



Australian Government

Department of Infrastructure, Transport,
Regional Development and Communications

Sydney Airport Demand Management: Discussion Paper



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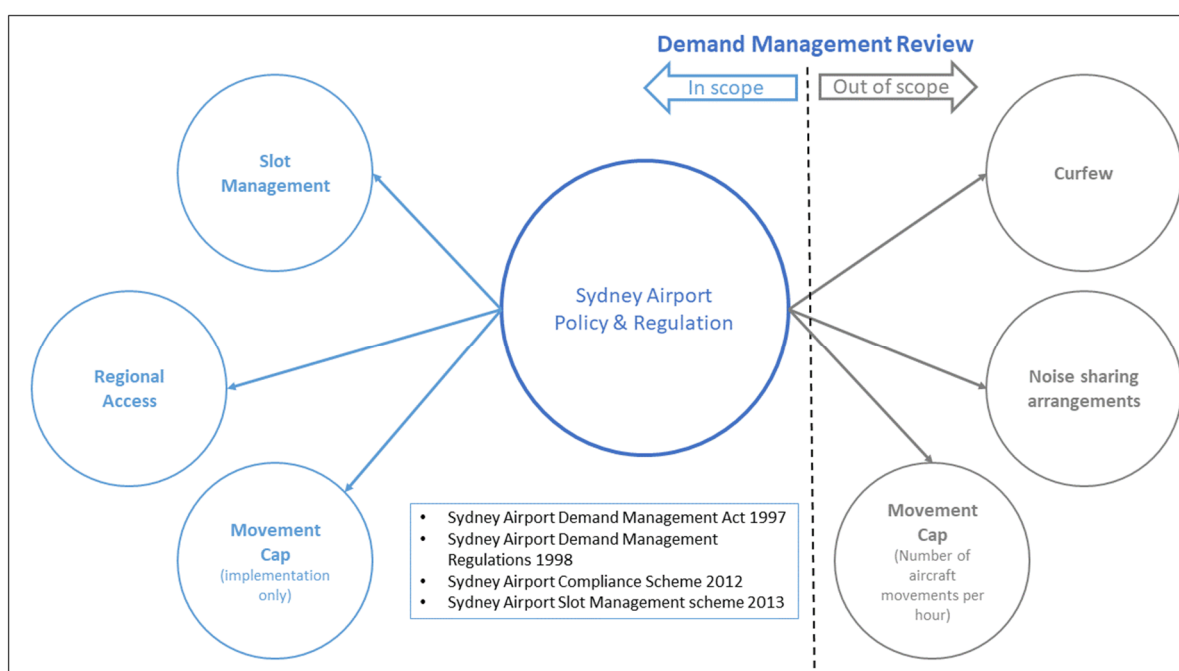
1. Introduction

1.1. Purpose

This Discussion Paper gives you the opportunity to have your say on how the Australian Government manages the demand for aviation services at Sydney (Kingsford Smith) Airport – Australia’s largest and busiest airport, which under pre-COVID-19 market conditions, handles over 40 million passenger movements per year (see Box 1.1).

The Paper is the first step of a comprehensive review of demand management at Sydney Airport. It outlines the scope of the review and raises a number of important focus questions that the Government is seeking your views on. **The questions do not reflect current Government policy** – they are designed to elicit discussion without prejudice to any subsequent decisions the Government may take.

Changing the number of aircraft movements permitted each hour at Sydney Airport and other policies governing Sydney Airport (such as the Long Term Operating Plan and *Sydney Airport Curfew Act 1995*) are out of scope for this Paper and the review. Matters relating to the development and operation of Western Sydney International (Nancy-Bird Walton) Airport and other airports in the Sydney basin are also outside the scope of this review.



After receiving feedback from all stakeholders, the Government will consider what changes, if any, may be beneficial to reform the existing demand management regime at Sydney Airport. If any changes are to be pursued, further consultation opportunities will be provided.

1.2. Context

The *Sydney Airport Demand Management Act 1997* (the Act) and associated legislative instruments establish a framework for the long-term management of air traffic demand at Sydney Airport. The Act, along with the Sydney Airport Slot Management Scheme 2013, Sydney Airport Compliance Scheme 2012 and Sydney Airport Demand Management Regulations 1998 (together, the Legislation), establish a limit of 80 aircraft movements an hour, provide for a slot management scheme, and guarantee access for New South Wales (NSW) regional services.



The policies underpinning the Legislation were originally designed to balance productivity with a range of social, competition and other objectives. In doing so, demand management has, to date, embodied a series of competing objectives, including:

- maximising the number of flights within the movement cap;
- managing noise impacts on the local community;
- maximising passengers and freight;
- guaranteeing access to flights from regional areas;
- providing certainty of slots for incumbent airlines; and
- encouraging competition through making slots available for new entrants.

Following the Productivity Commission's (PC's) 2019 Inquiry into the Economic Regulation of Airports¹, the Government committed to conducting a comprehensive review of Sydney Airport demand management². The review provides an opportunity to revisit the existing policies and competing objectives, to ensure the regulatory framework remains fit for purpose to meet the needs of the aviation industry, the travelling public and the local community.

