

Australian Government response to the Productivity Commission Inquiry into the Economic Regulation of Airports

Announced 11 December 2019 by the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, the Hon Michael McCormack MP, and the Treasurer, the Hon Josh Frydenberg MP.

Overview

The Australian Government acknowledges the work done by the Productivity Commission (PC) in inquiring into the Economic Regulation of Airports.

As a significant component of the transport infrastructure network, airports play an important role in the national economy. The Australian Government's primary objective in setting the regulatory environment for the sector is to encourage an efficient, responsive and high quality service that meets the expectations of the travelling public and requirements of the Australian tourism, export and service industries which depend on them.

The Australian Government concurs with the PC's view that the existing airport regulatory framework remains fit for purpose and that there is no current justification for significant change to the current form of 'light handed' economic regulation of aeronautical services established under the *Airports Act 1996* (the Act).

The Australian Government encourages all parties to continue to work together to strengthen their commercial relationships under the current regulatory framework. It welcomes interest by some airlines and airports in working together to establish principles that could be of assistance in guiding negotiations and achieving mutually satisfactory service contract outcomes. The Australian Government expects airports to work constructively with airlines and other airport users to achieve good consumer outcomes, including reasonable car parking charges, reasonable charges for aeronautical services and well-maintained infrastructure so that passengers are satisfied with their overall airport experience.

In support of this aim, the Australian Government supports the recommendation that regulators should receive a broader range of financial information (aeronautical, car parking and landside access and services) and more transparency in airport performance data. This will enable a more comprehensive assessment to be undertaken such that Government will be in a position to respond more quickly and effectively should any evidence of abuse of market power be identified.

The Australian Government welcomes the PC recommendation that airports be more accountable to the community and the travelling public through closer quality of services monitoring. The Australian Government acknowledges that the Commission's analysis, and supported by feedback provided by airlines and other airport users, lends support to airports being accountable in this way through ongoing monitoring of customer outcomes.

Consequently, the Australian Government has accepted the PC's recommendation to ask the Australian Competition and Consumer Commission (ACCC) to undertake a review of

quality of service indicators to ensure they have a greater focus on outcomes and more closely reflect the expectations of passengers, airlines and other airport users.

Within the current arrangements there is no case for anticompetitive clauses being included in agreements with airlines. The Australian Government supports the removal of clauses that are detrimental to effective competition in pricing contracts and therefore detrimental to consumers. The additional enhancements to the framework proposed by the PC will assist in detecting where such contracts are running counter to the public interest.

Additional scrutiny on airports will help provide a clearer indication of whether pricing and the quality of services do not reflect reasonable standards and community expectations.

Should these enhancements to the framework indicate regulatory intervention is warranted, the Australian Government would not hesitate to bring forward the next PC Inquiry into the economic regulation of airports and review available regulatory options to address concerns.

The current regulatory framework established under the *Airports Act 1996*, supported by annual price and quality of service monitoring, periodic PC inquiries and the National Access Regime, continues to contribute to our air transport system operating to meet the needs of the travelling public. With major aeronautical developments coming on line at Brisbane, Melbourne and Perth, it is clear that future capacity is being financed and developed. It is the Australian Government's view that regulatory certainty to date has provided investment certainty that supports these and other airport developments.

The PC's insights into the structure and practical operation of markets to supply jet fuel at Sydney, Melbourne, Brisbane and Perth airports have been beneficial. In relation to Western Sydney International (Nancy-Bird Walton) Airport, consistent with the Commission's recommendation, the Commonwealth's Shareholder Ministers (Ministers for Finance and for Population, Cities and Urban Infrastructure) will write to Western Sydney Airport requesting that it include an analysis of an open access model as part of any business case to develop its future on-airport jet fuel infrastructure service to its airline customers.

The Australian Government's response to each of the PC's recommendations is set out below.

RECOMMENDATION 7.1 USING ANY PEAK-PERIOD SLOT FOR REGIONAL FLIGHTS

The Australian Government should amend the Sydney Airport Slot Management Scheme 2013 (Cwlth) to allow peak period slots that are not part of a permanent regional service series (PRSS) to be used for either regional or non-regional flights. These slots should not become PRSS slots when used for regional flights.

