



# 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) is an independent administrative office that:
  - a) reviews the handling of complaints or enquiries made to Airservices Australia (Airservices) or the Department of Defence (Defence) about Aircraft Noise;
  - b) monitors and reports on the effectiveness of community consultation processes relating to Aircraft Noise undertaken by Airservices and Defence;
  - c) monitors and reports on the effectiveness of the presentation and distribution of Aircraft Noise-related information; and
  - d) provides targeted reviews of specific aspects of Aircraft Noise management as requested by Airservices and Defence.
- 2 The ANO may make recommendations to the Board or the Chief of Air Force for improvements relating to these matters.

#### **Handling of complaints**

- 3 The ANO's review of complaints is free of charge for Complainants. The costs of the service are met by Airservices, to the extent that the complaint relates to civil Aircraft Noise and Defence, to the extent that the complaint relates to Aircraft Noise from Military Aircraft.
- 4 In dealing with complaints, the ANO:
  - a) must consider that Airservices is bound by statutory obligations as set out in a range of laws including the *Air Services Act 1995* (Cth);
  - b) must consider that Defence is bound by legal obligations as set out in a range of laws, Defence instructions and agreements;
  - c) must do what in his or her opinion is appropriate with a view to resolving complaints in a cooperative, efficient, timely and fair manner;
  - d) will proceed with the minimum formality and technicality; and
  - e) will be as transparent as possible, whilst also acting in accordance with its confidentiality and privacy obligations.

## **Overview of this Charter**

- 5 Use of the ANO as an independent review mechanism for Aircraft Noise management is supported by:
  - a) the Minister Responsible for Airservices' Statement of Expectations dated 29 April 2013, which requires Airservices to support the ongoing role of the ANO; and
  - b) the Minister for Environment's approval for Super Hornet flying operations at RAAF Base Amberley dated 23 March 2010, which requires Defence to establish a qualified independent noise complaint and review mechanism similar in role and function to the ANO.
- 6 This Charter is a public document and is to be published on the websites of Airservices and Defence. Superseded Charters will also be published on Airservices' website, along with their start and end dates.
- 7 This Charter is to be reviewed periodically. A review can be initiated by the ANO, the Board by resolution or by Defence.
- 8 When a new or revised Charter takes effect:
  - a) the Chair will advise the Minister Responsible for Airservices;
  - b) the Chief of Air Force will advise the Minister Responsible for Defence; and
  - c) the parties will ensure a media release is made that explains the reason for the changes.

## **Part 2 – ANO Structure**

### **Powers and duties of the ANO**

- 9 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, by the team responsible for handling noise complaints and information requests;
  - b) reviewing administrative actions relating to the handling of noise enquiries and noise complaints by Defence and, in particular, as part of the Australian Super Hornet Noise Monitoring and Complaints Handling Strategy and the Australian Super Hornet Noise Monitoring and Complaints Resolution Strategy;
  - c) monitoring and reporting on the effectiveness of Airservices' and Defence's community consultation processes on Aircraft Noise-related issues;
  - d) monitoring and reporting on the effectiveness of the presentation and distribution of Aircraft Noise-related information provided to the community by Airservices and Defence;
  - e) providing independent review of Airservices' and Defence's Aircraft Noise management systems, in total or in part;
  - f) making recommendations to the Board or the Chief of Air Force for improvements in Aircraft Noise enquiry and complaint handling, noise information provision and community consultations;

- g) seeking the advice of Airservices and Defence on technical matters;
- h) deciding whether the ANO has jurisdiction under this Charter to consider a complaint and whether the ANO should exercise its discretion to exclude the complaint; and
- i) referring complaints that the ANO considers are outside the ANO's jurisdiction to the appropriate organisation.

### **Appointment of ANO**

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

### **Disclosure of interests by the ANO**

- 15 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 will disclose the interest to the Chair and to the Chief of Air Force in writing; and
  - b) except with the consent of all the parties to the matter, the Chair and the Chief of Air Force, he or she will not take part in the matter.

### **Removal from office**

- 16 The ANO's appointment may be terminated on the grounds of incapacity, misconduct or other good cause following a resolution by the Board, subject to prior consultation with Defence.
- 17 The resolution by the Board will specify the grounds for termination and will be immediately provided to the Minister Responsible for Airservices.
- 18 Without limiting paragraphs 16 and 17, 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 will remove him or her from office.

## **Resignation**

19 The ANO may resign his or her appointment by giving the Chair and the Chief of Air Force 3 months' written notice. The resignation takes effect on the day notified to the Chair.

## **Acting ANO when office vacant**

20 The Chair may appoint an acting ANO for a period of no more than three months until a new ANO is appointed. Defence will be consulted prior to such appointment.

## **Section B: Jurisdiction of ANO**

### ***Part 3 – Complaints within scope of the ANO’s jurisdiction***

#### **Eligibility to lodge a complaint with the ANO**

21 Complaints eligible for review by the ANO must be in relation to Airservices’ or Defence’s handling of an Aircraft Noise issue as outlined below. A Complainant may be any legal person or community organisation.

