



National Aviation Policy

Response to the Green Paper

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Prepared by



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Executive Summary

The Green Paper was an important milestone in Australian aviation policy history. For the first time, in a generation the disparate streams of aviation policy were drawn together in one place in an attempt to provide a vision for the future of an industry critical to Australia's economic future and the social well being of its people. The Rudd Government is to be commended for this initiative.

APAC fully supports the intention and objectives of the Government's approach. These objectives strike the right balance between the interests of the various businesses in the industry and the users of their services. APAC also believes that if properly implemented the Government's policy as foreshadowed in the Green Paper will strike the right balance between the benefits the Australian people will gain from the aviation industry's continued growth and the environmental impacts of that growth.

However, in a number of important regards APAC remains concerned about what is proposed to meet these objectives. This is in part due to the fact that a number of important matters are the subject of further or ongoing consultation. In a number of important cases, such as airport planning and economic regulation, this additional consultation stems from there being little evidence provided of the policy problems the Government is seeking to address. APAC's experience is that the current planning arrangements have facilitated airport development, with inappropriate developments being more a feature of the nature of decisions made rather than the framework in which they were made. As far as economic issues are concerned, no case of abuse of market power has been made out against any airport since price controls were removed seven years ago. APAC sincerely hopes that the Government will use the White Paper to provide more information on what the issues of concern are as it will provide guidance to those affected by policy decisions and will also ensure that policy is based on objective and transparent evidence.

Given the global financial crisis the areas of economic regulation and airport planning are the two areas of policy most likely to create uncertainty about future airport cash flows. Recent media reports have highlighted, and in APAC's view understated, the extent of capital raising airports need to undertake in the next few years. Until recently, there was a thorough and supportive understanding of the economic regulatory framework governing Australia's airports and it was understood this was supported by both major political parties. APAC's recent experience, and we understand that of other airports, is that providers of both debt and equity are concerned about the impact that the proposed show cause arrangements may have on the ability of airlines and airports to reach long term pricing arrangements to underpin investment in existing and new infrastructure. To avoid this issue becoming a source of risk in future financing discussions, the Government needs to ensure far greater clarity around its show cause proposals than that contained in the document circulated by the Department.

Glossary

ACCC	Australian Competition and Consumer Commission
AEO	Airport Environment Overlay, part of the Victorian Planning Provisions
Airports Act	<i>Airports Act 1997 (Cth)</i>
Airservices	Airservices Australia
ALOP	Airport Local Ownership Program
ANEF	Australian Noise Exposure Forecast
ARFF services	Aviation rescues and fire fighting services currently provided at Australian airports by Airservices.
CASA	Civil Aviation Safety Authority
CTFR	Counter Terrorism First Response – a service provided by the Australian Federal Police
Customs	Australian Customs Service
Department	Department of Infrastructure, Transport, Regional Development and Local Government
dMP	Draft Master Plan
FAC	Federal Airports Corporation
ICAO	International Civil Aviation Organisation
KSA	Sydney Kingsford Smith Airport
LCC	Low cost carrier
MAEO	Melbourne Airport Environment Overlay, the AEO that applies specifically to Melbourne Airport
MDP	Major Development Plan as defined in Part 5 of the Airports Act
Minister	The Minister of the Commonwealth responsible for the administration of the Airports Act and aviation policy generally
Part IIIA	Part IIIA of the Trade Practices Act
RPT	Regular Passenger Transport
T1	Terminal 1 at Melbourne Airport operated under lease by Qantas
T2	Terminal 2 at Melbourne Airport operated by Melbourne Airport for international services
T3	Terminal 3 at Melbourne Airport operated by Melbourne Airport for domestic operations, primarily used by Virgin Blue and Rex, formerly leased by Ansett
T4	Terminal 4 at Melbourne Airport operated by Melbourne Airport currently used by Tiger Airways, originally developed to facilitate the entry of Impulse and Virgin Blue.
Trade Practices Act	<i>Trade Practices Act 1974 (Cth)</i>
2007 Amendment Act	<i>Airports Amendment Act 2007(Cth)</i>

1 Aviation Safety

APAC congratulates the Government for ensuring that safety is at the core of aviation policy. APAC has, and strives to continue to have, good working relationships with CASA and Airservices and would urge the Government to ensure that in addressing the various serious issues that confront both these organisations that outcomes in those areas that are working well are not interfered with.

APAC strongly supports the ongoing attempts by the Government to improve the institutional arrangements governing aviation safety and believes that the structures being put in place are appropriate. That said it is also important that the internal relationships with aviation agencies and their governance relationships function well. For example, it is important that decisions made in relation to airspace management around airports that may involve ground-based infrastructure by the Office of Airspace Regulation are properly communicated and understood by CASA's aerodrome branch.

APAC welcomes the appointment of a new Director of Aviation Safety. The Government must expedite recently introduced legislation to reinstate a board for CASA thereby ending the uncertainty about the organisation's governance arrangements that is simply the result of unnecessary politicisation of aviation safety under the previous Government.

APAC welcomes the commitment of both the Government and the Board of Airservices to undertake a major investment program in air traffic management systems in coming years. These investments should help to improve on-time performance, reduce emissions and most importantly improve safety outcomes. It is important to keep in mind that airport investment also has an important role to play in aviation safety in both ensuring that aerodromes are maintained to adequate standards and that technology meets the needs of the industry. Melbourne Airport has recently invested over \$10 million to upgrade both runways at Melbourne Airport to Category IIIa standard. This substantial investment will improve safety outcomes in poor visibility and significantly reduce the number of occurrences of the airport being closed. Investments like this are not only a result of co-operation between airlines, Airservices and the airport concerned but are critically supported by the investment-friendly economic regulatory framework currently in place that is discussed at further length in section eight of this submission.

2 Aviation Security

APAC commends the government on its commitment to maximising aviation security outcomes in a way that reflects the true nature of the threats posed whilst being sensitive to the infrastructural and operational realities of Australia's aviation sector.

The Green Paper makes the observation that vulnerabilities in security systems occur where risks have escaped identification or where measures designed to respond to known threats are not properly implemented. The importance of maintaining a watching brief on our national security responses is a natural conclusion flowing from this recognition. As important as identifying new risks and effective responses to mitigate them however, is re-evaluating existing measures in accordance with prevailing risk profiles and being prepared to remove restrictions found to be disproportionate or ineffective in responding to the threat posed. This becomes as much a question of public perception as it does effective policy and requires both leadership from the Government and the support of industry and the community to be successful.

Knee-jerk policy making in response to sudden and unexpected events both domestic and international whilst understandable, creates significant downstream difficulties in the medium to long terms without necessarily providing a commensurate improvement in Australia's national security outcomes. We would urge the Government to continue to look for improvements in Australia's aviation security system but to do so with tangible and sustainable outcomes in mind.

Though it has been disappointing to not yet have access to the outcomes of a number of reviews currently in progress in relation to security screening, APAC accepts the need to get the analysis right and commends the Government's willingness to continue to work with industry in devising appropriate policy settings for the implementation of effective, practical and cost effective measures and look forward to a continued dialogue throughout these important processes.

APAC continues to support the work being undertaken by the Office of Transport Security through the aviation Security Screening Review, in particular the review of the prohibited items list. As indicated in its submission to the Issues Paper, APAC looks forward to the findings of the review being utilised to streamline passenger processing whilst maintaining, and where possible enhancing, the security of air travel.

2.1 Last ports of call

Whilst national security must remain a priority for government, it is also important to acknowledge and consider the impact that some security measures may have on Australian businesses, particularly during uncertain economic times. Though mindful of the fact that industry partners are not privy to a significant proportion of government intelligence as it relates to aviation security risks, as a general premise increased regulatory burdens without an evidentiary basis create financial burdens that cannot be ignored. Such burdens place significant strain on the ability of all members of the aviation sector, from airports and airlines to retailers and service providers, to maintain viable businesses and impacts more particularly on their ability to invest in and drive growth in the sector and the economy more broadly.

With that in mind, it is imperative that the Government recognise the flow on effects of decisions taken in respect of foreign jurisdictions. Australia's reluctance to offer reciprocal rights, particularly in relation to internationally acceptable standards on the carriage of LAGs in the cabin of aircraft, closes off markets to Australian businesses.

Whilst we would certainly not advocate for a relaxation of Australian security standards, the Government must be prepared to offer reciprocal rights where acceptable standards of risk mitigation are being met in foreign jurisdictions in respect of last ports of call.

2.2 Terminal security

APAC welcomes the Government's commitment to the finalisation and implementation of the Aviation Security Training Program to address issues of the training and retention of quality security staff who represent an integral link in the security chain and security operations overall.

We appreciate the Government's commitment in the Green Paper to engage in consultation with industry to address front of house mitigation strategies which include enhanced operational measures, staff training and improved stakeholder engagement. It is important that any such initiatives reflect the age and capacity of existing physical infrastructure and considers the full security continuum prevailing at airports including personnel and procedural arrangements that can be more readily improved with arguably greater practical effect than the existing physical infrastructure.