The Australian Government **supports** this recommendation in principle.

The Australian Government will explore opportunities to implement the proposed recommendation.

Protections for regional slots have played a crucial role in ensuring air access to Sydney for regional communities since their introduction in 2001. The Government supports amending these provisions to ensure continued access to Sydney Airport by regional communities.

A new Declaration regarding the regional price cap and notification scheme was made ahead of the release of the Commission's draft report. The Declaration commenced on 1 July 2019 and will cease on 30 June 2022.

As part of any changes to the Sydney Airport Slot Management Scheme 2013, the Declarations and their applicability to non-PRSS slots will be examined.

RECOMMENDATION 7.2 COMMERCIAL NEGOTIATIONS FOR NSW REGIONAL SERVICES

The Australian Government should ensure that future Declarations relating to the regional price cap and notification regime at Sydney Airport only apply to aeronautical services that are not covered in commercial agreements between Sydney Airport and airlines operating flights servicing regional New South Wales, after the current Declaration ceases on 30 June 2019. Future Declarations should specify that prices in commercial agreements cannot be used to assess whether Sydney Airport has breached section 95Z of the Competition and Consumer Act 2010 (Cwlth).

The Australian Government **supports** this recommendation in principle.

The Australian Government notes a new Declaration commenced on 1 July 2019 and is valid until June 2022.

The Australian Government remains committed to ensuring regional access to Sydney Airport. If airlines and Sydney Airport are able to negotiate commercial terms, which provide better access outcomes through commercial-in-confidence agreements, the Government does not wish to undermine this outcome through the mandatory publication of commercial terms.

Stakeholders will be consulted in any drafting of declarations to ensure no airline is worse off under these arrangements.

RECOMMENDATION 7.3 MEASURING SYDNEY AIRPORT'S MOVEMENT CAP ONCE AN HOUR

The Australian Government should amend section 6(2) of the Sydney Airport Demand Management Act 1997 (Cwlth) to define a regulated hour as a period of 60 minutes starting on the hour.

The Australian Government **notes** this recommendation.

The Australian Government will review the legislative definition of regulated hour in the Sydney Airport Demand Management Act 1997. Any proposal for changes will be subject to a detailed consultation process with the community and industry.

The Australian Government recognises operating restrictions, including the 80 aircraft per rolling hour movement cap, are important measures to protect surrounding communities from the impacts of aircraft noise. However, the Government acknowledges these restrictions can limit the growth and productivity of Sydney Airport and have an impact on passengers and the local, regional and national economies.

The Australian Government remains committed to facilitating access within the movement cap, with options for updating or streamlining the current movement cap arrangements. However, legislative change will be considered only if there is a net benefit to the community.

RECOMMENDATION 7.4 ALTERNATIVE TYPES OF FREIGHT AIRCRAFT DURING THE CURFEW

The Australian Government should amend the Sydney Airport Curfew Act 1995 (Cwlth) to introduce noise standards for freight aircraft allowed during the curfew, rather than specifying only one type of freight aircraft (the British Aerospace 146). The noise standards should allow alternative types of freight aircraft to operate during the curfew, provided they do not increase aircraft noise above current levels, or the number of freight aircraft movements above the current cap (74 a week). The new aircraft noise standards should be in place by the end of 2020.

The Australian Government **supports** this recommendation in principle.

The Australian Government remains committed to maintaining the curfew at Sydney Airport but agrees with the findings of the Commission that freight aircraft should not be defined as if limited to one particular aircraft type. The Government remains committed to the principle that any change to freight aircraft types not involve increases in aircraft noise above current levels, or increase freight aircraft movements during curfew hours.

Any future changes to the *Sydney Airport Curfew Act 1995* to take into account noise standards will be subject to regulatory change processes, including stakeholder consultation.

RECOMMENDATION 7.5 REVIEWING SLOT MANAGEMENT AT AUSTRALIAN AIRPORTS

The Australian Government should commission a public review of the Sydney Airport Slot Management Scheme 2013 (Cwlth) following the completion of the International Air Transport Association's review into the Worldwide Slot Guidelines (WSG), expected at the end of 2019.

