffected residents are welcoming activists who see an opportunity to further their political ambitions. Our social licence is under threat, while AsA meanders towards amelioration with an ever receding timeline. Our acting doorman isn't doing his job, and because his intended replacements are all being trained, and his supervisors are all in acting positions, we are having trouble drawing attention to our jeopardy. No one at an airport wants to hear the "C--f-w" word, but it is being muttered here for the first time and we need a reaction now before it becomes a battle cry. Emergency Services, Polair, and Firefighting need 24 hour capability. That 24 hour capability is being threatened, and the agency responsible for the threat is seemingly indifferent to the urgency of the situation.

.....

As I look back over the last twenty-five years, I marvel at the foresight behind THE LEGAL AND CONTRACTUAL FRAMEWORK presented by the Australian Government Solicitor to potential purchasers of Phase 2 Airports at the Sydney briefing September 15, 1997. The vision was elevated and fixed, but the political complexity of dealing with core, non-core, and joint-user airports across state jurisdictions was acknowledged. In the final wash-out, agreement among the states couldn’t be secured within the required time frame, so the preference to free-hold the non-core airports was abandoned, and the default "Lighthanded Leasehold Option" was adopted:-

".....in the event that agreement with the States/Territories is not forthcoming for the freehold option then the fallback option would see the airports being leased in accordance

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with the Airports Act 1996. As these airports are not "core regulated" airports under the Airports Act there are a number of provisions in the Airports Act which will not, as of right, apply."

As I have noted, the lighthanded leasehold option was progressively obliterated from about 2004 onwards. A door was closed. One regulating officer declared that all regulated airports were "core regulated", and with that sleight of hand, all governance principles of proportionality were abandoned. History, and law, and intention were rewritten on a misguided whim, and the non-core airports have struggled under a full compliance burden ever since.

Regardless of how it might be rationalized, the reality is that bureaucratic convenience has taken precedence over public purpose. Human nature being what it is, I doubt that balance can be restored and maintained under the present set-up. That is why I urge that the original intention to freehold the non-core airports be revisited, so that the Metros can compete and contribute on an even footing with all the other airports in the state networks.

Yours faithfully,

Gavin J. Bird AM
Managing Director
Archerfield Airport Corporation

# 2.1 LEASEHOLD OR FREEHOLD SALES

The eight core regulated airports will be sold by long term leasehold. Each lease will be for 50 years with an option for an additional 49 years. Core regulated airports, defined under the Airports Act 1996, are Adelaide, Alice Springs, Canberra, Coolangatta, Darwin, Hobart, Launceston and Townsville.

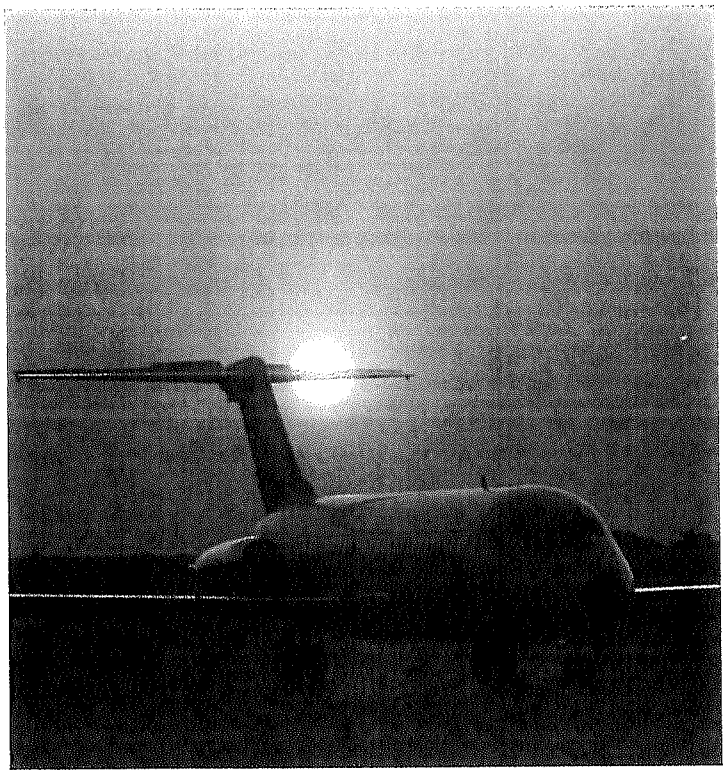
Subject to reaching agreement with relevant State or Territory Governments and to the passage of relevant amendments to the Airports (Transitional) Act 1996, the Commonwealth proposes to sell the remaining seven airports (the five General Aviation airports, Mount Isa and Tennant Creek) on a freehold basis. This is in recognition of the regional and local focus of the airports. This should reduce the complexity of the sales process and, more importantly, simplify ongoing regulation, particularly in relation to planning and zoning matters. It means that only one level of Government (State) will be required to make the key decisions on planning, environment and other related issues at these airports.