As stated in our response to the Issues Paper, whilst APAC appreciates the confidential nature of the majority of government security intelligence, the

encouragement of better community understanding and compliance through a greater openness in sharing information about the nature and severity of threats would likely lead to a demonstrable improvement in security outcomes at airports. This would serve to improve the ability of aviation industry members to better assist government in identifying and minimising risk and would be of particular assistance to airports seeking private funding for infrastructure investment to support the security objectives of Government. We encourage the Government to consider ways in which non-government personnel may be able to access a greater level of intelligence to enable them to better support Government and the border agencies in securing national security objectives.

2.3 Technology

APAC again welcomes the Government reviews being undertaken in respect of passenger screening and physical security at Australia Airports. APAC has been involved in a number of technology trials in partnership with Government and is committed to continuing to assist as and when appropriate in the future.

APAC found these partnerships very productive and they have also served to increase the level of operational understanding between Government and industry. In order to maximise the findings of such technology trials, it is imperative that Government provide greater leadership in bringing proven technology to a point where it becomes both commercially viable and implementable through a process of accreditation. This will also secure more consistent national outcomes and better targeted investment in these vital security tools.

2.4 Service Delivery and Cost Recovery Models for Passenger and Baggage Screening

The submissions to the Issues Paper in relation to the service delivery models and the economic issues surrounding passenger and baggage screening clearly indicate that these two matters are inextricably linked. Further, it is clear that international experience provides a range of models none of which appear demonstrably superior to others.

APAC believes that the provision of these services at major airports, either by airport operators or airlines, is of a relatively high quality and moreover that any institutional reform is unlikely of itself to improve outcomes and risks creating impediments to the efficient provision of security services. Whilst it is accepted that there are economies of scale in relation to the provision of these services (resulting from the fact that they are both capital intensive and have quasi-fixed labour demands), it is much less clear that they exhibit network economies. In other words,

unit cost reductions are much less likely to be found by providing services at multiple sites than by increasing the throughput at any given site.

APAC does not believe that the efficient provision of these services at major airports would be enhanced by major institutional change and in particular by the imposition of a single national screening authority. From a cost perspective the costs of screening labour and equipment would not fall and airport management overheads would not be materially reduced. Indeed, costs may actually rise as a result of the need to support the corporate overheads of a national screening authority. Further, the presence of a national screening authority would raise a range of issues about service quality, passenger facilitation, the funding of capital expenditure, the ownership of assets and the extent to which the screening authority had rights to influence and/or determine terminal design outcomes.

Compliance issues should rightly be addressed by the Office of Transport Security whether screening services are provided by a national agency, individual airports or a combination of the two as discussed below. From an operational and planning perspective what is required is a consistency of security outcomes rather than identical processes being put in place at all locations. The quality of services actually provided should be a matter for airports and airlines and possibly the quality monitoring and audit system.

A national screening authority would need to be involved in a wide range of discussions relating to terminal development. These discussions now largely occur between airports and their airline customers in the normal course of events with some passing involvement with the Customs where international terminals are concerned. A national screening authority would be another party to these discussions whose status in those consultations would need to be clear. Further, whereas these discussions currently involve only local issues, there is a risk that a national screening authority may seek to impose nationwide approaches for its own convenience which are not optimal on an airport-by-airport basis.

APAC acknowledges there are legitimate efficiency, efficacy and pricing issues in relation to the provision of screening services at smaller airports. APAC maintains its general opposition to network based pricing – transparency will be compromised, users will pay for services they don't use and the pressure to keep costs down will be lessened.¹ At a high level, unit costs at smaller airports will generally be higher than at larger airports simply because of the economies of scale noted in the Green Paper and there is no apparent economic or public policy reason why a subset of airport services, which are consumed jointly with other services, should be separated out and priced on a network basis or supported by Government subsidy.

¹ The arguments against network pricing for security services are the same for services provided by Airservices which APAC identified in its submission in response to the Issues Paper.

There are legitimate issues relating to pricing of aviation services in regional and remote Australia and it is in the interests of the community and the industry to address these issues. These are primarily concerns of equity rather than competition and economic efficiency. Further, as a small airport operator itself, APAC is aware of the management challenges faced by small airports in delivering the capital and operating outcomes necessary to meet current security requirements and believes that there may be benefits to be gained in this regard from a regional airport screening authority providing services for airports with an annual throughput of less than one million domestic (including regional) passengers.

A national regional screening authority could gain some economies of scale for regional airports that are already being achieved by major airports particularly in relation to procurement, management expertise and airline and regulator stakeholder management. Serious consideration should be given as to whether an existing government agency may be in a position to add this activity to its suite of services rather than establish a new agency. A new agency would need to establish corporate structure, systems and stakeholder relationships at considerable cost.

Whatever corporate structure is chosen, be it a new agency or expanding the role of an existing one, there is potential that even after the cost savings identified above were achieved, the resulting prices at regional airports may still be considered to be too high from an equity perspective. In such circumstances, the revenue shortfall that would result from charging an acceptable price (determined across the regional network as a whole) should be funded as a community service obligation by the Commonwealth Government.

In putting forward this suggestion, APAC would make clear that it does not see it being applied to international operations or those smaller domestic airports that compete with larger hub airports. This is essential to ensure that developing inter-airport competition in both the international and domestic markets is not distorted. In the case of international markets, to the extent that the costs of airport services affects the route planning decisions of international carriers, the resources to reduce these costs should be found from within the airport itself or local tourism agencies, not the Commonwealth's consolidated revenue. In relation to those smaller airports that compete with major capital city airports (Gold Coast, Maroochydore, Avalon and Newcastle) there is no case for the community to subsidise services as they are already being provided at lower social cost at the hub airport and indeed in providing such a subsidy, the Government might be encouraging unnecessary and inefficient investment at those locations.

3 International Aviation

3.1 Liberalising international markets

APAC welcomes the Government's commitment to continue deregulating international aviation arrangements on a case by case basis when it is in the national interest to do so.

This area of aviation policy has long been contentious and it is inevitable that there will be tension between the interests of consumers and the tourism industry in potentially more services gained from liberalisation on the one hand, and the interests of airlines and their employees in maintaining the protection that naturally flows from any capacity constraint on the other.

APAC's view that this natural tension is made much more contentious by the lack of transparency in how the national interest is assessed and how in each negotiation the aspects of the outcome have been assessed against the various criteria that make up the assessment of the national interest.

There is no reason why the levels of transparency that Government expects of airports in their dealings with airlines should not be matched by this area of aviation policy. APAC believes transparency would be greatly improved by a simple two-step process:

- The Minister issuing a statement outlining the various issues that the Government considers are relevant to the national interest and the relative weight (in general terms) it places on each of them much in the same way the Treasurer has in relation to the assessment of foreign investment proposals; and
- At the conclusion of each negotiation the Minister sets out in summary form the various aspects of the agreement against the criteria contained in the Government's policy.

3.2 Foreign ownership rules

APAC sees no in-principle reason why the foreign ownership of Qantas should be limited to 49% and supports the Government's efforts of moving the notion of nationality away from ownership to principle place of business. However, given the importance of Qantas in Australia's international aviation market, it would seem

prudent to maintain the 49% ownership limit until such time as the agreements that cover all Australia's major markets have modified to a principle place of business definition of nationality.

APAC supports the Government's proposed removal of the restrictions preventing a single foreign interest exceeding 25 per cent of the equity of Qantas and total foreign airline equity exceeding 35 per cent. To the extent that these restrictions are designed to ensure the vigour with which Qantas competes is not undermined by it being controlled or significantly influenced by a foreign airline, APAC's view is that this issue, as with all other Australian companies, can be adequately dealt with under section 50 of the TPA.

It should be noted however that given the global financial crisis has accelerated the global trend of airline consolidation, this area of policy cannot be approached on a "set and forget" basis. It is vital that the Government keep this area of policy under active review, including the 49% foreign ownership limit, to ensure that it does not obstruct transactions involving any Australia carrier that would advance the national interest if pursued.

3.3 Passenger facilitation and border control

APAC welcomes the Government's acknowledgement of the significant capital works programmes currently underway at a number of Australia's international gateways. Efficient and effective passenger facilitation requires the investment of both public and private resources in order to be effective and APAC is pleased to see that the contributions of industry in this regard have not gone unnoticed by Government.

The Passenger Facilitation Taskforce in both its original and reinvigorated form is to be commended for its work in devising and implementing practical solutions to congestion problems at international airports and trusts that this highly successful model of industry engagement will continue into the future. While positive steps have been made, there is still much work to be done in improving international passenger experiences at the Australian border.

APAC strongly supports the Principles released by Government in relation to new international airports and in particular was pleased to see the Government confirm that the establishment of new international airports will not result in a diminution of Commonwealth standards at existing airports. In order to give effect to this intention in particular however, it is imperative that Government make clear that it does not intend to move existing staff resources from any existing major international airport to meet the staffing needs of new international airports. There is already a significant under resourcing of border protection at the major airports to the

detriment of security and facilitation outcomes at those locations, any further reduction would only serve to further compromise existing border security initiatives and further congest our major international gateways.