The public review should assess how effectively the Scheme contributes to the efficient use of airport infrastructure, taking into account regional access and noise management objectives. The review should consider reform options in relation to:

- whether slot allocation arrangements generate the greatest net benefits to the community or if alternatives that are not based on historical precedence would improve outcomes for passengers
- the outcomes of the WSG review and any WSG provisions that are not currently part of the Scheme
- the costs and benefits of continued alignment with the latest WSG, including the effects on competition between airlines.

The review should also investigate the need to implement or revise slot management at other major Australian airports.

The Australian Government **notes** this recommendation.

The Sydney Airport Slot Management Scheme 2013 is scheduled to sunset in 2024. Prior to this date a public review of the scheme and associated legislative instruments, including the Sydney Demand Management Regulations 1998 and Sydney Airport Slot Compliance Scheme 2012, will be conducted to provide the Government with valuable guidance on whether the scheme remains fit for purpose and provides for the efficient use of airport infrastructure.

The Australian Government **does not support** an investigation of the need to implement slot management at other major Australian airports at this time.

As several major airports are making substantial investments to increase capacity allowing the services needed by the travelling public, including another runway at Brisbane, in development at Perth and in planning at Melbourne, there is not a strong case for a review of slot management at other major Australian airports at this time.

In addition, a number of major airports in Australia have been proactive in the recognition of the need for, and implementation of, slot management schemes without the need for regulatory oversight.

RECOMMENDATION 8.1 JET FUEL INFRASTRUCTURE AT WESTERN SYDNEY AIRPORT

Through the Australian Government's Shareholder Ministers for Western Sydney International (Nancy-Bird Walton) Airport (the Minister for Finance and the Minister for Urban Infrastructure), the Australian Government should recommend to the Western Sydney Airport Board that the on-airport jet fuel infrastructure operate on an open access basis and that this should be a condition of any future privatisation.

The Australian Government **notes** this recommendation.

The Australian Government's Western Sydney Airport Shareholder Ministers (Minister for Finance and Minister for Population, Cities and Urban Infrastructure) will write to Western Sydney Airport requesting they include an analysis of an open access model as part of any business case to develop on-airport jet fuel infrastructure.

RECOMMENDATION 8.2 INTRODUCING JET FUEL INFRASTRUCTURE PLANNING GROUPS

The Minister for Infrastructure should recommend a jet fuel infrastructure planning group be incorporated into the master planning process at each monitored airport. The group should be sufficiently flexible to suit the arrangements at each airport, but could be tasked with discussing, among other things:

- capacity constraints and any potential pressure points
- linkages between different parts of the infrastructure supply chain
- demand forecasts and security of supply
- future infrastructure requirements and investment planning.

The Australian Government **supports** this recommendation in principle.

The Australian Government notes that jet fuel infrastructure planning can be considered in the development of airport Master Plans and relevant stakeholders are consulted in master planning processes to consider the matters identified in the Productivity Commission's recommendation.

RECOMMENDATION 9.1 REMOVING ANTICOMPETITIVE CLAUSES FROM AGREEMENTS

The Australian Government should amend the Aeronautical Pricing Principles to specify that any agreement between an airport and an airport user must not contain anticompetitive clauses. This includes clauses that would constrain that user's access to regulatory remedies for the exercise of market power or that directly or indirectly reference the terms being offered to users' competitive rivals.

The Australian Government **supports** this recommendation.

The Australian Government does not endorse agreements between airports and their users containing anticompetitive clauses. The inclusion of anticompetitive contract terms, such as preventing airlines from seeking remedy under the National Access Regime or preventing airports from providing a more favourable offer to an airline's competitors, are of concern to the Government.

The Australian Government considers the Aeronautical Pricing Principles set an important framework for establishing prices, service delivery and the conduct of commercial negotiations at airports, and has amended the principles to specify the exclusion of anticompetitive clauses (copy attached).

The Australian Government expects all airports and airport users to have regard to the Aeronautical Pricing Principles when negotiating future airport services and to be cognisant of their legal obligations, including to not breach provisions that proscribe anticompetitive conduct contained in the *Competition and Consumer Act 2010*.

