

Our ref: 2023-713825

18 June 2025

Dear Professor Foth

Your request for a review of my decision about your complaint | 2023-713825

I acknowledge your request for a review of my decision about your complaint.

I understand you (on behalf of the Brisbane Flight Path Community Alliance (BFPCA)), are dissatisfied with my decision and comments and suggestions to the agencies involved.

In my decision letter, I acknowledged your complaint was about the long-term and systemic failure to provide and administer adequate regulatory oversight of Airservices Australia.

Your email identified several areas of dissatisfaction with my decision. I have considered the matters you raise in your request for a review. While the Ombudsman Act does not provide for review of my decisions, it is my practice and the practice of my Office to consider whether a complainant seeking a review has identified any significant apparent flaw in the decision or any significant new material that was not taken into account in the decision.

Consideration

Failure to Investigate the Core Complaint

You state that your original complaint clearly alleged that the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) failed in its statutory responsibility to provide effective regulatory oversight of Airservices Australia.

My role is to consider if the agency has acted in accordance with its powers and that its actions or decisions were reasonable. Where decisions require judgement or discretion, there can be more than one outcome properly available to an agency.

In such cases I may focus on whether the outcome provided was reasonably open to the agency to make, rather than whether the response that you would prefer should have been made.

The Commonwealth Ombudsman is impartial and independent. I do not advocate for members of the public or for the agencies I oversee, nor can I compel or require an agency to take a specific action or to change a decision.

Issues of aircraft noise and of Airservices' operations have been extensively scrutinised already by a number of reviews and inquiries, and in response agencies and the government have made a number of commitments. I remain of the view that there is currently no value in my Office also looking in detail at these issues. I have explained in the section 12 decision letter sent to you on 18 February 2025 that in my view the matter is currently being handled appropriately and have therefore decided not to investigate the complaint further at this time. The comments you make in your review request do not alter this decision.

Over-Reliance on Historical Reviews

You stated that the response leaned heavily on prior investigations by the Aircraft Noise Ombudsman (ANO), Airservices' own PIR, and the Trax report.

As part of investigating your complaint, we interrogated all information that was available to us to understand the situation. We receive over 24,000 complaints a year and the Ombudsman Act makes clear that it is entirely up to me whether and if so how we investigate a complaint. I do not agree that there was an 'over-reliance' on this information, as it was used to inform us of how the issues were managed. What the various prior investigations, including the Senate Rural and Regional Affairs and Transport References Committee inquiry, demonstrated was that your concerns had received considerable detailed consideration already and that the government and agencies had already taken or agreed to take a number of actions in response. In particular, the Aviation White Paper released in August 2024 contains a number of commitments focussed on reducing aircraft noise and making changes to some of Airservices Australia's practices, including making the Aviation Noise Ombudsman fully independent of Airservices Australia.

It also demonstrated that the issues on which we our investigation focussed, namely the manner in which the agencies handled complaints and worked together, were aspects where we could uniquely add value in suggesting improvements.

Inaccurate Acceptance of Departmental Claims

You stated that in your view the Ombudsman's acceptance of the Department's claim it "does not review or seek to intervene" in Airservices' operations is alarming and factually incorrect, that the legislation and ministerial responsibilities clearly establish a regulatory and oversight role and that accepting such a position sets a dangerous precedent for unaccountable government.

My Office does not seek to intervene with the management of legislative powers given to organisations unless maladministration is identified. I did not identify maladministration beyond how the Department and related agencies handled complaints. In addition, as noted above, the Aviation White Paper also involved consideration of how to improve aspects of Airservices' operations, particularly with respect to aircraft noise issues.

Lack of Consequential Outcomes

You indicated although the Ombudsman acknowledged complainants perceive no agency is taking responsibility, and agencies should work better together, no binding recommendations or meaningful outcomes were issued and that in your view this condones continued inaction and regulatory failure.

As I have said above, my Office is independent and impartial. This means that I do not act on your behalf, nor on behalf of the agencies involved. My focus is on identifying whether any issues of administration are present where our Office may be able to recommend or suggest improvements. It is not our role, nor are we required, to assist you in achieving the specific outcomes you seek. While I have the power to issue recommendations if I believe it is appropriate to do so and if I believe that the statutory thresholds to do so have been reached, I do not have the power to issue a binding recommendation. This is a common feature of all Ombudsman, who are not regulators.

Ongoing Harm and Public Interest

You stated that the decision fails to account for significant ongoing public harm being experienced by residents across Greater Brisbane. In your view, the government's current response, including what you term "engagement theatre" and references to future reforms, is insufficient and continues to erode public trust.

I have made comments and suggestions to the agencies which are in line with my powers as the Commonwealth Ombudsman. I acknowledge this has not satisfied you and that you seek a binding outcome which I cannot provide. I also do not have jurisdiction to investigate actions of Ministers. My view therefore remains that no practicable outcome can currently be achieved in further consideration or investigation by this Office.

It is open to you to continue to raise your concerns with the Minister for Infrastructure, Transport, Regional Development and Local Government, the department, the Aircraft Noise Ombudsman and Airservices, and with the Senate Rural and Regional Affairs and Transport References Committee, particularly with respect to the government's response to the Committee's recommendations or the ongoing or future implementation of the White Paper commitments.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Iain Anderson', written over a light blue horizontal line.

Iain Anderson

Commonwealth Ombudsman