APAC notes the outcomes of the Government's *Quarantine and Biosecurity Review* conducted by Mr Roger Beale AO and welcomes the majority of commitments contained in the Government's interim response to Mr Beale's recommendations. APAC is particularly supportive of the commitment to move away from the imposition of arbitrary intervention rates and toward a thorough risk based model which strikes a balance between resource investment and biosecurity returns. APAC is also pleased to see a commitment to establish a more formal relationship between border agency resourcing and projected passenger growth. APAC encourages government to maintain the momentum it has created with their in-principle support of the majority of the Review recommendations by moving to implementation as soon as is practicable following industry consultation.

Notwithstanding APAC's support of the majority of the Government's response to the Review, APAC does not support the proposed increase in the Passenger Movement Charge (PMC). The PMC continues to collect significantly greater revenue than the costs of border protection at airports, is not transparently expended, risks causing significant damage to an already compromised leisure travel market and reduces the accessibility of travel to working families created by low cost carriers over the last five years. Government must acknowledge the vital importance of adequately resourced border security services in the furtherance of favourable economic and security outcomes for Australia and resource them accordingly.

4 Domestic and Regional Aviation

As noted in APAC's submission in response to the Issues Paper, APAC's view is that the current domestic aviation policy settings, largely put in place by the Hawke and Keating Governments, have served Australia well in producing a competitive industry that performs well even when confronted by major shocks such as the Asian financial crisis and the collapse of Ansett.

4.1 Potential Competition distortion by Airservices Australia

APAC is disappointed that the Government did not take the opportunity provided by the Green Paper to express its general view on the approach the pricing of the services provided by Airservices, particularly in relation to location specific charges. APAC remains particularly concerned that the current policy will have the effect of distorting emerging competition between airports serving major population areas such as south-east Queensland and greater Melbourne. Further, the Government should make it abundantly clear that it is not the role of Airservices to use its pricing policy to encourage the development of some parts of the aviation sector at the cost of others or to seek to "encourage" (read "distort") competition between two airports by Airservices charging less than its avoidable cost to provide services at a particular (smaller) airport contrary to National Competition Principles.

4.2 Waste of Public Money on Bass Strait Ferry Subsidy

APAC notes with some interest the importance that has been placed on the availability of alternative transport modes in assessing eligibility for the Remote Air Service Subsidy Scheme. This is an appropriate approach to ensure intermodal competition is not distorted whilst ensuring communities have access to vital transport services. What is profoundly disappointing is that this sound approach to public policy has not been applied to subsidies paid in regard to Bass Strait passenger ferry services.

As noted in APAC's submission in response to the Issues Paper, the Bass Strait Passenger Vehicle Equalisation scheme in recent years has been a demonstrable failure. Indeed, it is arguable that the subsidy has induced inefficient investment in sea capacity which has now been removed. Since 2003, when the Tasmanian Government increased capacity, market share (in terms of passengers) has fallen

from 22% to 12% in 2007². This is not only a result of aviation growth but also an absolute decline in sea-going passengers of 20% over the same period.

It is even more concerning that a Government that prides itself on its approach of “evidence based public policy” would increase the subsidy without any analysis of the benefits of such an increase. Again APAC would urge the Government to request the Productivity Commission to undertake a formal review of the assistance provided to all passenger transport modes across Bass Strait as input not only to this review but future budget considerations of both the Tasmanian and Commonwealth Governments.

² BITRE (various)

5 General Aviation

The Government's commitment to helping the development of the general aviation sector is most welcome. However APAC is disappointed that the Green Paper pays little regard to airport infrastructure issues relating to general aviation other than a few passing comments regarding the rents and charges paid by general aviation operators at the general aviation airports previously operated by the Federal Airports Corporation .

Much in the way APAC believes it is prudent, irrespective of the interpretation or volatility in traffic forecasts, to provide for a second major airport for Sydney, so does it believe that it would be prudent for the Government, in consultation with the States, to review the availability of general aviation capacity in Australia's capital cities. Not only would this ensure that pressure does not develop to facilitate general aviation operations at major airports such as Melbourne, which would inevitably lead to a reduction in efficiency of those airports, but also ensures that Government can be certain that its ambitions for the general aviation sector, supported by the policy set out in the Green Paper, are not delayed or frustrated by a lack of appropriate airport infrastructure.

6 Industry Skills and Productivity

APAM welcomes the focus the Green Paper has placed on aviation related labour market and skills issues and the positive steps that the Government has already taken.

That said, other than in regard to training of security staff, the Green Paper makes no reference to the labour needs of Australia's airports.

Airport planners, airfield standards experts, obstacle limitations assessors and specialist engineers are now in short supply and a number of regional airports must rely on consultants many of whom are of retiring age and it is not clear how the consulting workforce will replenish itself. In some cases consultants are not willing to take on small scale projects at regional airports.

This problem is a reflection of the general shortage of young people seeking to pursue careers in the transport and other technical sectors that require both degree and technical training and is exacerbated by the demand and remuneration that the mining sector is currently providing for this part of the labour force. That said, a general reduction in demand in these parts of the mining and construction sector may see the supply of suitable applicants increase.

APAC had hoped that the Green Paper would bring forward proposals for a strategy to develop and train staff for the airports sector. Such a strategy should be aimed at aviation industry wide training to enable people with generic aviation skills to move between parts of the industry and to ensure that in years to come the industry has high quality leadership in commercial, technical and operational areas. Cross functional training is particularly important for secondary and regional airports which otherwise need to rely on costly and centralised consultancy services.

APAC urges the Government to ensure that when it brings forward its final aviation skills and productivity package in the White paper that it ensures that the needs of Australia's airports, like all other sectors of the aviation industry, are properly addressed.

7 Consumer Protection

APAC welcomes the Government's intention to legislate to require all-inclusive pricing of airline tickets. APAC has long been concerned that the current practice of component pricing is misleading to consumers by not advising them of the full price of a ticket. Further, as a result of the high level of variability between airline practices as to what constitutes "taxes and charges" and the level of aggregation used, the information provided in this regard on tickets is of little value to passengers in making purchasing decisions.

The increasing variety of airline products offered to the travelling public is a healthy sign of the competitive dynamism of Australia's domestic aviation industry. This trend, and the benefits it brings to the travelling public, will extend to international markets as carriers such as Jetstar, Tiger and AirAsiaX expand their operations on both new and existing routes.

APAC's experience is that Australian passengers are learning to adjust to the range of services offered and indeed are welcoming the fare reduction that comes with this form of quality-price competition. Further, the difficulties that have been experienced in Europe with the growth of LCCs have not manifested themselves in Australia for a range of reasons including the skill of the management of Australia's LCCs, the benefit of learning from the European experience and some structural differences between the Australian and European markets. APAC totally supports the approach suggested in the Green Paper that these issues are best dealt with by the general consumer protection laws and not by aviation specific arrangements as are proposed in Europe. It is APAC's view that the European approach is likely to stifle quality based competition, reduce choice and lead to higher fares.

Disability access has been a vexing issue for many years and APAC welcomes the Working Group proposed in the Green Paper in this regard. For this Working Group to be successful, it must be mindful that at many airports, the vast bulk of airport passengers are passing through buildings that are decades old and the cost of retrofitting facilities can be very high and in some cases retrofitting may compromise other passenger processing activities. The output of the Working Group work should be directed at actually improving accessibility outcomes and it should not repeat past experiences that led to physical standards which in many cases were not implementable and/or did nothing to improve disability access and potentially impacted on overall passenger facilitation and access.

8 Airport Infrastructure

8.1 Airport Planning

APAC is pleased that the Green Paper notes the substantial investment that is planned for Australia's major airports and the importance of the existence of a supportive framework to ensure that such investment occurs as and when market conditions dictate. As the Government is aware, this follows on from a significant period of investment since prices notification was removed in 2001 and 2002.

It is APAC's view that the law and policy surrounding the current economic and planning framework strikes an appropriate balance between the commercial objectives of airport operators, the legitimate interests of airlines and the travelling public and the importance of the community being properly consulted about the impacts of current and future airport operations and development.

Whilst it has not been an issue for APAC airports, there is clearly a need in some states to better align airport and other infrastructure planning and APAC welcomes the Commonwealth's commitment to develop more co-operative arrangements with the States. It is important however to ensure that any such arrangements are reciprocal. The States (and to some extent local government) have very legitimate interest in the current and future demands that airports' aeronautical and non-aeronautical businesses place on their infrastructure. Indeed, given the economic benefits aviation creates and the revenues it supports, the aviation industry is entitled to be certain that its future development is not inhibited by inadequate planning and provision of public infrastructure.

