



Aircraft Noise Ombudsman Charter

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Aircraft Noise Ombudsman Charter

Section A: Preliminary Matters

Part 1 – Introduction

Purpose of the Service

- 1 The Aircraft Noise Ombudsman (ANO) has been established as an independent administrative office to:
 - a) review the handling of complaints or enquiries made to Airservices Australia (Airservices) about aircraft noise and in particular the operation of the Noise Complaints and Information Service (NCIS);
 - b) monitor and report on the effectiveness of community consultation processes relating to aircraft noise undertaken by Airservices;
 - c) monitor and report on the effectiveness of the presentation and distribution of aircraft noise-related information.
- 2 The ANO may also make recommendations to the Airservices Board for improvements relating to these matters.

Handling of Complaints

- 3 The review of complaints is free of charge for complainants. The costs of the Service are met by Airservices.
- 4 In dealing with complaints, the ANO:
 - a) must consider Airservices is bound by its statutory obligations as set out in a range of laws particularly, but not limited to, the *Air Services Act 1995*;
 - b) must do what in his or her opinion is appropriate with a view to resolving complaints in a cooperative, efficient, timely and fair manner;
 - c) shall proceed with the minimum formality and technicality; and
 - d) shall be as transparent as possible, whilst also acting in accordance with its confidentiality and privacy obligations.

Scope of the Charter

- 5 The Charter provides guidance as to how the ANO will operate.
- 6 The Charter sets out the appointment, powers and duties of the ANO, who is eligible to lodge a complaint, the types of complaints that the ANO can consider, how the ANO resolves complaints, the types of recommendations that the ANO can make and other related matters.

- 7 The current Ministerial Statement of Expectations dated 3 May 2011, requires Airservices to support the ongoing role of the ANO.
- 8 The Charter is binding upon Airservices and the ANO.
- 9 The Charter is a public document and is to be published on Airservices' website. Superseded Charters will also be published on Airservices' website along with their starting and ending dates.
- 10 The Charter is to be reviewed periodically. A review can be initiated by the ANO or the Board by resolution.

The Chair of the Board Environment Committee (CBEC) will seek the views of management prior to commencing a dialogue with the ANO as to changes to the Charter:

- a) If the CBEC and ANO agree on a revised Charter, the revised Charter is to be presented to the Board for endorsement:
 - i) If the Board endorses the revised Charter, it becomes the Charter;
 - ii) If the Board requests alterations to the revised Charter that are acceptable to the ANO, it becomes the Charter.
- b) To the extent the CBEC and the ANO cannot agree, the matters of disagreement shall be provided to the Board:
 - i) If the Board agrees with the ANO, the position of the ANO will be reflected in the Charter;
 - ii) If the Board does not agree with the ANO, the Secretary of the Department will be asked to facilitate a discussion that resolves the matter.
- c) The Chairman shall advise the Minister when a new Charter takes effect and ensure a media release is made that explains the reason for changes.

Part 2 – ANO Structure

Powers and Duties of the ANO

- 11 The ANO's duties will include:
 - a) reviewing administrative actions relating to the handling of noise enquiries and noise complaints by Airservices, and in particular the Noise Complaints and Information Service (NCIS);
 - b) monitoring and reporting on the effectiveness of Airservices' community consultation processes on aircraft noise-related issues;
 - c) monitoring and reporting on the effectiveness of the presentation and distribution of aircraft noise-related information provided to the community by Airservices;
 - d) making recommendations to the Board for improvements in aircraft noise enquiry and complaint handling, noise information provision, and community consultations;

- e) seeking the advice of Airservices on technical matters;
- f) deciding if the ANO is able under the Charter to consider a complaint and whether the ANO should exercise the discretion to exclude the complaint;
- g) referring complaints that are not related to 11 (a) or (b) or (c) to the appropriate organisation. For example:
 - i) noise complaints relating to civilian aircraft operating from military aerodromes. These would be referred to the Department of Defence or the Royal Australian Air Force where appropriate;
 - ii) curfew and noise insulation issues. These would be referred to the Minister's Department;
 - iii) aircraft ground running complaints. These would be referred to the relevant airport operator;
 - iv) matters relating to land use planning or conveyancing issues. These would be referred to relevant local government or state government agencies, or the Minister's Department unless they relate specifically to the actions of Airservices.