RECOMMENDATION 9.2 FUTURE PRODUCTIVITY COMMISSION REVIEWS

The Australian Government should continue the practice of five yearly Productivity Commission inquiries into the regulation of airports, to determine the effectiveness of the regulatory regime in achieving the following objectives:

- promoting the economically efficient operation of, and timely investment in, airports and related industries
- minimising unnecessary compliance costs
- facilitating commercially negotiated outcomes in airport operations.

In requesting the inquiry, the Australian Government should also ask the Commission to consider:

- whether any airports should be added to, or removed from, the price and quality of service monitoring regime
- if there is a continued need for arrangements to facilitate access for airlines servicing regional New South Wales
- the state of competition in markets to supply jet fuel, including progress towards open-access joint-user hydrant infrastructure lease agreements.

The Australian Government should stipulate in the inquiry terms of reference that the monitored airports make their agreements with airport users available to the Commission on request, on a commercial-in-confidence basis.

The Australian Government **supports** this recommendation in principle.

The Australian Government agrees periodic reviews of the economic regulation of airport services are a key element of the light-handed regulatory framework currently afforded to the industry and supports this ongoing practice. The Government will consider the terms of reference for any future inquiry – including whether requests for information from airports would be of specific use to the inquiry – nearer to the time.

Should it be considered necessary, the Australian Government would not hesitate bringing forward the next PC Inquiry into the economic regulation of airports and review available regulatory options to address concerns.

RECOMMENDATION 9.3 DISCONTINUE SECOND-TIER AIRPORT MONITORING

The Australian Government should issue a statement that the voluntary self-reporting system for second-tier airports is discontinued.

The Australian Government **notes** this recommendation.

The Australian Government agrees with the Productivity Commission's view that the airports included in the second-tier airport monitoring regime do not currently have significant market power and the information provided by these airports through the second-tier price and quality of service monitoring regime is not required for future assessments of market power.

However, the five federally leased airports participating in this arrangement (Adelaide, Canberra, Darwin, Gold Coast and Hobart airports) publish prices of aeronautical services and car parking, quality of service outcomes and complaint-handling processes and outcomes on a voluntary basis. In the interest of providing transparency, information of interest to their customers and to assist the airports to monitor and address the expectations of their customers, the Australian Government supports ongoing self-administered price and quality of service monitoring for second-tier airports as established by voluntary agreement by airport lessee companies.

The Australian Government maintains its expectation that all airports and service providers maintain a focus on consumer outcomes.

RECOMMENDATION 9.4 MORE DETAILED INFORMATION ON AIRPORT PERFORMANCE

The Australian Government should amend part 7 of the Airports Regulations 1997 (Cwlth) such that, in addition to current requirements, monitored airports are required to provide to the ACCC, for each financial year, statements that:

- show the number of passengers that depart from and arrive at each terminal
- separately show the costs and revenues in relation to the provision and use of aeronautical services for domestic flights and for international flights
- for Sydney Airport, also show the costs and revenues in relation to the provision and use of aeronautical services for flights to regional New South Wales
- separately show the number of users, costs and revenues in relation to the provision and use of at-terminal and at-distance car parking and the utilisation rates for each type of parking
- separately show the number of vehicles that use landside services, and the charges (and other terms of access), operating revenues and costs attributed to the provision of each landside service
- report any costs that are allocated to the provision of specific services, including international and domestic aeronautical services; at-terminal and at-distance parking; and landside access services
- report the methodologies that they use to allocate costs to specific services.

The Australian Government should direct the ACCC to:

- publish annual monitoring reports
- publish the methodologies the monitored airports use to allocate costs across different services
- publish a database of the information the airports provide
- consult with airports and airlines to determine whether any of the information they provide is commercially sensitive and to develop approaches to reporting that balance disclosure with the need to protect sensitive information.

The Australian Government should implement these changes in time for the 2020-21 monitoring report.

The Australian Government **supports** this recommendation in principle.

The Australian Government agrees in principle to amend part 7 of the Airports Regulations 1997 to expand the reporting requirements for monitored airports, as recommended by the PC. The Government will undertake a consultation process to determine the form that the amendments should take. Monitored airports will be required to report this information to the ACCC in addition to existing requirements, allowing for greater granularity in future monitoring reports.