The aim of the review is to determine whether the objectives remain relevant and the scheme is fit-for-purpose, including through:

1. providing for the efficient use of airport infrastructure, while managing the impacts of noise to maintain livability for the Sydney community;
2. encouraging competition and resilience within the industry; and
3. facilitating recovery from the COVID-19 pandemic, such as through being responsive to changes and opportunities in the market.

Releasing a Discussion Paper now ensures the review will take into account current and emerging factors influencing Sydney airport demand management, including:

- changes to the aviation industry and demand since the Legislation was introduced – both resulting from the COVID-19 pandemic, and other changes to market dynamics;

¹ Productivity Commission 2019, *Economic Regulation of Airports*, Report no. 92, Canberra

² See Appendix A

- rapid advancements in emerging aviation technologies³ and quieter aircraft;
- any changes to community views since the Legislation was introduced; and
- the anticipated opening of the Western Sydney International (Nancy-Bird Walton) Airport in 2026.

The review will also inform the remaking of parts of the Legislation that are due to sunset on 1 April 2024. Under Chapter 3, Part 4 of the *Legislation Act 2003*, legislative instruments are automatically repealed a certain period (usually 10 years) after they are made. Sunsetting is an important mechanism for the Australian Government to implement policies to reduce red tape, deliver clearer laws, and align existing legislation with current government policy. On 24 August 2018, the Attorney-General made a declaration⁴ to align the sunsetting date for a range of aviation-related legislative instruments – including legislative instruments relating to demand management at Sydney Airport. The instruments are now due to sunset on 1 April 2024. Unless this Legislation is reviewed and remade, it will cease to have effect.

1.3. Structure of this Discussion Paper

The PC Inquiry investigated a number of the issues addressed in this Paper. This Paper is intended to further this work and to prompt deliberation of the more detailed aspects of these issues. This Paper also considers other issues which were not contemplated by the PC, as well as looking at whether some of the findings in the PC's inquiry remain relevant, given the changing market conditions due to COVID-19. The discussions in this Paper and focus questions deal with a range of important issues, both broad and technical. It is expected different stakeholders will have varying interests with only some chapters and focus questions of interest to many.

Noting the curfew and number of hourly aircraft movements is out of scope, Chapters 2, 3 and 4 of this Paper looks at the key policies underlying Sydney Airport demand management and their implementation. These are the:

- implementation of the hourly aircraft movement cap;
- operation of the regulated slot management scheme; and
- protection of slots for regional NSW flights.

The COVID-19 pandemic has severely impacted the aviation sector. Currently, there is no certainty about when conditions may facilitate demand resuming to pre-COVID levels. During this crisis, the Government has focused on

- maintaining supply lines for air freight exports and imports, including essential medical supplies and equipment;
- maintaining essential air connectivity without subsidising commercially viable services; and
- preserving critical capacity so a competitive aviation market can restart as the economy emerges from COVID-19 and COVID-19 restrictions are lifted.

³ Refer to the *National Aviation Policy Issues Paper on Emerging Aviation Technologies* available at <https://www.infrastructure.gov.au/aviation/drones/index.aspx>

⁴ [Legislation \(Airport Instruments\) Sunset-altering Declaration 2018](#)

This Paper provides an opportunity to consider immediate and short-term decisions for Government which may support this objective.

To this end, Chapter 5 of this Paper considers the impact of COVID-19 on slot management at Sydney Airport, including the current Ministerial Directions for northern summer 2020 and northern winter 2020 scheduling seasons⁵. Chapter 5 also discusses slot management for northern summer 2021 and northern winter 2021 seasons.

Chapter 6 of this Paper considers matters relevant to the sunset of the Legislation which are not addressed in earlier chapters. These matters are more technical in nature.

Other policies governing Sydney Airport (such as the Long Term Operating Plan and *Sydney Airport Curfew Act 1995*) are out of scope for this Paper and the review. Matters relating to the development and operation of Western Sydney International (Nancy-Bird Walton) Airport and other airports in the Sydney basin are also outside the scope of this review. However, their impact on Sydney Airport will be taken into account if relevant to this Review.

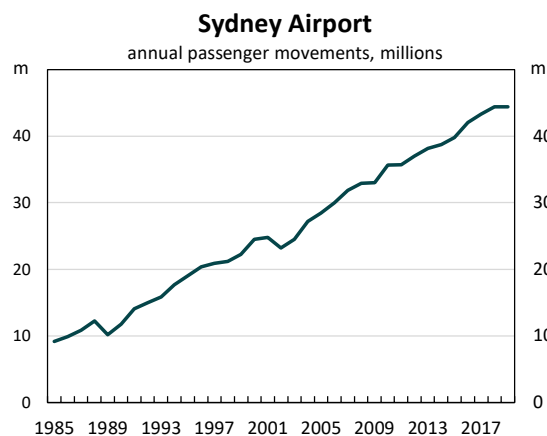
⁵ To provide certainty for airlines, while also providing operational flexibility, the Deputy Prime Minister made Ministerial Directions on 12 March 2020 and 31 August 2020 to allow slots allocated to airlines at Sydney Airport based on historical precedence for the period March 2020 to March 2021 to be retained for the same period in 2021-22. The Directions allows airlines to retain their historic precedence for slots at Sydney Airport, without having to operate commercially unviable flights.

Box 1.1: Importance of Sydney Airport

Sydney Airport is Australia's largest domestic and international air transport hub.