Appointment of ANO

- 12 The Chairman will ensure that a vacancy for the position of ANO is publicly advertised in the major metropolitan media.
- 13 A Selection Committee comprising the Chairman of the Board, the Chair of the Board Environment Committee, one other non-executive director and at least one independent person (that is, not a Director or employee of Airservices) appointed by the Board, will make a recommendation to the Board.
- 14 The Board appoints the ANO. In making the appointment, the Board will consider candidates' objectivity, qualifications, experience and personal qualities.
- 15 The Board will appoint the ANO on terms and conditions, including leave arrangements, as determined by the Board.
- 16 The ANO will generally be appointed for a three year term under contract approved by the Board. The appointment may be extended for an additional term at the discretion of the Board.

Disclosure of Interests by ANO

- 17 Where the ANO has or acquires any interest, pecuniary or otherwise, that could conflict or be perceived to conflict with the proper performance of his or her functions in relation to a matter:
- a) he or she shall disclose the interest to the Chairman of the Board in writing; and
 - b) except with the consent of all the parties to the review and the Chairman of the Board, he or she shall not take part in the matter.

Conflicts of Interest

- 18 A person being considered or appointed to the position of ANO must declare any potential conflicts of interest to the Chairman of the Board.

Removal from Office

- 19 The appointment may be terminated on the grounds of incapacity, misconduct or other good cause following a resolution by the Board.
- 20 The resolution by the Board will specify the grounds for termination and will be immediately provided to the Minister.
- 21 If the ANO becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Board shall remove him or her from office.

Resignation

- 22 The ANO may resign his or her appointment by giving the Chairman of the Board a written resignation. The resignation takes effect on the day notified to the Chairman.

Acting ANO when office vacant

- 23 The Chairman of the Board may appoint an acting ANO for a period of no more than three months until a new ANO is appointed.

Section B: Jurisdiction of ANO

Part 3 – Complaints within Scope of the Service

Eligibility to Lodge a Complaint with the ANO

24 Complaints eligible for review by the ANO must involve Airservices and a complainant. A complainant may be any legal person or community organisation.

Types of Complaints that can be Reviewed by the ANO

25 The ANO will review a complaint by a complainant about Airservices that arises from issues since 1 January 2010 in relation to:

- a) administrative actions relating to the handling of aircraft noise enquiries and complaints by Airservices, including the NCIS;
- b) community consultation processes relating to aircraft noise undertaken by Airservices;
- c) the presentation and distribution of aircraft noise-related information by Airservices subject to a complaint;

26 In the event that a complaint is otherwise within jurisdiction but the matter has not been raised with Airservices, and there are exceptional circumstances that the ANO considers justify the complainant not first raising the matter with Airservices, the ANO may investigate the complaint.

27 A complaint that does not relate to noise emanating from civilian aircraft in flights operating in airspace under the control of Airservices is not subject to investigation by Airservices. Accordingly only the administrative actions of Airservices in referring or rejecting the complaint are subject to ANO review. Airspace under Airservices control includes enroute airspace and terminal airspace at the airports set out in Attachment 1.

Review of Other Matters by Agreement

28 Notwithstanding any other paragraph of the Charter, the ANO may review other matters as determined by the Board. If so, the procedures set out in Section C of this Charter will apply to the review of such matters. Matters may include:

- a) systemic issues which may have been identified by the ANO in the course of reviews;
- b) Airservices' consultation procedures and processes;
- c) the adequacy of information provided to aircraft noise affected communities by Airservices;
- d) initiatives to further improve Airservices' community consultation processes and information services.

Nothing in this paragraph prevents the ANO conducting reviews within the powers set out in paragraph 11 at the ANO's discretion.

Complaints Outside the Scope of the ANO's Jurisdiction

29 The ANO must not review a complaint to the extent that the complaint:

- a) relates to an action or decision taken by the Minister or any government agency other than Airservices;
- b) the complaint relates to Airservices' safety practice or policy and does not involve any allegation of either maladministration or inappropriate application of the practice or policy that directly impacts on aircraft noise outcomes;
- c) is about whether Airservices has met confidentiality or privacy obligations unless the complaint is about confidentiality or privacy issues arising in the context of Airservices' handling of an aircraft noise enquiry or complaint;
- d) where the complaint has been previously dealt with by the ANO or the Commonwealth Ombudsman and there is insufficient additional information raised in the new complaint to warrant the ANO's consideration of the new complaint.