The Government considers that increasing the transparency of prices and performance will assist it to assess airports' market power over time, for aeronautical, car parking and landside access and services. This will benefit users of airports, both passengers and commercial users, and the broader community in the long-run.

The ACCC is an independent statutory authority and the degree to which the ACCC discloses information relating to its monitoring is a matter for the ACCC. The Government encourages

the ACCC to consult with airports and airlines to determine if any of the information they provide is commercially sensitive and to develop approaches to reporting that balance disclosure with the need to protect sensitive information.

RECOMMENDATION 9.5 IMPROVING QUALITY OF SERVICE MONITORING

The Australian Competition and Consumer Commission (ACCC) should, within 12 months, provide advice to the Australian Government on an updated set of quality of service indicators, in consultation with airports, airlines, other airport users and the Department of Infrastructure, Transport, Cities and Regional Development.

Once the ACCC has developed its recommended set, the Australian Government should amend schedule 2 of the Airports Regulations 1997 to codify the updated list of indicators.

The Australian Government **supports** this recommendation in principle.

The Australian Government agrees a review of the quality of services indicators is warranted to identify a contemporary set of indicators reflecting the outcomes valued by airport users.

The Australian Government considers that the quality of service indicators should more closely reflect the expectations of passengers, airlines and other airport users and have a greater focus on outcomes.

The ACCC will be asked to review the quality of service indicators contained within Schedule 2 of the Airports Regulations 1997 and provide advice within 12 months. The Australian Government encourages airports and airport users to participate in this process to build a better set of indicators.

Informed by the review to be requested of the ACCC, and subject to standard regulatory change processes, the Government agrees to updating schedule 2 of the Airports Regulations 1997.

RECOMMENDATION 10.1 ASSET MANAGEMENT AT REGIONAL AIRPORTS

The Australian Government should review the efficacy of the Western Australian Strategic Airport Asset and Financial Management Framework in 2022, three years after its implementation in Western Australia. The review should be conducted in consultation with State, Territory and Local Governments.

Pending the findings of that review, the Western Australian Strategic Airport Asset and Financial Management Framework should be adapted and rolled out by governments in other jurisdictions with the objective of providing a template for sound asset management practices and greater transparency when determining airport charges at regional airports.

The Australian Government **supports** this recommendation in principle.

The Australian Government is committed to ensuring appropriate principles for asset management are reflected in grants programs such as the Regional Airports Program announced in the 2019 Budget.

The Australian Government is monitoring the development of the Western Australian Strategic Airport Asset and Financial Management Framework, and recognises its potential in assessing an airport's asset management practices and will ask WA Transport and Infrastructure Council members to keep other jurisdictions informed of the Framework's progress.

RECOMMENDATION 10.2 FUNDING FOR REGIONAL AIRPORT INFRASTRUCTURE

The Australian, State and Territory Governments should:

- ensure that an independent analysis of proposed government funding of regional airport infrastructure is completed, and made available for public comment, before funding is committed. The analysis should include a public consultation process and assess:
 - the economic and financial viability of proposed infrastructure investment
 - whether the project is consistent with the long-term strategy of the region and the airport's master plan
 - the social and economic benefits and the recipients of those benefits
 - users' (airlines and communities) willingness to pay for the infrastructure
 - whether the airport operator has in place sound asset management practices
- assess proposed government-funded investments in airport infrastructure using the relevant functional economic region as the basis for decisions, not individual local councils.
- monitor and independently evaluate any project that receives funding to assess whether the project outcomes have been achieved. The evaluation report should be published.

The Australian, State and Territory Governments should publish the justification for funding an infrastructure project that was not supported by independent analysis.

The Australian Government **notes** this recommendation.

The Commonwealth Grants Rules and Guidelines (CGRG) promote the proper use and management of public resources through collaboration with government and non-government stakeholders to achieve government policy outcomes.

The general grants principles outlined in the CGRG include the need to consider the interests of grantees and beneficiaries, collaboration and partnerships, value for money, appropriate governance and accountability, transparency and other grants administrative processes, when providing and administering Australian Government grants.

The existing Australian Government regional grants programs play an important role in investment decisions across all types of assets and projects. When agreeing to a grant, the Australian Government gives consideration to broader regional economic growth and potential, as well as to the social and community benefits a project will deliver.