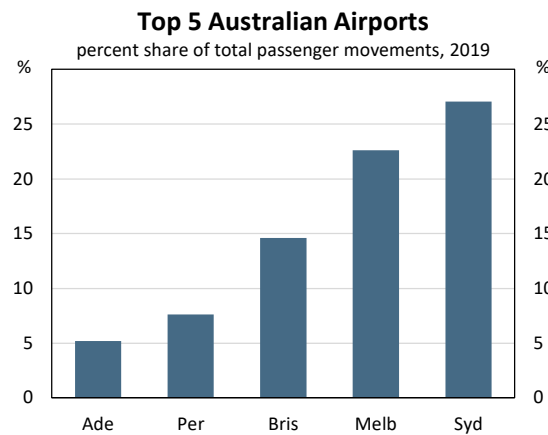
In 2019, Sydney Airport facilitated 44.4 million passenger movements – or 27 per cent of the nation's total (Chart 1.1) – and enabled 324,144 aircraft movements⁶.

Sydney Airport handled 40 per cent of all international passenger movements (Melbourne with 25 per cent is the next highest) and 47 per cent of international airfreight, highlighting its role as Australia's most significant international gateway⁷.



Pre-COVID, Sydney Airport facilitated direct services to 27 countries and over 100 destinations with more than 50 airlines. The tourism, freight and logistics and business benefits of the airport contribute to local, state and national employment, tourism and development.

Chart 1.1



Activity levels have grown over time, with passenger movements through Sydney Airport quadrupling in the three decades to 2019 (Chart 1.2). Airfreight volumes have more than tripled over the same period.

Sydney Airport's submission to the PC Inquiry and 2039 Master Plan estimated the direct and indirect economic contribution of the Sydney Airport precinct at around \$38 billion in 2017; supporting 338,500 full-time equivalent jobs, including 30,900 jobs on airport, and impacting on 6.8% of the New South Wales (NSW) economy.

1.4. Have your say

The Australian Government is interested in hearing your views on demand management at Sydney Airport – how it is working now, and where you think it could be improved in the future.

The Paper identifies a range of specific questions where the Government is seeking stakeholder views. A consolidated list of questions is at **Appendix B**. Written submissions are welcome on all or some of these questions, or any other key issues related to Sydney Airport demand management you may wish to raise.

The Government acknowledges the difficult operating environment currently being experienced by the aviation sector and other stakeholders as a result of COVID-19, and appreciates your time and consideration in responding to this Paper.

Written submissions on the Discussion Paper can be provided until **close of business, Friday 11 December 2020** (4-6 weeks after release).

⁶ BITRE 2020, *Airport Traffic Data*

⁷ BITRE 2019, *International Airline Activity 2019*

The Australian Government will also undertake targeted consultation with stakeholders. An eminent person with a strong understanding of the aviation sector (both airports and airlines) and of working with the Government and the community has been engaged to conduct much of this consultation. To register your interest in participating in targeted consultation (which will occur as teleconferences or virtual meetings), please email an expression of interest to demandmanagement@infrastructure.gov.au by **close of business, 11 November 2020**. Meetings are anticipated to occur before 11 December 2020.

If you provided a public submission to the PC's Inquiry into the Economic Regulation of Airports, and the contents of that submission remains reflective of your current views regarding the focus questions in this Paper, you may refer us to that submission rather than making a new submission to this process.

The preferred method for receiving submissions is electronically to the email demandmanagement@infrastructure.gov.au.

Submissions may also be made in hard copy to:

Attention: Director, Productivity Section, COVID Aviation Reforms
GPO Box 594
CANBERRA ACT 2601

Please provide your contact details so the Department can follow up on any issues raised. Any personal information respondents provide to the Department will be used for purposes related to considering issues raised in this Paper, in accordance with the *Privacy Act 1988* (see **Appendix C**). You are also welcome to provide submissions confidentially.

Written submissions will be made publicly available **unless you explicitly request that they not be**. Submissions will be published in full on the Department's website unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Questions?

If you have any questions about the process for responding to the Discussion Paper, please contact the Department:

Email: demandmanagement@infrastructure.gov.au
Phone: 02 6274 7111

2. Movement cap

To mitigate the impact of aircraft noise on the community following the opening of the Sydney Airport's third runway, in 1997 the Australian Government introduced legislation to provide a maximum aircraft movement limit at the airport⁸. This limit is commonly referred to as the movement cap. The movement cap restricts the number of take offs and landings to 80 per *regulated hour*. The regulated hour, also referred to as the *rolling hour*, is a one hour period, commencing each 15 minutes. Because of this, the number of movements in any 15 minute period affects the number of movements in the three periods of 15 minutes before, and the three periods of 15 minutes following any given time. In peak times, the rolling hour has the effect of restricting movements to 20 each 15 minute period.

The movement cap is managed through the slot management scheme and is monitored by Airservices Australia. Exceedance of the movement cap since the legislation was introduced has been very rare. On 16 May 2017, it was exceeded – with 81 movements recorded between 8.15am and 9.15am. This was the only exceedance since 2011.

Despite the actual capacity of the airport and requests from airlines for slots in certain periods exceeding what is permitted by the movement cap, it is still very uncommon for even 80 movements to occur in any regulated hour. While decisions by airlines to cancel flights and other factors can reduce the number of actual movements, even in peak periods⁹, the Productivity Commission's (PC) 2019 report into the economic regulation of airports noted Airservices Australia aims to process 78 movements per rolling hour to help ensure the movement cap is not exceeded¹⁰.