Discretion to Not Review a Complaint

30 The ANO will not review a complaint if:

- a) the ANO considers that the complaint is outside the ANO's jurisdiction as set out under this Charter; or
- b) the ANO decides to exercise discretion under the Charter not to review the complaint as set out in paragraphs 32 and 33.

31 The ANO may refuse to consider, or continue to consider, a complaint, if the ANO considers this course of action appropriate, for example, because:

- a) there is a more appropriate place to deal with the complaint, such as in a court, tribunal or under another complaint resolution scheme such as the Commonwealth Ombudsman;
- b) the complaint being made is frivolous or vexatious or lacking in substance;
- c) after the complaint is lodged with the ANO, the complainant commences legal proceedings against Airservices that are related to the complaint.

Process for Not Reviewing a Complaint

32 The ANO will advise the complainant (and any other parties that are involved in and have been informed about the complaint) and provide reasons for the jurisdictional decision that the complaint will not be reviewed. The complainant must be notified that an objection to this jurisdictional decision may be made in writing to the ANO within 30 days of receipt of this advice.

33 If, within 30 days of receipt of this advice, the complainant objects in writing to a jurisdictional decision made by the ANO, the ANO will re-consider the matter and provide a final jurisdictional decision setting out, as relevant, the reasons for the exclusion or decision to proceed to review the complaint.

Section C: Processes for Review of Complaints

Part 4 – Complaints Lodgement

Lodging of Complaints

- 34 A complainant will be required to lodge a complaint by referring the complaint to the ANO for consideration.
- 35 The complaint can be made by phone, in person or in writing, and either sent by post, email or lodged through electronic lodgement facilities on the ANO website. The ANO will not consider anonymous complaints.
- 36 The ANO will provide information to assist complainants with this process through its website or by mailing out information packs on request.

Provision of Information by the Parties to the Complaint

- 37 The ANO may request that a party to a complaint provide the ANO with any information the ANO considers necessary.
- 38 The complainant must agree to provide the requested information. If the information is not provided, the ANO has the discretion not to pursue the complaint.
- 39 The ANO may request that the information be provided within a timeframe specified by ANO except where the party satisfies the ANO that:
 - a) to provide information would breach a duty of confidentiality to a third party and, despite best endeavours, the third party's consent to the disclosure of the information has not been able to be obtained;
 - b) to provide the information would breach a Court order or prejudice a current investigation by the police or other law enforcement agency; or
 - c) the information does not exist or no longer exists or is not within the party's reasonable possession or control.
- 40 The ANO may request a party to a complaint to do anything else that the ANO considers may assist in the review of the complaint and may take related actions to assist the ANO to review the complaint. This may include:
 - a) requesting a party to a complaint to attend an interview (either in person or via telephone); or
 - b) requesting Airservices to review a complaint further; or
 - c) the appointment of an independent expert to report back to the ANO on a matter pertaining to the complaint.
- 41 Airservices undertakes to co-operate with the investigation of a complaint by the ANO by including but not limited to:
 - a) providing access to relevant information and information systems
 - b) answering relevant queries unless it can demonstrate that a response would involve an excessive and unreasonable workload.

Timeframes

42 Nothing in the Charter or elsewhere restricts the ANO's ability to give a party to a complaint an extension of time (even if the original period, or the period as extended, has ended) should the ANO consider this appropriate.

Multiple Complaints

43 The ANO may review multiple complaints if the complaints relate to similar facts as those set out under paragraph 25.

Part 5 – Deciding Complaints

Rules of Evidence

44 The ANO is not bound by any legal rule of evidence.

Complaint Resolution Criteria

45 The ANO will do what in his or her opinion is fair in all the circumstances, having regard to each of the following:

- a) sound administrative practices;
- b) Airservices' statutory obligations;
- c) applicable industry regulations, codes or guidance;
- d) good industry practice; and
- e) previous relevant decisions of the ANO or the Commonwealth Ombudsman.

46 Nothing under paragraph 45 prevents the ANO providing comment on any of the above matters where this may assist the management of aircraft noise issues.