Airports and their airline customers similarly have a critical interest in ensuring that off-airport development does not impede the future aircraft operations at airports through:

- the creation of physical obstacles;
- interference with air navigation systems;
- light or bird hazards;
- noise sensitive developments in inappropriate locations; or
- a lack of availability of land (especially that currently in relatively low value uses) required for future airport operations.

As such, APAC welcomes the Green Paper commitment to bring forward a discussion paper on safeguarding and looks forward to this process addressing the issues set out above. It should be stressed that in relation to the availability of land, all parties would benefit from a clear statement from the Commonwealth, after proper consultation with the states and other relevant stakeholders, as to the approach that will be taken in the future about the acquisition of land needed for future airport use including the Commonwealth's preparedness to use the *Land Acquisition Act 1989*.

It is a key corporate objective of APAC for each of its airports to earn their licence to operate from the communities in which the airports are located. This involves a process of constant engagement with local and state governments as well as residents currently or potentially affected by the airport's operations. It is clear from the responses to Melbourne Airport's most recent draft Master Plan, approved by the Minister on 8 December 2008, this has been achieved. The Minister wrote in advising Melbourne Airport of the approval that:

It is apparent that Melbourne Airport has established constructive relationships with a number of key stakeholders, including the Victorian Government and a range of councils. I congratulate you on this and encourage you to maintain these relationships.

I am encouraged by the largely positive tone of the submissions received during the public consultation process on the dMP. I firmly believe it is incumbent on all airport-lessee companies to ensure they remain good neighbours within the communities in which they operate³.

It is unfortunate that despite many submissions critical of the current planning processes, examples of material problems were not brought forward. Further, the Green Paper reflects this absence of solid data by not indentifying specific examples of the problems the proposals contained in the Green Paper are intended to solve. This obviously makes it difficult to comment on the specific proposals, especially given the level of detail that has been provided.

However, it is clear from a range of submissions made in response to the Issues Paper that a number of important stakeholders feel that they are not appropriately involved in decision making process at some airports and that some airports are not meeting the standards expected by the Minister. Whilst clearly the conduct of some airports is an issue, this lack of confidence is also a result of poor decision making by previous Ministers and a failure on the part of some stakeholders, including some state and local governments, to avail themselves of the extensive consultation

³ Letter to the Chief Executive Officer of Melbourne Airport from The Hon Anthony Albanese dated 8 December 2008.

provisions already provided to them in the Airports Act, especially after the proclamation of the 2007 Amendment Act. Whatever the cause and merits of these concerns, it is APAC's strong view that it is vital the community have confidence in airport planning arrangements and the conduct of airport lessee companies.

Whilst the Green Paper proposals for Airport Consultative Committees and Expert Panels are clearly at a concept stage, APAC believes if carefully implemented they may prove valuable in improving community confidence and transparency in airport planning process' without substantially increasing cost or extending current approval timeframes. Some thoughts on each of these proposals are provided below as well as comments on other planning related issues.

Airport Consultative Committees

It is clear from submissions in response to the Issues Paper that there is significant variation in the approaches and outcomes of community consultation and engagement across airport lessee companies. APAC does not consider the already good outcomes being achieved at its airports would be materially different following the implementation of more formal consultative processes but such an approach would improve outcomes at some other airports. Of equal importance, the establishment of Airport Consultative Committees (ACCs) would enhance the general community's confidence in, and engagement with, airport planning issues.

Before discussing how ACCs might be structured and operate, APAC would observe that the need for airports to properly and fully engage with their communities is not restricted to those airports leased from the Commonwealth – such obligations should apply to those airports operated by local councils and subject to other ownership arrangements (such as Cairns, Mackay, Cambridge and Avalon) as well as airfields operated by the RAAF. To ensure that all affected communities benefit from this important initiative, if legislation is required to implement these arrangements APAC would suggest the Government consider whether the necessary legislative provisions should be contained in the *Civil Aviation Act 1988* (as a requirement to hold an aerodrome licence for aerodromes with annual aircraft movement numbers above a certain threshold) rather the Airports Act.

ACCs have been a feature of United Kingdom aviation policy for several decades. APAC through its previous arrangements with BAA Limited has extensive knowledge and experience of those arrangements and believes they provide a very suitable starting point for the development of a similar policy framework for Australian airports⁴. Whilst the quality of outcomes at United Kingdom airports has

⁴ See Department for Transport (2003)

varied, they have generally been positive and the legislative framework and guidance provided by the United Kingdom Government has proven sufficiently flexible for individual airports and their communities to craft arrangements to meet their particular local needs.

APAC is of the strong view that for ACCs to deliver on their intended policy objectives, and maintain their relevance and functionality, it is essential for Government to give very clear guidance as to the policy intentions of the ACCs and equally, what it is not intended by the proposal.

Drawing on the United Kingdom guidelines the following set of ACC objectives would fulfil the policy purpose described in the Green Paper:

- to enable airport operators, communities in the vicinity of the airport, local authorities, local business representatives, aerodrome users and other interested parties to exchange information and ideas;
- to allow the concerns of interested parties to be raised and taken into account by the airport operators in relation to the off-airport impacts of airport operations and development, with a genuine desire on all sides to resolve any issues that may emerge;
- to complement the legal framework within which the airport operates; and
- to provide a mechanism and monitoring framework through which individuals may express concerns and obtain responses about the operation of the airport and the customer experience at the airport. This should include not only those matters under direct control of the airport and its contractors but also those controlled by government agencies (particularly the border agencies and Airservices Australia), airlines, any other terminal operators, ground transport service providers and so on. To achieve this will obviously require the Government to ensure the cooperation of its own agencies, potentially some state government agencies and airport users.

APAC believes it is equally important to ensure that ACCs should not:

- detract from or constrain the ability or responsibility of the airport operator to manage the airport;
- be involved in matters of security;
- prevent or obstruct interested parties dealing directly with airport, or through other channels. In particular an ACC should not obstruct, prevent or involve itself in the use of any statutory or common law right of any party, including the airport operator;
- involve itself in commercial issues (including the pricing of services and setting of rents) between the airport and any of its customers or in the daily operational decision making of the airport;
- involve itself in matters properly the province of regulatory authorities such as CASA and the Office of Transport Security;

- act as a dispute resolution forum; or
- in any way have any executive decision making capacity with respect to the airport.

APAC supports the notion of the ACC having an independent chairperson. It is the practice of many airports in the United Kingdom to publicly advertise this position. The approach to appointment varies from place to place but an appointment committee consisting of, the airport, the Commonwealth Department, the State Government and two other members of the ACC for example should ensure that the person to be appointed is both independent of any sectional interests and competent to fulfil the role. To minimise the risk of the ACC becoming a forum for the politicisation of airport issues, it would be desirable to avoid the appointment of chairpersons who are serving politicians or people who are candidates for elected office. Whilst former elected officials may be suitable, a period of say two years should have passed since they left office or last sought election before they should be considered.

Perhaps the area of most difficulty, and the one where the most flexibility is required to meet local circumstance, is that of the composition of an ACC. ACCs must achieve a reasonable balance in the representation of the following groups:

- National and state governments and their operational agencies but in such a way that the ACC does not become a forum for interjurisdictional or interagency disputes;
- Local authorities (not only the municipality in which the airport is located in but also those impacted by airport operations and those who have a strong economic interest in the airports activities); and
- The major airlines using the airport and any major significant airline groupings.

Membership of the ACC by the airport is not necessary but the airport must have the right to attend and speak at all meetings and subcommittee meetings of the ACC.

Providing the costs of operating the ACC are not excessive, it would not be unreasonable to expect airports to meet those costs. It should be at the airports discretion to provide services in kind such as printing, secretarial services, web site hosting and meeting rooms. Proceedings of the ACC should be made available to the public via the internet.

Expert Panels

APAC believes that the planning framework could be improved by Expert Panels (EPs) to advise the Minister. APAC supports the Green Paper proposal that EPs

would be a source of advice to aid ministerial decision making, but importantly should not substitute for it. Further, it is imperative that in order to deliver on the Rudd Government's laudable agenda to reduce business red tape, EPs should not duplicate or cut across those processes already provided for in the Airports Act or other relevant planning laws.

If properly implemented this proposal could be expected to provide the Minister with access to expert planning advice that is simply not economic to retain within the Commonwealth Public Service due to the relatively low and infrequent demand for it. This should give both airport lessee companies and the wider community greater confidence that prior to making a decision the Minister has been fully apprised of the relevant technical and legal issues.

This proposal will require significantly greater consideration to reach implementation than the process governing the implementation of ACCs. If not implemented properly, this proposal stands a strong possibility of being nothing more than additional regulatory burden that will achieve little other than delays and frustration of investment. As such, APAC would encourage the Government to provide further detail in the White Paper and embark on further specific consultation once it has further developed its policy in relation to this matter.

To assist, set out below are a number of thoughts on how this proposal may be developed.