In 2018, on average there were approximately 70 movements during morning peak hours and 60 during evening peak hours on weekdays. During non-peak hours on weekdays the average was approximately 50 movements per hour¹¹.

Aside from being logistically challenging to administer the rolling hour, there are environmental impacts from doing so – such as requiring an early arriving aircraft to fly a longer flight path, often overhead of Sydney communities, to delay their arrival – reducing the overall efficiency of airport and airline operations. The PC also recognised the unintended consequences of the movement cap in its 2019 report, commenting that the cap “can exacerbate delays when there are disruptions, such as those due to weather events. Delays can lead to significant costs for airlines and passengers that cascade across Australia's aviation network, due to the high number of aircraft that pass through Sydney Airport”¹². Subsequently, the PC recommended the Australian Government should amend section 6(2) of the *Sydney Airport Demand Management Act 1997* to define a regulated hour as a period of 60 minutes starting on the hour.

In its response to the 2019 PC inquiry, the Government recognised that operating restrictions, including the 80 aircraft per rolling hour movement cap, are important measures to protect surrounding communities from the impacts of aircraft noise. However, the Government also acknowledged these restrictions can limit the growth and productivity of Sydney Airport, have an

⁸ Section 6, *Sydney Airport Demand Management Act 1997*

⁹ 'Peak period' is defined as 6-11am and 3-8pm, Monday to Friday. All other times between 6am and 11pm, seven days, are considered 'off peak'.

¹⁰ Productivity Commission 2019, *Economic Regulation of Airports*, Report no. 92, Canberra, page 240

¹¹ Productivity Commission 2019, *Economic Regulation of Airports*, Report no. 92, Canberra, page 30

¹² Productivity Commission 2019, *Economic Regulation of Airports*, Report no. 92, Canberra, page 30

impact on passengers and the local, regional and national economies and unintended consequences as aircraft can spend longer overhead of Sydney communities.

In its response, the Government also reiterated its commitment to facilitating access within the current movement cap, with options for updating or streamlining the current movement cap arrangements. However, legislative change would only be considered if there is a net benefit to the community and the movement cap is retained at 80 movements per hour.

This Paper invites further consideration of the change recommended by the PC and seeks additional information on the impact of this proposal. It also seeks views in relation to other options for updating or streamlining the movement cap. Each of the proposals for discussion retains the current movement cap, they present options to enable the cap to be implemented more effectively so the capped number of movements can be achieved.

2.1. Definition of regulated hour

As outlined above, the PC recommended amending section 6(2) of the *Sydney Airport Demand Management Act 1997* to define a regulated hour as a period of 60 minutes starting on the hour.

This recommendation retains the movement cap and makes it more likely that the intended 80 actual movements an hour could be achieved, providing the potential to improve airport productivity without changing the overarching policy. It also delivers enhanced community and environmental benefits and simplifies the legislation and its implementation.

The movement cap is currently measured on a 15-minute rolling hour basis —effectively commencing four ‘regulated hours’ within any non-curfew 60-minute period. A reform that measures the cap on actual movements only once (rather than four times) an hour would allow Airservices Australia to process movements more smoothly and less conservatively, and reduce compliance costs. Airlines and their passengers would benefit through reduced delays to departing aircraft that are caused by the movement cap.

As safe air traffic management requires minimum separation standards to be maintained between aircraft, resulting in a need to disperse landing and take-offs, it is anticipated significant condensing of flights and related noise at any particular part of an hour to be highly unlikely. However, we are seeking views on the impact of the proposed removal of the rolling hour and on options to replace it.

A. How would changes to the definition of a regulated hour (i.e. removing the rolling hour) impact stakeholders?

2.2. Recovery from interruptions

Interruptions to airport operations are sometimes caused by severe storms, changing the runway being used due to wind direction changes, emergency situations, security breaches and other (usually unforeseen) circumstances that can stop airport operations and cause delays. Submissions to the PC inquiry indicated that although Sydney Airport is able to absorb some delayed flights, it cannot absorb significant delays of multiple flights where to do so would result in a breach of the movement cap. In instances where the cause of the delay was unavoidable (e.g. adverse weather), the number of flights affected and the duration of the delays were exacerbated by the movement cap, which prohibited the airport from being able to ‘catch up’ the number of delayed flights. Sydney Airport cited two such events that occurred in September 2017 which “collectively resulted in

around 230 flight cancellations, the delay of many other flights and disruptions to the travel plans of tens of thousands of airline passengers nationwide”¹³.

Most interruptions would provide noise respite to the nearby community due to the resulting reduction in aircraft movements, although the actual location of any noise ‘savings’ will depend on the varying operation of runways in what may be unusual conditions. However, the movement cap, as it is currently implemented does not recognise or make any concession for recovery from such circumstances. In effect, unless it is possible to reschedule flights to a later time, movements that would otherwise have occurred must be cancelled, decreasing the overall productivity of the airport.

Maintaining the movement cap following interruptions distorts the balance between the objectives the Legislation is intended to achieve. In the future, a set of measures may need to be considered to optimise all policy objectives and better allow recovery from delays, for example a daily movement cap or capping scheduled movements rather than actual movements which would provide increased flexibility for when movements can occur.