Specialist Input

47 When reviewing a complaint, the ANO will consult with Airservices in the first instance and seek access to Airservices' specialist advisors as the ANO thinks appropriate.

48 If the ANO seeks specialist advice from other than Airservices or other Australian government agencies, without the need for additional funding, the ANO will advise the Chairman of the Board of doing so within seven days of seeking that advice. Such advice may include advice on continuing future use of that expert advisor.

49 In the course of performing his or her duties the ANO may obtain expert advice from other specialist advisors at the cost of Airservices with the agreement of the Chairman of the Board.

ANO's Obligation to Provide Information to the Parties

50 The ANO may provide the parties with access to certain documentation, information and material that is not public information, upon which the ANO proposes to rely in forming recommendations, with the agreement of the Chairman of the Board.

51 Notwithstanding the previous paragraph:

- a) the ANO is not obliged to make available to the parties any memoranda, analysis or other documents generated by employees or contractors allocated to provide support to the ANO; and
- b) the ANO must not disclose to a party to a complaint information provided by another party to the complaint where the party supplying the information has refused consent to this (and, in the absence of a clear statement to the contrary, the ANO is entitled to assume that consent is given to the material in its entirety being provided to the other parties to the complaint).

52 If a party to a complaint refuses consent to provide information to another party to the complaint, the ANO is not entitled to use that information to reach a decision adverse to the party to whom confidential information is denied unless the ANO determines that special circumstances apply.

Part 6 – Process for Making Recommendations

Process for Making Recommendations

53 After giving the parties a reasonable opportunity to make submissions and provide information about the matters in a complaint, the ANO will make an assessment. The ANO will provide this assessment to Airservices and allow Airservices a reasonable opportunity to resolve the matter. If, in the opinion of the ANO, Airservices does not respond appropriately the ANO may make a recommendation to the Board.

54 The Board will ensure the ANO has access to the information relating to a decision by Airservices where the complaint was due to Airservices' taking action to address an emergency, a formal Direction, or circumstance which due to operational requirements required prompt action which may not have allowed for community consultation.

Recommendations

55 Recommendations must be provided to the Board and:

- a) be in writing; and
- b) set out reasons for any conclusions about a complaint.

Publication and communication of recommendations

56 Reports and Recommendations of the ANO are to be provided to the Secretary of the Board.

57 The Board must consider and respond to these at its next or subsequent meeting.

58 Once the Board has responded, its response and reports or recommendations are to be made public by the ANO. In the event the Board does not agree with the ANO recommendation, a joint press release, approved by the Chairman of the Board and the ANO, will be issued outlining the basis of the ANO's position and the Board's response.

Section D: ANO Reporting Obligations

Part 7 – Reporting

Notification of Recommendations

59 For all recommendations, the ANO will:

- a) provide written advice to the complainant;
- b) publish the information on the ANO website;
- c) provide written advice to any body that the ANO has a written agreement with for release of such information.

60 The ANO will provide regular reports on complaints reviewed and recommendations to the Board.

Reporting to the Minister

61 The Board will provide quarterly reports to the Minister (copied to the Secretary of the Department) on the activities of the ANO. Reporting will include the following:

- a) any recommendations made by the ANO;
- b) the actions taken by the Board in respect of the recommendations;
- c) any proposed changes to the Charter;
- d) a report of the annual review of the ANO's activities.

Recommendations on Systemic Issues, Information and Consultation Processes

62 A systemic issue is an issue that will have an effect on Airservices or parties associated with the complaint.

63 The ANO may identify and review systemic issues and refer these to the Board. The Board may request that the ANO review these issues and make recommendations as appropriate.

64 The ANO can also, in monitoring the effectiveness of the provision of aircraft noise-related information to the community and community consultation processes, make written recommendations for the Board's consideration outlining measures for improving the performance of these functions.

Part 8 – Collection of Information by ANO

Data Collection

- 65 The ANO must collect and record comprehensive information pertaining to complaints, for example:
- a) the number of complaints;
 - b) the demographics of the complainants (where practicable);
 - c) details of complaints which were not reviewed by the ANO and why;
 - d) the outcome of complaints that were reviewed by the ANO;
 - e) the current caseload including the age and status of open cases;
 - f) the time taken to resolve complaints; and
 - g) a profile of complaints that identifies:
 - (i) the cause of the complaint;
 - (ii) recommendations made to the Board; and
 - (iii) any systemic issues or other trends identified.