#### **Types of complaints that can be reviewed by the ANO**

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

- a) administrative actions relating to the handling of civilian Aircraft Noise enquiries and complaints;
- b) community consultation processes and procedures relating to civilian Aircraft Noise; and
- c) presentation and distribution of civilian Aircraft Noise-related information.

23 The ANO will review a complaint by a Complainant about Defence that arises from issues since 1 July 2014 in relation to Defence’s:

- a) administrative actions relating to the handling of enquiries and complaints regarding Aircraft Noise from Military Aircraft;
- b) community consultation processes and procedures relating to Aircraft Noise from Military Aircraft; and
- c) the presentation and distribution of information related to Aircraft Noise from Military Aircraft.

24 In the event that a complaint is within the ANO’s jurisdiction but the Complainant has not first raised the matter with Airservices or Defence, the ANO may, in exceptional circumstances, decide to investigate the complaint.

25 Where a complaint is not subject to investigation by Airservices or Defence, only the administrative actions of Airservices or Defence in referring or rejecting the complaint are subject to ANO review.

#### **Review of other matters**

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

27 Nothing in this Section B prevents the ANO conducting reviews within the powers set out in paragraph 9 at the ANO’s discretion.

#### **Complaints outside the scope of the ANO’s jurisdiction**

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

- a) relates to an action or decision taken by any Minister or any government agency other than Airservices or Defence;



- b) relates to Airservices' or Defence's 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 or Defence has met confidentiality or privacy obligations unless the complaint is about confidentiality or privacy issues arising in the context of Airservices' or Defence's handling of an Aircraft Noise enquiry or complaint; or
- d) 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 not to review a complaint**

29 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 this Charter not to review the complaint as set out in paragraph 30.

30 The ANO may elect not 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; or
- c) after the complaint is lodged with the ANO, the Complainant commences legal proceedings against Airservices, Defence or the ANO that are related to the complaint.

### **Process for deciding to not review a complaint**

31 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 decision that the complaint will not be reviewed. The Complainant must be notified that an objection to this decision may be made in writing to the ANO within 30 days of receipt of this advice.

32 If, within 30 days of receipt of this advice, the Complainant objects in writing to a decision made by the ANO, the ANO will re-consider the matter and provide a final 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 complaints**

- 33 A Complainant will be required to lodge a complaint by referring the complaint to the ANO for consideration.
- 34 The complaint can be made by following the process outlined on the ANO website. The ANO will not consider anonymous complaints.
- 35 The ANO will provide information to assist Complainants with this process on its website or by mailing out information packs on request.

#### **Provision of information by the Parties to the Complaint**

- 36 The ANO may request that a Party to a Complaint provide the ANO with any information the ANO considers necessary in order to investigate a complaint.
- 37 The ANO may request that the information be provided within a timeframe specified by the ANO.
- 38 A Party to a Complaint must agree to provide the requested information unless:
  - a) providing the 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) providing the information would breach a Court order or prejudice a current investigation by the police or other law enforcement agency;
  - c) providing the information would breach an operational, commercial-in-confidence, or Australian Government Security Classification System caveat; or
  - d) the information is not within the party's possession, power or control.
- 39 If the information is not provided, the ANO has the discretion to not investigate the complaint.
- 40 The ANO may request a Party to a Complaint to do anything else that the ANO reasonably considers may assist in the review of the complaint. This may include:
  - a) requesting a Party to a Complaint to attend an interview (either in person or via telephone);
  - b) requesting Airservices or Defence to review a complaint further; or
  - c) appointing an independent expert to report back to the ANO on a matter pertaining to the complaint.

- 41 Airservices and Defence will co-operate with the investigation of a complaint by the ANO, including by:
- a) providing access to relevant information and information systems, subject to any operational, commercial-in-confidence, or security-related caveats; and
  - b) answering relevant queries unless it can demonstrate that a response would involve an excessive or unreasonable workload.

### **Timeframes**

- 42 Nothing in this Charter 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 issues and are otherwise within the jurisdiction of the ANO as set out under Part 3.

## ***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' and Defence's 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 from 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 or Defence as applicable in the first instance, and seek access to Airservices' or Defence's specialist advisors as the ANO thinks appropriate.
- 48 If the ANO seeks advice from a specialist advisor who does not work for Airservices, Defence or another Australian government agency, and the provision of advice does not require the ANO to incur any expense, the ANO will notify the Chair within seven days of seeking such 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 advice from other specialist advisors at the cost of Airservices or Defence as applicable, with the agreement of the Chair or the Chief of Air Force.

### **ANO's obligation to provide information to the Parties to a Complaint**

50 The ANO may provide the Parties to a Complaint with access to certain documentation, information and material that is not public information, on which the ANO proposes to rely in forming recommendations, with the agreement of the Chair or the Chief of Air Force, as appropriate.

51 Notwithstanding the previous paragraph:

- a) the ANO is not obliged to make available to the Parties to a Complaint 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 to a Complaint a reasonable opportunity to make submissions and provide information about the matters in a complaint, the ANO will make an assessment of the complaint. The ANO will provide this assessment to Airservices or Defence as appropriate and allow the relevant party a reasonable opportunity to resolve the matter. If, in the opinion of the ANO, Airservices or Defence do not respond appropriately, the ANO may make a recommendation to the Board or the Chief of Air Force.