Discussions are currently underway with the States and Territories in relation to land use and planning issues associated with retaining the airports as aviation facilities under a freehold sale option.

The Government, at this stage, retains the flexibility to proceed with leasehold sales for all airports if required. In that case, some parts of the Airports Act could be applicable to these airports.



# 2.2 CORE REGULATED AIRPORTS

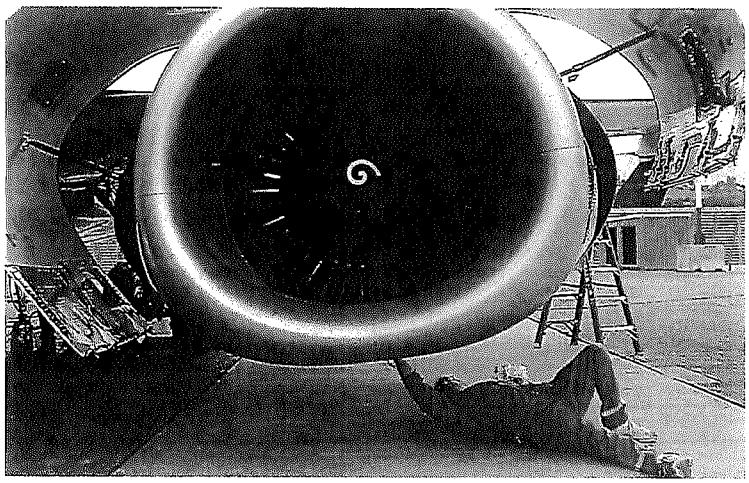


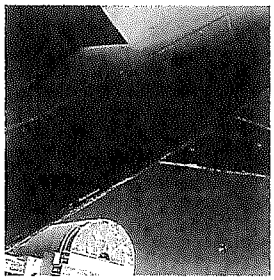
The Airports Act 1996 establishes a regulatory framework for the major Federal airports, defined as core regulated airports as listed above.

Key provisions of the Act include the following:

- Requirement that an airport lessee company's business be limited to operating and developing the airport and incidental activities;
- Foreign ownership, airline ownership and cross ownership restrictions;
- Requirement for the airport lessee company to provide an airport master plan, major development plans, environment strategies and to satisfy various building requirements and environmental obligations;
- Quality of service monitoring and reporting;
- Requirement for accounts and reports of airport operator companies;
- Access regimes to apply to the airports; and
- Ability of the Minister to formulate demand management schemes at airports.

# 2.3 OTHER PHASE 2 AIRPORTS



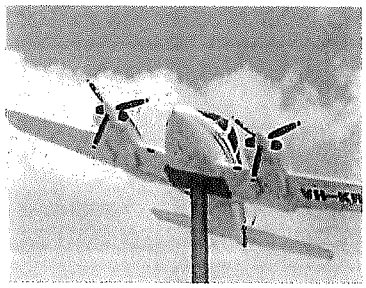


The Commonwealth's intention is to apply a limited regulatory approach to the remaining seven airports, Archerfield, Essendon, Jandakot, Moorabbin, Mount Isa, Parafield and Tennant Creek if sold by leasehold. If sold freehold, regulation will be put in place by the relevant State. The main objective of the Commonwealth Government is to ensure that these airports continue to be operated as airports. These airports will remain subject to generally applicable civil aviation safety and security obligations.