Publication of Data

- 66 The ANO must produce an annual report for publication and provision to the Board, the Minister and the public. This report must be a comprehensive summary and analysis of the data collected. Amongst other things, it will include the following statistical information:
- a) the number of complaints referred to the ANO;
 - b) the number of complaints finalised; and
 - c) the outcome of those complaints.
- 67 The Report will be included in the Airservices Annual Report which is tabled by the Minister in Parliament on an annual basis.
- 68 The Report will be published on the ANO website.

Section E: Other Matters

Part 9 – Legal Proceedings and Other Matters

Legal or Other Proceedings

- 69 Where a complainant lodges a complaint with the ANO, Airservices must not instigate any proceedings against the complainant relating to any aspect of the subject matter of the complaint;
- 70 If a complaint is subsequently reviewed by the ANO and the recommendation is accepted by the Board, Airservices will abandon any aspect of proceedings against the complainant that are inconsistent with that decision.

Defamation Protection

- 71 Airservices shall not instigate defamation action of any kind against a complainant in respect of allegations made to the ANO by the complainant about Airservices.

ANO's Confidentiality Obligations

- 72 The ANO must keep confidential all information pertaining to a complaint that is provided to the ANO except:
- a) to the extent reasonably necessary to carry out the ANO's responsibilities including under the Charter or for any incidental purpose; or
 - b) as required or permitted by law.

Non-compliance with the Charter

- 73 Where Airservices fails to meet its obligations under the Charter, the ANO may make a written complaint and recommendation to the Board.

Section F: Interpretation of Defined Terms

Defined terms

The following words have the following meanings where they appear in the Charter:

“Aircraft Noise” refers to noise generated by all operations by international, domestic and regional airlines, general, sport and recreational aviation using aircraft, helicopters, balloons and other forms of air transportation.

“Airservices” means Airservices Australia, the body established under the *Air Services Act 1995*.

“ANO” means Aircraft Noise Ombudsman.

“Australia” includes the external territories.

“Board” means the Board of Directors of Airservices Australia.

“Chairman” means the Chairman of the Board of Airservices Australia.

“Chair of the Board Environment Committee” means the Chair of the Airservices Australia Board Environment Committee or the Chair of any other Committee of the Board of Airservices Australia that has carriage of environment issues.

“Complainant” means a person who has a complaint that has been lodged with the ANO and who under the Charter is eligible to use the Service.

“Direction” means an instruction issued by the Minister or the Regulator which due to legislative requirements must be addressed by Airservices.

“Jurisdictional Decision” means a final decision as to whether, under the Charter, ANO is able to review a complaint or whether ANO should exercise his or her discretion to exclude a complaint.

“Minister” means the Minister responsible for the *Air Services Act 1995*.

“Ombudsman” means the person appointed by the Board of Airservices to be the Aircraft Noise Ombudsman.

“Party to a Complaint” means the Complainant, Airservices, and any other legal person or community organisation with an active interest in the complaint.

“Predecessor Scheme” means Commonwealth Ombudsman and any other approved external complaint resolution scheme which merges with the ANO.

“Regulator” means the Civil Aviation Safety Authority (CASA).

Attachment 1 – List of airports where Airservices provides air traffic management services.

The airports where Airservices provides air traffic management services as at 11 April 2012 were:

- ⇒ Adelaide
- ⇒ Albury
- ⇒ Alice Springs
- ⇒ Archerfield
- ⇒ Avalon
- ⇒ Bankstown
- ⇒ Brisbane
- ⇒ Broome
- ⇒ Cairns
- ⇒ Camden
- ⇒ Canberra
- ⇒ Coffs Harbour
- ⇒ Essendon
- ⇒ Gold Coast
- ⇒ Hamilton Island
- ⇒ Hobart
- ⇒ Jandakot
- ⇒ Karratha
- ⇒ Launceston
- ⇒ Mackay
- ⇒ Melbourne
- ⇒ Moorabbin
- ⇒ Parafield
- ⇒ Perth
- ⇒ Rockhampton
- ⇒ Sunshine Coast
- ⇒ Sydney
- ⇒ Tamworth