The PC’s proposal to remove the rolling hour from the definition of a regulated hour could provide an improved ability to recover from short interruptions. However, the effectiveness of this change for mitigating longer interruptions or interruptions which occur during peak periods is limited.

2.3. Excluded movements

The Act allows for movements to occur without a slot allocation if the aircraft is involved in an emergency, is a state aircraft or if the Slot Manager issues a dispensation due to exceptional circumstances. However, these flights continue to count towards the movement cap. The reasons for these flights are typically not commercially motivated, are typically ad-hoc and occur infrequently. In practice, exceptional circumstances are only considered where the refusal of the Slot Manager to allow an aircraft to make a gate movement could threaten the safety of a person, or Australia’s international relations. The airport and airspace infrastructure would likely have capacity – based on 2012 estimates – to handle the very small number of occurrences.

If the movements excluded from requiring a slot were also excluded from the movement cap, the legislation could be streamlined. Furthermore, in considering opportunities to update and streamline the movement cap, it is relevant to consider other aircraft noise mitigation frameworks. In this context, movements excluded from curfew restrictions could be equally appropriate to exclude from the movement cap.

A curfew applies between 11pm and 6am at Sydney, Adelaide, Gold Coast and Essendon Fields Airports. While most aircraft operations are prohibited during this period, the operation of emergency aircraft, some small jets, propeller-driven aircraft and freight movements may be permitted. Adelaide, Gold Coast and Essendon Fields Airports have an additional requirement for some of the permitted aircraft to meet a specified noise standard, or to meet noise performance characteristics. As these exclusions are primarily based on an assessment of noise impacts, similar noise based exclusions during daytime operations could retain the movement cap for aircraft which exceed a noise threshold at 80 per hour, while allowing increased productivity by excluding those aircraft which fell below a noise threshold aircraft from the cap. This would provide a strong incentive for operators to adopt newer, quieter aircraft for operations in Sydney Airport. A similar approach has been used at a number of airports around the world to ensure that newer fleets are

¹³ Sydney Airport 2018, *Submission to the productivity Commission – Economic Regulation of Airports*, page 106

incentivised and could be implemented consistently with the noise sharing arrangements under the Long Term Operating Plan.

Other exclusions from the cap could be considered to provide net benefits to the community, such as route-specific exclusions from the cap. Exclusion of regional flights from the movement cap for example, or regional flights which also meet a particular noise standard, could increase the utilisation of the 80 permitted aircraft movements by high volume aircraft, while guaranteeing ongoing access to the airport for regional flights and encouraging the adoption of newer, quieter aircraft¹⁴.

B. Should any flights be excluded from the movement cap, while still providing a net benefit to the community? What impacts would this have?

2.4. Monitoring and reporting

Airservices Australia is required to monitor compliance with the movement cap and give the Minister quarterly reports on the outcomes of this monitoring. The Minister is required to table these reports in Parliament. Reporting provides an indication of the effectiveness of demand management and creates a degree of public accountability and transparency for the entities involved in managing demand. As is standard parliamentary process, once tabled, the movement cap reports are published on the Australian Parliament House (APH) website. Records indicate that in the 12 months to 30 June 2020, the four (4) reports published in that period had only been accessed a total of 13 times (quarter 1 report: 5 times, quarter 2: 5 times, quarter 3: twice and quarter 4: once)¹⁵. By contrast, the Movement Cap webpage voluntarily provided by Airservices Australia was viewed 898 times in the same period.

As exceedances of the movement cap are rare and public access to the movement cap reports – particularly from the APH website – is not high, this Paper provides an opportunity to review reporting arrangements.

C. What means of publication would satisfy public accountability and transparency with respect to both breaches and non-breaches?

3. Sydney Airport regional access regimes

The Sydney Airport Slot Management Scheme 2013 (the SMS) reserves a number of slots in peak periods¹⁶ for regional services. This arrangement is commonly referred to as Sydney Airport's regional ring fence. Outside of peak periods, regional flights may be conducted using any available slot. The ring fence – along with a price cap and price notification regime for regional services – is designed to guarantee required access for airlines operating flights between Sydney Airport and communities in regional New South Wales (NSW). The original intent of the regional ring fence was to ensure the communities of NSW were able to maintain access to their state's capital city. While the regional ring fence provides regional access, the aircraft used are typically smaller than those

¹⁴ Refer to Chapter 3 of this Paper for more discussion on the Sydney Airport regional access regime and measures to support regional NSW.

¹⁵ This data does not reflect website hits by users who block Google Analytics or other analytics blockers.

¹⁶ 'Peak period' is defined as 6-11am and 3-8pm, Monday to Friday. All other times between 6am and 11pm, seven days, are considered 'off peak'.

operating international flights and other domestic flights. Consequently, facilitating regional access reduces the total volume of passengers and freight able to be handled at Sydney Airport.

This chapter looks at whether the current arrangements provide the best possible balance of outcomes, or whether there are opportunities to achieve improvements for both regional communities and the productive capacity of Sydney Airport.

3.1. Permanent Regional Service Series (PRSS)

The regional ring fence slots are reflected in the Legislation as the Permanent Regional Service Series (PRSS). PRSS slots were initially established by 'ring fencing' the slots being used for regional services when the Legislation was introduced. This has resulted in a different number of slots being available week to week and, more noticeably, differences between the number of ring fenced slots in the winter and summer scheduling seasons.