- There must be no extension to the statutory time frames currently in place to facilitate the work of EPs. They must provide their advice to in a way which enables the Minister to make decisions within the timeframe set out in the current law.
- APAC would envisage that the EP would be expected to take over a large part of the role of the Department in providing advice on those Master Plans and MDPs they are involved in. As such, the EP would commence its work once the relevant draft Master Plan or MDP had been submitted to the Minister for approval. It would not be appropriate for an EP to undertake further public consultation – this is properly the role of the airport lessee company. Rather, if an EP formed the view that further consultation or information was required it could advise the Minister to either reject the proposal because of a lack of consultation or information or to utilise the “stop the clock” provisions provided for in the Airports Act.
- As Master Plans remain the principle airport planning documents, it would not be unreasonable for EPs to advise the Minister on all Master Plans. However, APAC does not believe that all MDP's would need to be referred to EPs. The tenor of the discussion in the Green Paper suggests that the primary area of concern is non-aeronautical development proposals that interact with off-airport infrastructure or may have impacts on surrounding

communities. As the Government develops its thinking on this issue, APAC would encourage it to consider providing an indication of what criteria would be used to assess the need for the convening of an EP and perhaps some examples of specific projects that would and would not be referred to EPs.

- In establishing an EP, the Minister should be required to provide terms of reference and publish these at the time the EP is established. This provides the opportunity for the Minister to focus the EPs attention on those issues that are of primary concern. This will help reduce cost and timeframes for MDPs and Master Plans where there are a wide range of issues and many are non-contentious.
- EPs should not be involved in reviewing the planning or design of primary aviation infrastructure except to the extent its use impacts on the community infrastructure or people who live around the airport. Specifically, EPs should not be involved in safety or airspace management issues as the Airports Act already requires the Minister to seek the views of CASA and Airservices on these matters. It would however be appropriate for them to advise the Minister on issues relating to ensuring the ongoing development of sites as airports.
- EPs will need to exercise care to not become involved in disputes between airlines and airports about facility design, especially in relation to terminals. Rather, their activities should be confined to airport wide planning considerations such as their overall size, their location on the airport site and their relationship with supporting infrastructure.
- It would be appropriate that EPs be funded by the Commonwealth as they would effectively be advisors to the Minister and would undertake work as and when the Minister would require them.
- The members of EPs must be independent of the airport concerned, its major business partners and other stakeholders who have an interest in the outcome of the Minister's decision. It would not be appropriate for officers of state or local governments who are involved with the airport concerned to serve on an EP as this could lead to pressure being placed on these officers by their primary employer to advise the Commonwealth Minister in a certain way or lead to accusations of bias. Similarly, it would not be appropriate for airport executives or consultants who advise the airport concerned to serve on an EP. However, after a suitable period of time, previous involvement with an airport or a major stakeholder interest should not be seen as an impediment to serving on an EP as long as that previous involvement is transparently disclosed.
- APAC is concerned that the number of people with appropriate expertise to serve on EPs, once the conflict of interest issues discussed above are

appropriately addressed, may be quite small. Rather than seek to appoint EPs on an ad hoc basis, it might be more prudent to establish a pool of suitably qualified people to serve as required. This approach seems to work quite well in regard to non-judicial members of the Australian Competition Tribunal (who are not full time officers of the Tribunal or the Federal Court) in as much as it ensures suitably qualified people are available but at the same time manages conflicts that may arise from their normal employment and/or business activities.

- If legislation is required to implement this proposal, it should ensure that the work of the EPs is subject to no greater interference from FOI and administrative law procedures than if the work was undertaken by the Department. That said the advice of EPs to the Minister should be made public except to the extent of any issues of commercial confidentiality and the airport lessee company concerned should be given the opportunity to provide confidential comment on the final draft of the advice to the Minister prior to it being provided to the Minister.

Improving aeronautical and ground transport planning arrangements.

APAC is disappointed that the Green Paper fails give any consideration to how the MDP triggers relating to aeronautical developments might be reformed to reduce both the cost and time associated with development approvals. Whilst APAC supports the general position adopted in the Green Paper that planning arrangements, particularly in relation consultation and non-aeronautical development do require reform, failure to address issues related to aeronautical development renders the Green Paper claim “there is no intention to over-regulate”⁵ without substance.

As noted in APAC’s submission in response to the Issues Paper, most aeronautical related MDPs appear to be relatively uncontentious and that their impacts on the community are better addressed through the Master Planning process giving proper consideration to the impacts of the overall level of aviation activity.

The White Paper is an opportunity to reform aeronautical MDP triggers in such a way that not only benefits the development process but also adds efficacy to the Master Plan process.

This could be achieved by amending section 71 of the Airports Act to require the Master Plan to contain a list of projects that are necessary to facilitate a certain level of activity (probably the upper level passenger forecast) and possible objectives relating to freight and general aviation over the five-year period of the Master Plan.

⁵ Australian Government (2008, page 166).

This list would require specific approval by the Minister and projects contained in the list would be exempt from the MDP provisions although the Secretary would be required to give such an exemption promptly (deemed approval in 14 days in the absence of a decision would be considered appropriate).

The specification of projects should also be flexible, for example:

- Increases in floor areas (up to a certain amount) of existing passenger and freight terminals, hangars, flight kitchens and similar aeronautical buildings;
- Development of new buildings as above up to a certain size in predetermined general locations identified in the Master Plan;
- Development of taxiways and parking aprons to facilitate developments described above;
- Additional aircraft parking aprons up to a certain number;
- Taxiway infrastructure (new or extensions) and other projects that the airport lessee and Airservices believe will improve the efficiency of airfield operations;
- Facilities agreed between the airport lessee and Airservices for Airservices use; and
- Road and car park projects set out in the Ground Access Strategy (see below)

It should be noted that those aeronautical projects most likely to lead to new impacts on the community above and beyond the general growth of activity - runway extensions (including potentially runway end safety areas) and new runways - would still be subject to the MDP processes.

APAC has long felt that land transport issues are an important area that is not properly addressed in the current planning framework. A way to redress this situation would be to make it a statutory requirement for Master Plans to contain a Ground Access Strategy that

- shows how the airports road traffic will impact on supporting public road infrastructure and what measures have been agreed with providers of that infrastructure to ensure adverse impacts, if any, are minimised;
- identifies any future off-airport infrastructure and the level of commitment of the relevant level of government to provide it as and when required;
- sets out the airport lessee's approach to airport accessibility by all modes of transport;

- identifies on-airport roads from a land use planning perspective; and
- demonstrates that the airport has properly planned projects to meet future on-airport traffic and parking demand including specific proposals for the five-year period of the Master Plan (such projects would be exempt from MDPs as discussed above).

Such a strategy would need to be integrated with the urban and regional transport strategies of the jurisdiction in which the airport is located. The MDP provisions could also be amended to require an MDP to specifically address how the proposed development relates to the objectives set out in the Ground Access Strategy approved by the Minister.

8.2 Economic Regulation

As the Green Paper notes Australia's major airports are committed to a range of capital projects of a scope unparalleled in Australia's aviation history. This is occurring at a time when procuring the finance to undertake this work has become difficult as a result of the global financial crisis.

APAC welcome's the Green Paper's acknowledgement of the importance of providing an investment-friendly economic regulatory framework. APAC supports the view contained in the Green Paper that commercial agreements between airports and airlines are the best way to establish aeronautical prices.

APAC's experience, and we believe that of our airline customers (at least in dealing with APAC airports), is that commercial agreement can be reached over the capacity, quality and price of aeronautical services and facilities. These agreements provide for binding dispute resolution during the life of the agreement.

However, APAC recognises that there could be occasions when for whatever reasons, the parties cannot agree on important issues (probably in most cases about price) and negotiations become intractable. APAC has acknowledged the legitimate frustration that airlines have expressed at having unacceptable airport conduct dealt with under the monitoring framework. The timeframes available in which to gain a final resolution under Part IIIA of the Trade Practices Act are far too long to be an effective dispute resolution mechanism.

The issue confronting the Government is how to continue to promote an environment where commercial negotiations continue to drive airport investments while ensuring that the community has confidence that airports do not overcharge for its services. The key mechanism is the 'show cause' guidelines adopted by the previous Government. APAC supports the current Government's desire to provide more clarity around this mechanism

APAC considers that the draft ‘show cause’ guidelines issued by the Department after the release of the Green Paper will not promote commercial negotiation. They rely on historical accounting information and the process is open to abuse through regulatory gaming. APAC has provided below an alternative framework that seeks to address these underlying problems.

Draft ‘show cause’ guidelines

As is the case with any dispute resolution mechanism, the challenge in designing a show cause mechanism is to ensure it does not provide incentives for either airports or airlines to engage in strategic conduct to avoid normal commercial processes and outcomes.

As a matter of policy, the Government must make clear that any show cause procedure will in no way interfere with such contractual arrangements. Further, measures must be taken to ensure that airlines avoid entering into contracts with airports simply to gain access to show cause arrangements or for other strategic gaming purposes.