# 2.4 OWNERSHIP

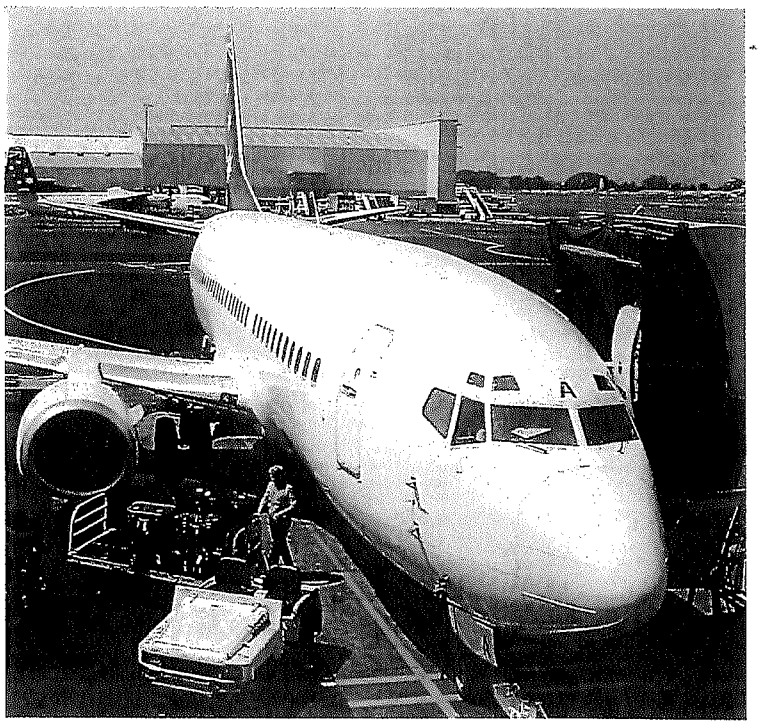
It is a requirement of the Airports Act 1996 that core regulated airports be majority Australian owned and individual airlines or associated interests are limited to 5% ownership.

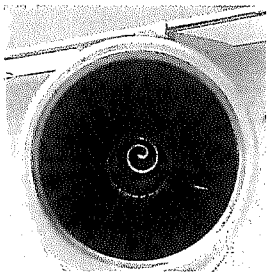
The remaining airports will be subject to general investment legislation, including the Foreign Acquisitions and Takeovers Act 1975.





# 2.5 PRICE REGULATION





Price regulation using a CPI-X price cap will apply to all eight core regulated airports. Price caps will be determined by the Minister for Transport and Regional Development on advice from the Australian Competition and Consumer Commission (ACCC). The ACCC will also be responsible for the implementation of the price cap; for related price monitoring; and for quality of service monitoring. The pricing arrangements will apply for 5 years. A review will take place at the end of the period to determine if price regulation will continue.

Price regulation is not planned to apply to Tennant Creek, Mount Isa or the 5 General Aviation airports.

# 2. Regulation and Investment Climate

## 2.1. Introduction

The *Airports Act 1996* (**Airports Act**) makes a key distinction between core regulated airports and other airports. Core regulated airports are required to be leased under the Act and are subject to the full regulatory regime that is set out in the Act, including Commonwealth controls of the land use and environmental issues. At present the core regulated airports are all the RPT airports excluding Mount Isa and Tennant Creek. The non-core regulated airports are accordingly Mount Isa and Tennant Creek plus each of the general aviation airports, that is Archerfield, Essendon, Jandakot, Moorabbin and Parafield.