Provided below is data of PRSS slots from a sample week during the identified seasons.

Northern Winter 2018	Monday	Tuesday	Wednesday	Thursday	Friday	Total
6:00-6:59	9	6	5	5	5	30
7:00-7:59	25	24	24	25	24	122
8:00-8:59	18	20	18	20	20	96
9:00-9:59	10	12	11	9	9	51
10:00-10:59	13	12	14	14	14	67
15:00-15:59	19	18	20	20	19	96
16:00-16:59	14	12	15	13	15	69
17:00-17:59	19	16	16	14	15	80
18:00-18:59	27	27	26	25	24	129
19:00-19:59	14	14	16	14	16	74
Total	168	161	165	159	161	814

Northern Summer 2018	Monday	Tuesday	Wednesday	Thursday	Friday	Total
06:00-06:59	11	12	10	11	11	55
07:00-07:59	22	22	23	23	23	113
08:00-08:59	19	19	19	20	19	96
09:00-09:59	10	11	9	10	10	50
10:00-11:00	13	16	15	13	15	72
15:00-15:59	21	20	21	19	22	103
16:00-16:59	16	13	12	14	14	69
17:00-17:59	14	15	15	17	15	76
18:00-18:59	26	25	26	24	24	125
19:00-20:00	15	15	15	15	16	76
TOTAL	167	168	165	166	169	835

The ring fencing provisions ensure the times of the PRSS slots cannot be moved out of the peak periods in favour of international or interstate services.

A PRSS slot can revert to a standard slot when the slot is not needed for regional services and is used for two consecutive equivalent seasons for flights to non-regional locations.

Under certain circumstances outside of peak periods, the Legislation allows for additional slots to be incorporated into the ring fence and for regional flights to be conducted using either a ring fenced slot or a standard non ring fenced slot. During peak hours, the Legislation prevents conversion of non-regional slots into regional slots (Box 3.1) and regional flights can only be conducted using a ring fenced slot. This effectively caps the number of regional services able to be operated in peak periods.

Box 3.1: Mobility between different categories of slots

Regional slots cannot be moved between peak and off-peak periods. A slot that is part of a PRSS can only be swapped with a slot that is not part of a PRSS if the time of the non-PRSS slot is within 30 minutes of the time of the PRSS slot when it first became such a slot.

Non-PRSS slots can be converted to PRSS slots in off-peak periods if the slot series was used for regional flights in the previous two equivalent scheduling seasons. A PRSS slot can lose its status if the slot series was used for non-regional services for each of the previous two equivalent scheduling seasons. However, an airline can only offer regional flights in non-PRSS slots during off-peak periods. These restrictions mean that new PRSS cannot be created in peak periods.

<i>Allowed slot series conversions</i>	<i>Peak period</i>	<i>Off-peak period</i>
Regional → Non-regional	✓ (over several scheduling seasons)	✓ (over several scheduling seasons)
Non-regional → Regional	✗	✓

3.2. Definition of regional service

The Legislation defines a ‘regional service’ as a flight that takes off and lands within NSW, noting that a particular service might consist of several legs, some of which will be regional services (that take off and land within NSW). This guarantees residents and communities of regional NSW, and the airlines which service them, continued access to Sydney Airport.

In 2017-18 (latest available data) regional route patronage ranged from over 300,000 passenger movements per year for Coffs Harbour to less than 10,000 for Cooma, Mudgee and Taree¹⁷. At the same time, flights to communities outside of NSW which are considered ‘regional’ by other definitions, fall outside the definition of regional services for this Legislation (e.g. Toowoomba, Cairns and Alice Springs).

It is relevant to consider whether the definition of ‘regional’ remains appropriate. A change to the definition of ‘regional service’ could either increase or decrease the range of flights able to access Sydney Airport under the PRSS.

To facilitate discussion, options for changes to the definition of ‘regional services’ include, but are not limited, to:

- only including flights below a certain seat capacity (e.g. a common definition of ‘regional’ in the US is flights with seat capacity of up to 76). This would remove larger flights from the definition of regional services, but could also incentivise airlines to fly more flights with smaller planes;
- removing flights to and from airports servicing Major Cities and Inner Regional Australia (based on the Australian Statistical Geography Standard Remoteness Structure)¹⁸;
- including flights to regional communities outside of NSW. In 2019, 21 of 48 domestic regular passenger transport (RPT) routes out of Sydney Airport were interstate, including to 14 airports not servicing major cities¹⁹. In some cases, the current PRSS preferences flights within NSW over flights to more remote communities outside of the state; and/or
- limiting it to flights predominantly providing essential services to regional communities; removing those flights predominantly for leisure purposes, or where there is an easy transport alternative (e.g. Newcastle to Sydney is a little over two hours travel by road or rail).

D. Should the definition of ‘regional service’ be changed? Why or why not?

3.3. Number of peak-period regional slots

The number of peak-period regional slots was set in 2001, by reference to the number of regional slots in the previous season. However, since 2001, the regional share of flights into Sydney has

¹⁷ NSW Bureau of Transport Statistics, *Quarterly Passenger Statistics NSW Air Routes September 1996 to June 2018*.