### **Recommendations**

54 Recommendations will:

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

### **Publication and communication of reports and recommendations**

55 The ANO's reports and recommendations in relation to Airservices will be provided to the Secretary of the Board.

56 The Board must consider and respond to a report or recommendation from the ANO at its next or subsequent meeting.

- 57 Once the Board has responded, the ANO's reports or recommendations and Airservices' response will be made public by the ANO. In the event the Board does not agree with an ANO report or recommendation, a joint press release, approved by the Chair and the ANO, will be issued outlining the basis of the ANO's position and the Board's response.
- 58 The ANO's reports and recommendations in relation to Defence will be provided to the Chief of Air Force.
- 59 The Chief of Air Force must consider and respond to a report or recommendation from the ANO as soon as practicable and, in any event, within 60 days.
- 60 Once Defence has responded, the ANO's reports or recommendations and Defence's response will be made public by the ANO. In the event Defence does not agree with an ANO report or recommendation, a joint press release, approved by Defence and the ANO, will be issued outlining the basis of the ANO's position and Defence's response.

## **Section D: ANO reporting obligations**

### ***Part 7 – Reporting***

#### **Notification of recommendations**

61 For all recommendations, the ANO will:

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

62 The ANO will provide regular reports on complaints reviewed and recommendations to the Board and the Chief of Air Force, as appropriate.

#### **Reporting to the Minister Responsible for Airservices**

63 The Board will provide quarterly reports to the Minister Responsible for Airservices (copied to the Secretary of the Department responsible for Airservices) 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 this Charter; and
- d) a report of the annual review of the ANO's activities.

#### **Recommendations in relation to systemic issues, information and consultation processes**

64 A systemic issue is an issue that will have a broader effect on Airservices' or Defence's systems, processes, procedures or actions, and may involve a more substantial investigation or arise from multiple complaints.

65 The ANO may identify and review systemic issues and refer these to the Board or Chief of Air Force. The Board or Chief of Air Force may request that the ANO review these issues and make recommendations as appropriate.

66 The ANO may 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 consideration of the Board or Chief of Air Force, outlining measures for improving the performance of these functions.

## ***Part 8 – Collection of information by the ANO***

### **Data collection**

- 67 The ANO must collect and record comprehensive information pertaining to complaints, for example:
- a) the number of complaints received;
  - b) the demographics of the Complainants (where practicable);
  - c) details of complaints which were not reviewed by the ANO including the reasons 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 nature of the complaint;
    - (ii) recommendations made by the ANO; and
    - (iii) any systemic issues or other trends identified.

### **Publication of data**

- 68 The ANO must produce an annual report for publication and provision to the Board, the Chief of Air Force, the Minister Responsible for Airservices and the public. This report must include 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.
- 69 The report will be included in the Airservices Annual Report which is tabled in Parliament on an annual basis by the Minister Responsible for Airservices.
- 70 The report will be published on the ANO website and may be published on the website of Airservices and Defence.

## **Section E: Other matters**

### ***Part 9 – Legal proceedings and other matters***

#### **Legal or other proceedings**

- 71 Where a Complainant lodges a complaint with the ANO, Airservices and Defence must not instigate any proceedings against the Complainant relating to any aspect of the subject matter of the complaint.
- 72 If a complaint is subsequently reviewed by the ANO and the recommendation is accepted by the Board or the Chief of Air Force, Airservices or Defence will abandon any aspect of proceedings against the Complainant that are inconsistent with that decision.

#### **Defamation protection**

- 73 Neither Airservices nor Defence will instigate defamation action against a Complainant in respect of allegations made to the ANO by the Complainant about Airservices or Defence in relation to a noise complaint.

#### **ANO's confidentiality obligations**

- 74 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 this Charter or for any incidental purpose; or
  - b) as required or permitted by law.

#### **Non-compliance with this Charter**

- 75 The ANO may make a written complaint and recommendation:
- a) to the Board where Airservices fails to meet its obligations under this Charter; or
  - b) to the Chief of Air Force where Defence fails to meet its obligations under this Charter.



## Section F: Definitions

In this Charter, unless the contrary intention appears:

**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, and Australian and foreign military flying operations.

**Airservices** means Airservices Australia, the body corporate of that name established by the *Air Services Act 1995* (Cth).

**ANO** means the Aircraft Noise Ombudsman.

**Australia** includes the external territories.

**Board** means the non-executive directors of the board of directors of Airservices Australia.

**Chair** means the Chairperson 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 environmental issues.

**Chief of Air Force** means the Chief of Air Force or a delegate.

**Complainant** means any person or community organisation which is eligible to make a complaint to the ANO under the ANO Charter.

**Defence** means the Department of Defence, including the Australian Defence Force.

**Military Aircraft** means any aircraft used by an Australian or foreign military force.

**Minister Responsible for Airservices** means the Minister responsible for the *Air Services Act 1995* (Cth), unless otherwise stated.

**Minister Responsible for Defence** means the Minister responsible for Defence, unless otherwise stated.

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