Set out below are APAC’s concerns in regard to the Department’s show cause guidelines and an alternative approach which will properly deal with airline grievances. Given the critical influence that the regulatory system has on investment outcomes, the lack of detail contained in the show cause guideline, the manifest flaws APAC believes to be contained in the guideline and the to date limited consultation on it, the Department having reviewed responses to the draft, must provide more detail on what is proposed and then release a revised draft for further consultation. It is also suggested that the Department seek the written views of both the ACCC and the Productivity Commission and publish them on the Department’s website prior to releasing its revised proposals.

The Department proposes it will undertake a ‘show cause’ assessment involving an analysis of the Regulatory Accounts published annually by the ACCC and any complaints that might have been made by other persons. The proposed guidelines only apply to price monitored airports, that is, the largest airports in Australia.

Coverage

APAC assumes, although it is not clear from the documents issued by the Department that complaints under this arrangement would apply only to the provision of those monitored services, namely aeronautical services and car parks. Therefore, at most airports of concern complainants will be airlines or other commercial operators. In the case of Melbourne Airport and a number of other airports, these issues can be properly dealt with under signed contracts currently in

place. If these arrangements are to deal with other matters, the Department must properly identify what other issues this process is meant to address.

Scope for regulatory gaming and confidentiality

If the show cause arrangements are intended largely to deal with airline complaints, then the notion that the information provided to the Department would be kept confidential from the airport is entirely unacceptable. The habit of airlines of making confidential submissions to the ACCC about NNI applications in the period 1997-2002 significantly impaired the development of normal dealings between airports and airlines and it is APAC's strong view that the process proposed more generally is likely to encourage the sort of gaming experienced during that period. Of this conduct the Department noted

The experience with the administration of the prices oversight regime, however, suggests that the parties (and notably the airlines) have not been prepared to negotiate commercially – instead continuing to rely on arbitration under regulation. This is seen to be partly attributable to the existence of the price cap arrangements which have acted as a strong incentive for stakeholders to dispute and adopt regulatory gaming tactics on any new pricing proposals or price increases put forward by airport operators to obtain commercial advantage. Evidence to date suggests that this has been at the cost of economic and dynamic efficiency in airport operations.

It has also been partly attributable to the statutory and administrative arrangements underpinning the prices oversight framework which are not suitably structured for delivering on the intended policy outcomes in a satisfactory way. It is our observation that the interaction of the requirements of the Prices Surveillance Act 1983 and Instruments issued thereunder, has resulted in: an excessive regulatory burden for all parties concerned; a cost plus approach being taken toward the regulation of airports rather than economic efficiency; and disputation over the meaning and purpose of the regulatory instruments and whether they were delivering on the economic policy intent.⁶

It is difficult to see why the Department would seek to impose on the Australian aviation industry a return to these sorts of outcomes or why it believes it is more able to avoid this than a professional regulator such as the ACCC.

The confidentiality aspects of the process proposed are also contrary to the spirit of the Freedom of Information reforms currently being developed by the Special

⁶ DoTARS (2001, pp 1-2)

Minister of State and fly in the face of the generally accepted processes of Commonwealth administration. Absent legislation, the arrangements will require co-operation from airports and in their current form, this may not be forth coming.

Airports are required to, and largely do, fully disclose to airlines confidential information about their current and future business operations which is not available in the public domain. This is usually done under an executed confidentiality deed. It is likely that any airline complainant would need to use airport information it had agreed to keep confidential to substantiate its complaint. If airports are to be expected to accept such breaches of their confidentiality from airlines with which they are expected to deal in good faith, the least they can expect is to know the identity of an airline complainant to the Department. Absent such information and notwithstanding efforts the Department may make, it will not be possible for an airport to respond fully to a complaint and natural justice will be denied.

Further as the Department has neither executed confidentiality deeds with the airports concerned nor is this information protected under Freedom of Information law, there is a significant risk that confidential and potentially market sensitive information would be subject to uncontrolled released. As such it is likely that the arrangements proposed would lead airports to be less forthcoming with information to airlines, especially in those cases when a material number of shares in the airport are held by listed investment companies such as Macquarie Airports or the Australian Infrastructure Fund.

Show cause analysis

The Department has not made clear what this analysis will involve although given the content of the ACCC reports, it is difficult to see how it will rest on any more than annual price movements and single year of returns on aeronautical assets as reported in the airports regulatory accounts. If the latter is to be a major part of this analysis, it can only assume that the Department has not understood the problems with such an approach. To assist the Department, set out below is the view put to the last Productivity Commission inquiry by Melbourne Airport.

the information that is revealed in the monitoring reports on asset returns tells only part of the picture. High returns on assets may reflect the point in the capacity cycle or large future capital programs in circumstances where current average costs are well below long run incremental costs. On the other hand, low returns might reflect the presence of significant surplus capacity.

Given these factors, it is almost certain that airports will exhibit different levels of return at different times. Further, there can be expected to be persistent differences in the level of returns reflecting levels of efficiency

in airport design and operations, the nature of the markets served and management competency.

Great care must be taken in interpreting the data published annually by the ACCC. This is particularly so as the total purchase price of the airport is not fully reflected in these figures. That said it is probably the case that Melbourne Airport is the most profitable airport in Australia.⁷

In its submission to the same inquiry, the ACCC found common ground with Melbourne Airport on this issue. It said:

the excess earnings measure is sensitive to the period over which it is measured, and it only provides a definitive answer on the extent to which the revenues earned by the firm were greater than costs when considered over the entire life of the asset. An assessment of excess earnings over a small part of the life of an airport is subject to myopia and be could misleading, especially if the revenues of an airport over the remaining term of the lease are significantly different from the airport's revenues during the period examined.

A result indicating that an airport's earnings are excessive over just one or a few years during its life could be offset by a future or past period in which its earnings were negative or not excessive. For example, an airport may be under recovering costs due to an adverse shock in demand, or over recovering costs because it is capacity constrained and is generating excess earnings to finance future investment.⁸

Bringing these two arguments, and some others, together the Productivity Commission concluded:

drawing strong conclusions from this rate of return data on the reasonableness of airports' charges — and thus, whether there has been any misuse of market power — is not straightforward.

In particular, reported returns are critically dependent on the values ascribed by the airports to their aeronautical assets. Several of the airports have 'booked' sizeable asset revaluations — most notably Canberra Airport, where the revaluation has been almost 200 per cent — which have the effect of reducing the rate of return presented in the price monitoring reports. As discussed in chapter 4, asset values have been a matter of considerable debate between airports and airlines.

⁷ Melbourne Airport (2006, p17)

⁸ ACCC (2006, p74)

Also, rates of return are likely to vary according to the stage of the investment cycle. Much airport investment is large and lumpy, meaning that there is usually initial excess capacity in major new infrastructure. With smoothing of prices, revenues and rates of return will tend to increase as capacity utilisation improves (see Melbourne Airport, sub. 13, p. 17).

Such investment cycle effects, in turn, mean that the reasonableness of rates of return and underlying charges can only be fully assessed over the longer term — a point recognised by the ACCC (sub. 39, p. 74). This creates considerable problems for a monitoring regime required to report annually on profitability.⁹

The views expressed above apply generally to any infrastructure service that is provided with excess surplus capacity and has long investment cycles. As such, they are equally relevant to the provision of services provided to airlines and to services provided by an airport to the travelling public more directly, and in particular car parking.

If the Department believes that Melbourne Airport's economic advisors, the ACCC and the Productivity Commission are all wrong on this point, it should clearly explain why and how the approach it will adopt avoids the problems identified.

In a traditional regulatory price setting framework, the regulator has access to the future business forecasts, including capital expenditure plans, of the business concerned. Indeed, it is the information about the future that is most important to the determination of prices today and it is this information that is most considered and debated by airlines and airports in their commercial discussions.

In the framework proposed by the Department, it is essentially proposing to pass judgement on prices determined by future forecasts based on information from the past in a way yet to be set out in any detail. The only way that the Department could competently advise the Minister of there being a *prime facie* case of abuse would be to examine the material that was the basis of the setting of those prices. In other words, the Department would need to put itself in the place of the negotiating parties. This would represent a level of invasion that is both unjustified and unprecedented and would make a mockery of the general approach of the policy of the Government.

⁹ Productivity Commission (2006, pp20-21)

Even if there was a *prime facie* case made out, reliance on Part VIIA of the Trade Practices Act may not necessarily give redress to a complainant. The reasons for this, and a potential remedy, in relation services provide to airlines are set out in some detail immediately below. The situation for other price monitored services, currently limited to car parks, provided directly to the travelling public is different and is dealt with as part of a wider discussion on car park price monitoring later in this chapter.

A better approach to airline-airport dispute resolution

The development of any ‘show cause’ mechanism must consider carefully how it will avoid the problems associated with the previous airport price regulation. The emphasis must be on promoting commercial negotiation to resolve issues.

APAC would suggest the following as a process which ultimately would lead to a formal inquiry under Part VIIA and the possibility of declaration under either Part IIIA (binding arbitration by the ACCC) or Part VIIA (prices notification). It has a known and relatively certain timeframe while ensuring that airports comply with the pricing principles outlined by the Government (the Principles) and is not subject to spurious complaints.