¹⁸ [www.abs.gov.au/websitedbs/D3310114.nsf/home/Australian+Statistical+Geography+Standard+\(ASGS\)](http://www.abs.gov.au/websitedbs/D3310114.nsf/home/Australian+Statistical+Geography+Standard+(ASGS)) and www.abs.gov.au/ausstats/abs@.nsf/mf/1270.0.55.005

¹⁹ BITRE, unpublished data.

declined significantly. In 2001, intrastate flights made up 26 per cent of movements; in 2019, it was only 19 per cent²⁰.

Sydney Airport Corporation has estimated approximately 25 per cent of peak-period slots are reserved for approximately 5 per cent of peak time passengers²¹. This may impact the number of passengers who could potentially arrive and depart during peak periods.

A new PRSS may be created, or an existing series extended if the equivalent slot in each of the two previous scheduling seasons was allocated to the operator to conduct a regional service. A slot series can cease being PRSS if in the previous two equivalent scheduling seasons, the slot was allocated to an operator for a non-regional service.

While the existing provisions result in gradual changes to the number of PRSS slots at any time, reducing the number of regional slots during peak periods could substantially increase the peak hour passenger capacity of Sydney Airport. However, it would result in slots available for regional flights being replaced by interstate or international flights, potentially disadvantaging NSW regional communities. Implementation of any change could take into account used versus unused PRSS slots, as well as other metrics to determine the appropriate number of PRSS slots.

E. Should the number of peak-period regional slots or the method for converting PRSS slots be revised? Why or why not?

In 2001, the number of PRSS slots in the winter season was set at the number of slots used for a regional service during the northern summer of 2001. The number of PRSS slots in the summer season was set at the number of slots used for a regional service during the northern winter of 2001. However, at the time, these were not equal, creating a larger number of PRSS slots in the summer than in winter.

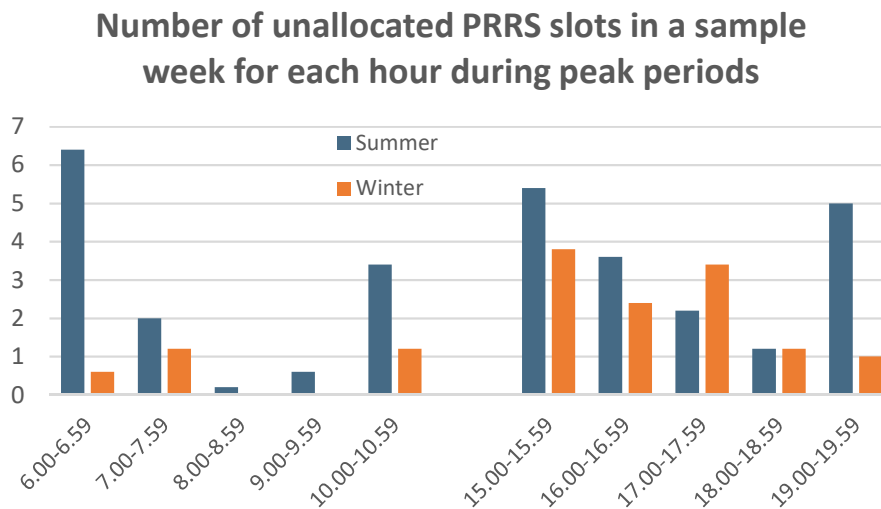
The ring fencing of PRSS slots means that this discrepancy has continued over time. As a result, where airlines fly broadly the same number of regional flights across the entire year, this results in a larger number of unallocated PRSS slots in summer than in winter (see Chart 3.1).

Some reallocation of PRSS slots between seasons could allow airlines to offer more consistent year-round regional services. Increasing the number of PRSS slots in winter (without decreasing the number of non-regional slots) would put strain on Sydney Airport's movement cap. Reducing the number of PRSS slots in summer would reduce the number of unallocated PRSS slots during summer. Replacing these PRSS slots with the same number of non-PRSS slots would also ensure that airlines could offer more consistent year-round non-regional services.

²⁰BITRE, unpublished data.

²¹ Sydney Airport, Submission No. 53 to Productivity Commission *Inquiry into the Economic Regulation of Airports*, 3 September 2018, paragraph 271 (page 102).