The Commonwealth has indicated its preference for selling the non-core regulated airports by means of a freehold sale rather than on a leasehold basis. Sale on a freehold basis is conditional upon satisfactory arrangements being reached with the relevant States and Territories, with a commitment from the States and Territories that their planning, zoning and environmental laws will enable the airport site to operate as an airport. In addition, it is also necessary for amendments to the *Airports (Transitional) Act 1996* contained in the *Airports Legislation Amendments Bill 1997* which is currently before Parliament to be enacted to allow a freehold sale to proceed.

## 2.2 Regulation

It is intended that airports sold freehold be regulated primarily under State and Territory law rather than under the framework of the Airports Act. Generally applicable Commonwealth aviation legislation such as the *Civil Aviation Act 1988* and the *Air Navigation Act 1920* will continue to be applicable. See **Section 7.4** of the **General Information Memorandum**.

Lessees of non-core regulated airports are subject to limited regulation under the Airports Act such as in relation to ownership restrictions. The Airports Act allows a number of other provisions which currently only apply to core regulated airports such as those relating to land use planning, building and environmental matters (Parts 5 and 6) to be applied to non-core regulated airports by way of regulation. In making a decision whether to sell an airport freehold or leasehold, the Commonwealth will need to consider which (if any) of these Parts will be made applicable to non-core regulated airports which are to be leased. For an outline of the Airports Act framework and possible developments in this regard see **Sections 7-9** and **11** and **12** of the **General Information Memorandum**.

Non-core regulated airports will not be subject to the pricing regime established for core regulated airports.

## 2.3 Continued Airport Operations

The Commonwealth is concerned to ensure that where a site is sold it continues to operate as an airport. To this end the freehold sale contract provided to purchasers is likely to contain on-going requirements in relation to the continued use of the site as an airport and the provision of access to the airport.

Additionally, the Commonwealth intends to seek commitments from the relevant State or Territory that planning, zoning and environmental laws will, if necessary, be amended to enable the airport site to continue to operate.

It is expected that there will be restrictive covenants placed on all or some of the land comprising the airport site to prevent the airport site being used for a purpose other than an airport without Commonwealth consent. The Commonwealth recognises that for some airports it may not be necessary for the entire airport site to be subject to such a restrictive covenant as certain areas within the airport site may not be necessary for the continued operation of the airport. Bidder views on this issue are expected to be sought (see the **Request for Proposal** for further details).

## 2.4 Provision of Services by Airservices Australia

Airservices Australia (**AA**) owns air traffic control towers and navigation aid facilities at four General Aviation Airport Procedures (**GAAP**) airports (Moorabbin, Jandakot, Archerfield and Parafield airports) and Essendon airport. AA provides aerodrome control and ground movement control services from the towers, and maintenance support for the tower equipment and navigation aids. These services are generically known as terminal navigation services.

Currently AA recovers the cost of the provision of these services through the AVGAS Excise Levy (currently 15.692 cents per each litre of avgas sold in Australia). Consistent with the desire to improve the economic efficiency of airways pricing and the move to a pricing regime which is more equitable and better reflects the costs of providing the services at a particular location, AA proposes to introduce location specific pricing for services provided at each airport.

Under a location specific pricing regime for terminal navigation services, the cost of services provided at each location may vary considerably and could impact upon the level of general aviation activity at each airport.

AA recognises this potential impact on general aviation operations and is therefore prepared to enter into negotiations with the new owners regarding the provision of terminal navigation services during the 12 month period following the sale of the GAAP airports and Essendon airport. The possible options may include, but not be limited to:

- Sale of the AA assets, i.e. towers and navaids to the new airport owner and provision of services under commercial contract to the airport owner;
- Sale of the AA assets, i.e. towers and navaids, to the new airport owner and provision of services, in accordance with appropriate regulations, by the airport owner;
- Restructure the provision of terminal navigation services at the airport over a defined period to achieve agreed cost savings; and
- Assistance to the airport owner in developing appproaches to charging airport users to cover terninal navigation and runway/airport costs.

These options are not mutually exclusive and negotiations may proceed on different bases at different GAAP airports and Essendon airport.