It would involve the Minister in the process of determining whether an airport should be exposed to a formal inquiry or arbitration by the ACCC. In addition to reducing time frames available under Part IIIA and increasing certainty this proposal, unlike the show cause guideline issued by the Department:

- will reduce gaming from both sides;
- can deal with price and non-price issues
- will encourage commercial rather than regulatory settlement; and
- potentially provide an arbitrated outcome to a dispute.

A dispute arises if an airline, or group of airlines, has not been able to reach a commercial agreement with an airport and believes that an airport is proposing to pursue (or is pursuing) a course of action that is inconsistent with the Principles.

The process starts by the airline writing to the Minister of the conduct of concern. The complainants would also be required to provide a copy of this letter to the airport concerned. Such a letter (and/or accompanying materials) must set out to the Minister’s satisfaction:

- Evidence that the complainants have engaged in serious good faith negotiations that have no reasonable prospect of reaching an acceptable outcome;

- The particular matters in dispute and how they constitute a contravention of the Principles; and
- A proposed resolution of the dispute that would be acceptable to the complainants including a demonstration of how such a resolution is consistent with the Principles. The complainant will need to evidence that such a counter offer has been put to and rejected by the airport concerned.

Within 14 days of receipt of such a letter, the Minister would confirm that the airport concerned had received a copy. The Minister would ask the airport to advise of any other customers who would have a legitimate interest in the matter and in particular who would be disadvantaged by the proposed resolution. During this period the Minister would also need to be satisfied that the complaint contains all the relevant information, the counter offer is capable of acceptance and is not vexatious.

Once the Minister is so satisfied the airport concerned will have 21 days to respond in writing to the complaint, accept the airline counter offer or submit the matters in dispute to commercial arbitration. Other affected commercial parties would be invited to provide a view during this period. If the airport concerned accepts the counter offer or is prepared to enter into binding commercial arbitration on the matters of concern (and obviously subject to the Principles) and if this is not acceptable to the complainant, then the Minister will not proceed with the complaint.

Having received the views of the airport and other affected parties, the Minister would have a further 21 days to determine if there is prima face evidence that the proposed conduct may contravene the Principles, the complainants have acted in good faith and the dispute is unlikely to resolve itself. If the Minister believes any of these are not the case, there will be no further action. If on the other hand, the Minister was satisfied on each of these grounds an inquiry under Part VIIA would be ordered.

The inquiry would be directed to consider the conduct proposed by the airport. The inquiry would be directed to have regard to:

- The Principles;
- Only those matters in dispute except to the extent any others are relevant to consideration of the matters in dispute;
- The extent to which the counter offer complies with the Principles; and

- The impact that acceptance of the both the proposed conduct and the counter offer would have on the interests of the commercial interests of parties not subject to the dispute.

As a matter of law, by effect of Part VIIA the airport will not be able to increase prices during the inquiry. Given the potential for subsequent ACCC involvement under Part IIIA, such an inquiry should be conducted by another body such as the National Competition Council.

The inquiry will be directed to report within 90 days. In accordance with part VIIA a copy of the report will be sent to the airport when it is sent to the Minister. If the report concludes that the Principles have not been contravened, no further action will be taken. If the report concludes that the Principles are likely to be contravened then the airport has 28 days to accept the counter offer of the airlines, come to some other agreement with the airlines or submit to binding commercial arbitration. In any case the report would be published 28 days after receipt by the Minister.

If the dispute remains unresolved or not subject to commercial arbitration, then the Minister will declare the aeronautical services (as defined in the Regulations) of the airport concerned for the purposes of Part VIIA and impose prices notification for a period of time, and at least until the next scheduled review.

Neither the inquiry process nor the prices notification contained in Part VIIA can ultimately compel an airport to change its conduct or stop an unjustified price increase, only delay them. Further, there are a range of potential areas of dispute between airports and airlines that do not involve prices that procedures under Part VII could simply not address – in its 2006 Report the Productivity Commission identified these as the major area of concern when it came to the potential abuse of market power by some airports¹⁰.

An alternative to the Part VIIA actions would be to amend the Airports Act as to enable the Minister to declare the aeronautical services of the airport concerned for the purposes of Part IIIA and thereby give the complainants the option of binding arbitration by the ACCC, in a similar way that section 192 of the Airports Act did until it expired and was repealed. Legislation would be required to do this and also to ensure that the ACCC in conducting any subsequent arbitration is required not to make any decision that is inconsistent with the Principles. Otherwise it would conduct the arbitration in accordance with the arbitration provisions of Part IIIA.

It is noted that decisions up to the point of declaration under Part IIIA are not currently subject to merits review although decisions would be subject to the

¹⁰ Productivity Commission (2006, p xvii)

normal processes of the ADJR Act. Decisions by the ACCC in arbitration are subject to merit review by the Tribunal. This is deliberate. At all times up until declaration which would lead to the possibility of arbitration by the ACCC the airport concerned may accept either the counter offer or commercial, rather than regulatory, dispute resolution.

In the event the airport elects to accept the counter offer or commercial arbitration – arbitration subject to the Principles – and the complainant refuses then the process is terminated. This is designed to ensure that the process is not gamed by airlines – it is difficult to conceive of reasons other than gaming why airlines would prefer arbitration by the ACCC over binding commercial dispute resolution.

It might be observed that the airport in question has all the options during this process. However, it does give airlines access to the ACCC in six months (subject to administrative review) if a commercial resolution is not found. This is compared to the over three years it took from Virgin Blue’s initial application for declaration of certain airfield services at Sydney Airport until the Tribunal’s decision in December 2005 which then was the subject of administrative and judicial review.

Price monitoring of car parks

The Green Paper continues to demonstrate the lack of understanding of ground transport services and markets at the individual airports concerned as evidenced by the Government’s decision to re-impose price monitoring on car parks at Australia’s five largest airports. Whilst conditions vary from airport to airport, and it is acknowledged that airports do possess some market power in relation to certain car park products (particularly short term car parking), the continuing reference to “monopoly position” displays either an underlying intention to regulate where regulation is not necessary and/or fundamental lack of understanding of the facts prevailing at each of the airports concerned. In respect to the latter point, to describe Melbourne Airport’s position in a car parking market where there are at least nine other operators as well as competing ground access modes as a “monopoly position” is simply untenable and tends to suggest that the Government’s approach to this matter is based on something other than a robust analysis of the facts at the relevant airports.

APAC is particularly concerned about how the show cause arrangements may be applied to those monitored services not provided to airlines, currently limited to car parks. As noted above, a year on year assessment of returns is highly problematic from an economic perspective. This is likely to be exacerbated substantially by

reasons associated with the locational value of the relevant land noted by the Productivity Commission in its 2006 Report¹¹.

Given the diverse nature of car parking products across Australian airports and the obvious lack of pure monopoly at most airports noted above, any show cause arrangements should be limited to those car parking services where market power is greatest. APAC suggests this should be periods of less than two hours. Further, in establishing whether a *prime facie* case exists, the Department should pay specific regard to movements in car park prices at other major airports and similar high-value locations in the cities concerned – most notably the relevant Central Business Districts. When the Productivity Commission undertook such analysis in 2006¹² it found that for all the airports currently monitored, their car park prices for one hour were below those charged in the comparative CBD.

If it is intended to incorporate car parking in the show cause arrangements, to ensure transparency and natural justice, the Government should ask the ACCC to also include in its reports an indicative level of CBD car parking charges, for say thirty minutes, one and two hours and over time report changes in these average prices. Beyond this, the Government should make clear what criteria it is going to apply in determining if car park prices are not reasonable and ask the Department to make those criteria a matter for specific further consultation.

Transparency in aeronautical pricing

APAC does remain concerned with the general tone of the Green Paper with respect to the accountability and transparency of airport pricing arrangements. In the absence of examples of the conduct that is of concern, it is difficult to comment precisely on this however it does appear that these comments are based on a lack of understanding of the extent to which airports provide information privately to their airline customers beyond that which is published by the ACCC. APAC believes that its information disclosure is world's best practice and goes far beyond that required even by regulators in other jurisdictions. APAC has in the past provided extensive details of this information disclosure to the Department and would be happy to provide examples again if this would help inform policy making.

¹¹ Productivity Commission (2006, pp114-116).

¹² Productivity Commission (2006, pp171-172).

8.3 Airport Capacity for Sydney¹³

Australia's domestic aviation industry¹⁴ exhibits very strong network characteristics. It is characterised by a small number of large hubs and relatively larger number of small to medium sized nodes. The hubs are themselves the major origins and destinations of traffic as well as the primary international gateways for passengers and freight.

Sydney is the largest hub accounting for 23% of domestic passenger movements and Melbourne, the second largest, accounts for 20% of domestic passenger movements. Traffic between them represents 14% of all domestic passenger movements and 36% of all domestic passenger movements through Melbourne Airport. Together these two airports alone account for 65% of all international passenger movements¹⁵.

The efficiency of such a dense network critically depends on the efficiency of its major hubs and as such the efficiency of national aviation network depends critically on airports in Sydney. Inefficiency at Sydney necessarily impacts the entire network, a significant proportion of which is felt in Melbourne.

Recent aviation market developments will impact the forecasts contained in Sydney Airport's draft Master Plan in such a way as is likely to extend the timeframe in which the airport's ultimate capacity is reached and as such may defer the need to develop new infrastructure. Further, there may be measures (such as policies to increase average aircraft size) that could increase the passenger throughput of Sydney Airport within the existing cap and curfew arrangements which the Government have made clear are a permanent feature of Australian aviation law. However, it is APAC's view that at some point, Sydney Airport will be constrained in its peak hour and this will ultimately limit the development of Australia's domestic aviation industry.

It is therefore APAC's view that it is incumbent upon the Commonwealth Government to identify, acquire and safeguard a site that will provide additional

¹³ APAC appreciates that there in this debate in the past distinction has been drawn between phrases such as "in Sydney", "for Sydney", "in the Sydney Basin" to name a few. For the purpose of this submission, Sydney is cast as a broad geographical context, potentially extending as far north as Newcastle, as far south as Goulburn and bounded to the west by the Great Dividing Range and the east by the Pacific Ocean.

¹⁴ The domestic aviation industry should be taken to mean all activity within Australia – it includes that activity defined in government statistics as "regional".

¹⁵ Source: BITRE (2008)

aviation infrastructure capacity for Sydney. APAC does not have a view on where this site should be located but does provide a number of observations as to the characteristics and issues that might determine a suitable site.

- *The site must be suitable to handle growth in the morning and afternoon peaks.* Whenever Sydney Airport becomes constrained it will be constrained in the morning and afternoon when business travel is dominant. Global experience indicates peak-hour pricing will provide little and only temporary relief to this problem. If the peak hour capacity constraint is to be eased then the new site must be relatively accessible to a substantial number of people living in Sydney. Ideally, they would live close to the site but it may be necessary for governments to undertake substantial investment in public transport infrastructure to deliver people to the site. Further, it would be highly desirable for the site to be relatively proximate to areas of Sydney that people wish to travel to – a balance in the demand to and from the site is essential in ensuring the viability of the services using the site.
- *A “traffic type” specific airport is not the answer.* It seems likely that there will be periods during the day, and perhaps between the evening peak and the curfew, where Sydney Airport will not be effectively capacity constrained. These times are suitable for less time sensitive operations such as freight and some international services, especially if a long-haul low cost model of international operations were to emerge. Consigning these flights to a secondary airport is unlikely to relieve the peak and moreover, given their relatively small number and their relatively low revenue yields per aircraft, would not generate sufficient airport revenues to sustain the airport financially in the early years of its operation and substantial operating subsidies would probably be required.
- *The Commonwealth should consider legislating to safeguard the site.* It is clear that one of the reasons why the site previously selected at Badgerys Creek is no longer suitable for development as an airport is that both the Commonwealth and NSW Governments failed to take adequate action to safeguard the site from urban encroachment. It is highly desirable that once a site has been selected by the Rudd Government that the debate on the location of a second Sydney Airport should be unambiguously concluded. This will only occur if the site is adequately safeguarded from noise, land transport and air navigation perspectives and if necessary, the Commonwealth should legislate to ensure this occurs.
- *Development of the site should be undertaken by the private sector and any government assistance must observe competitive neutrality principles.* APAC acknowledges that significant public resources will be required to bring a new airport into existence. However, it is APAC’s view that in

supporting the project governments exercise care to ensure that infrastructure is not developed inefficiently early and that financial support arrangements do not distort legitimate competition between the new airport and the current Sydney Airport or indeed other Australian airports. This is best ensured by the Commonwealth acquiring the site and leasing it under the Airports Act and then jointly with the NSW Government developing land transport and other supporting infrastructure. Under such circumstances, given the costs associated with the development of airport infrastructure, we would not expect the sale of the lease to generate a significant financial return to the Commonwealth.

8.4 Regional Airports

APAC is disappointed that in developing the Green Paper the Government has not taken the opportunity to properly assess the condition of Australia's regional and remote aerodromes and their likely funding requirements into the future. These aerodromes are not only essential for the communities concerned in gaining access to the rest of the nation's but in many cases represent the future growth destinations of the aviation industry as the LCC model grows in importance.

Given the nature and cost of aviation infrastructure procurement, it seems unlikely that any significant aviation infrastructure will be funded from the Regional and Local Community Infrastructure Program unless substantial funds continue to be provided to this program. Similarly the Remote Aerodrome Safety program, an initiative APAC welcomes, will do little to improve facilities at emerging regional aerodromes that are not generally considered "remote". Further, given the competing pressures on local authority resources, especially as the economy turns down, it seems unlikely that substantial resources could be found within the Financial Assistance Grants provided by the Commonwealth to local government. What is required is a thorough assessment of the nation's regional airports future funding infrastructure needs, the capacity of the airports and their owners to support necessary investment and if necessary, the development of a scheme to adequately and transparency allocate resources for both capital maintenance and where appropriate capacity expansion.

9 Aviation Emissions and Climate Change

APAC supports the Government's general approach to using market based mechanisms to deal with aviation emissions related climate change. This stands in stark contrast to the approach of the Brown Labour Government in the United Kingdom that has used legitimate community concern about the impacts of aviation on the environment as a cynical ploy to levy taxes on the aviation industry that are totally out of proportion to the known costs of aviation emissions. Tourism Minister Martin Ferguson is to be congratulated for the strong position he has taken on the UK Government's policy and for correctly identifying it as an unjustified impost on the Australian tourism industry.

APAC agrees that international aviation emissions are best dealt with through a global agreement facilitated by ICAO and looks forward to industry consultation about the Government's negotiating position at ICAO and the integration of international and domestic aviation arrangements at an appropriate point of time in the future.

Airservices and major airlines are to be applauded for their efforts in improving air space management procedures with a view to reducing fuel burn without compromising safety. APAC will ensure that the infrastructure it provides is designed and operated in such a way that supports the ongoing efforts of Airservices and APACs airline customers in this regard.

APAC welcomes the Green Paper's acknowledgement that airports of themselves are not major emitters and agrees that the best way for airports to contribute to emissions reduction is through the use of low emission fuels and energy savings, largely through better building design and use.

APAC's commitment in this regard is contained in Melbourne Airport's Environment Strategy that was approved by the Minister on 10 November 2008. APAC will ensure that where a rating tool is available, all major new developments at Melbourne Airport will be certified to a 5-star Green Star rating and all major refurbishments from 2013 will achieve a 4 Star Green Star rating. Through these and other measures Melbourne Airport aims to make a material reduction in energy usage with an aspirational target of 25% reduction per square metre of APAM managed and controlled terminal area by 2013 from 2004/05¹⁶.

¹⁶ Melbourne Airport (2008)

10 Noise Impacts

In 2007/08, the absence of a night-time curfew at Melbourne Airport was estimated to have contributed around \$309 million to Victorian state product. By 2012 the contribution to state product is forecast to be \$385 million. In terms of jobs, in 2007/08, 24 hour operation at Melbourne Airport facilitated around 1,156 jobs in the general vicinity of the airport, and 4,642 jobs state-wide than would have been the case if a curfew similar to Sydney's was in place¹⁷.

The absence of noise-related operational restrictions at Melbourne Airport is of substantial economic value to Victoria and indeed Australia. There is wide-ranging support for the continuation of this situation from the community, local government and the Victorian Government. Political support is bi-partisan. This support is the result of long-sighted decisions made over five decades ago when it was realised that Essendon could not meet Melbourne's aviation needs; supportive planning policies from successive Victorian Governments, and ongoing community support and engagement as identified by the Minister and discussed in Section 8 above.

APAC understands the desire of the Government to improve outcomes for noise affected communities throughout Australia and welcomes initiatives such as Airservices Web Trak tool and further limitations on marginally compliant Chapter 3 aircraft as valuable additions to arrangements at all Australia's major airports. Consistent with its commitment to supporting government initiatives in relation to aircraft noise management, Airservices Australia has an important role to play in responding to community noise concerns and participating in the management of noise reduction schemes.

It is clear that the current arrangements at Melbourne Airport work and will continue to serve the interests of the community in the decades to come. How many other airports in the world can say that their sites are safeguarded for a third runway and then a fourth? It is acknowledged that arrangements in Melbourne may not suit other major airports where noise is already, or becoming, of major concern but they do provide a useful departure point for a scheme that works. What is critical however is that in searching for solutions for other communities, the Commonwealth must not upset the arrangements that the people of Melbourne have put in place over decades that demonstrably balance the people of Melbourne's economic and environmental interests in a sustainable and durable way.

¹⁷ Sinclair Knight Mertz (2008)

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