Chart 3.1: Unallocated peak period PRSS slots by hour



F. Should there be alignment of the number of peak-period regional slots in the winter and summer seasons?

3.4. Peak and non-peak regional slots

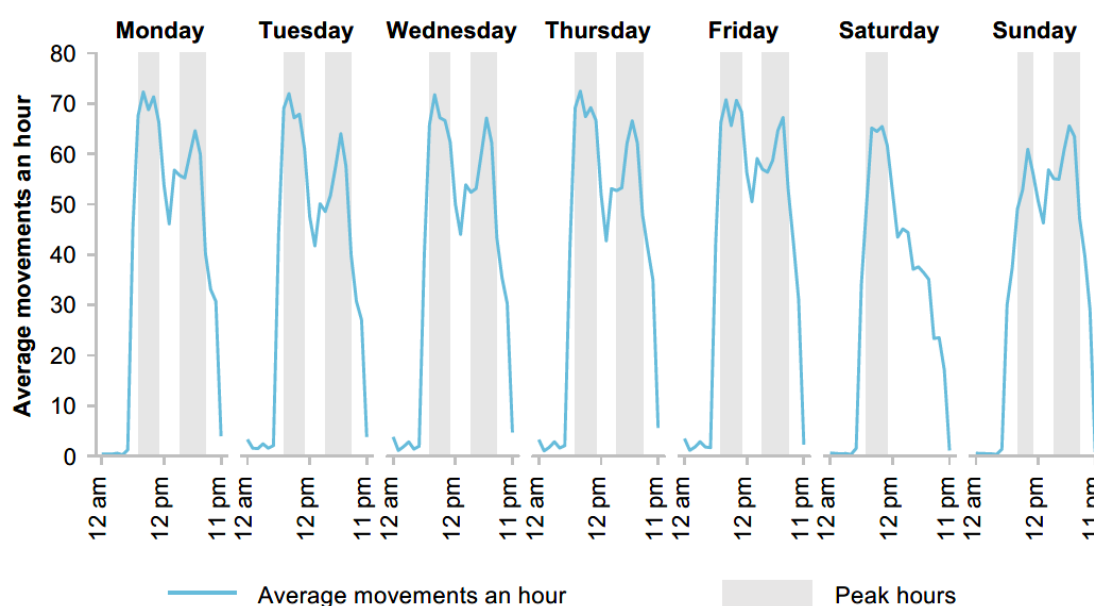
The peak period is currently defined as 6-11am and 3-8pm on weekdays – i.e. 10 of the 17 available (non-curfew) hours. Chart 3.1 above shows a large average number of unallocated slots early in the afternoon peak. Therefore, reducing the length of the afternoon peak hour (e.g. by one or two hours) could potentially increase flexibility within the system, without actually impacting on regional services.

G. Does the defined peak period remain appropriate for regional slots?

During off-peak periods, the demand for slots is generally well below the available supply (see Chart 3.2), meaning no flights (international, domestic or regional) are likely to have difficulty in obtaining a slot during off-peak periods. Given this is the case, distinguishing between regional and non-regional slots during off-peak periods has no practical effect. Changing all PRSS slots during non-peak periods into general slots (which could be used for international, domestic or regional services) would increase flexibility for airlines and for Sydney Airport, and would be unlikely to have any impact on regional services during non-peak periods.

H. Is there a need for dedicated regional slots in off-peak periods?

Chart 3.2: Average hourly movements at Sydney Airport



Source: Productivity Commission

3.5. Flexibility

The PRSS provides a range of provisions designed to maintain regional slots within peak hours (see Box 3.1). A slot that is part of a PRSS can only be swapped with a slot that is not part of a PRSS if the time of the non-PRSS slot is within 30 minutes of the time of the PRSS slot when it first became such a slot.

Given the morning and afternoon peak periods each extend for five hours, allowing regional slots to be moved by up to 45 minutes would provide more flexibility to move regional slots within peak periods, and into the 'shoulder'. The additional 15 minutes could add materially to airport efficiency (e.g. allowing for larger passenger volumes, on interstate or domestic services) at little inconvenience to regional services.

I. Should there be additional flexibility in allowing regional slots to be moved between peak and off peak periods?

Currently, regional services in peak periods can only use PRSS slots. To introduce added flexibility in the Scheme, the Government supported the Productivity Commission's recommendation that any peak-period slot should be able to be used for regional flights. Non-PRSS slots would be allowed to be used for regional flights when available and as and when required, without being converted to permanent regional slots.

The intended outcome of the Productivity Commission recommendation is to increase flexibility for regional flights during peak periods. However, it is important that the implementation of the recommendation not introduce other distortions into the system.

There are already safeguards in place to limit the conversion of PRSS to non-PRSS slots over time, including that the Slot Manager is required to first offer the PRSS to any airline that proposes to operate a regional flight. The intention of the reform proposed is to allow the scheme to be more responsive to demand for regional services in peak periods where demand exceeds the supply of

slots available for regional services. By doing so, further changes may be needed to maintain and deliver overall productivity and not unduly constrain the passenger capacity of Sydney Airport.

J. Are additional safeguards needed in order to implement the Productivity Commission recommendation that non-PRSS slots be allowed to be used for regional flights?

3.6. Price cap and notification regime

The Australian Competition and Consumer Commission (ACCC) has a role in assessing proposed price increases for regional air services at Sydney Airport under the Part VIIA price notification regime (in the *Competition and Consumer Act 2010*)²². The ACCC can object to a proposed price increase if it considers the increase would exceed the Consumer Price Index (CPI) linked price cap, or if the increase is not required to recover the airport's costs of providing regional aeronautical services²³.

Sydney Airport has made three price notifications for regional aeronautical services since the regime was introduced in 2002. The ACCC did not object to two structural price changes in 2002 and 2013, as it concluded they were unlikely to result in price increases. The ACCC did object to Sydney Airport's price notification in 2010 – a proposal to increase passenger facilitation, runway and security charges. The ACCC concluded Sydney Airport did not demonstrate the increase was required to recover costs, or that prices at that time signalled an inefficient use of airport assets by airlines operating regional flights. Sydney Airport did not proceed with its proposed price increase.

Prices for regional air services have been held constant in nominal terms since 2002. This equates to a fall of 32 per cent in real terms. This compares with a real increase in average aeronautical revenue per passenger of 34 per cent since 2001-02 across the airport as a whole²⁴.

While regional charges are capped, prices for non-regional flights are not. Currently, regional prices are around half of Sydney Airport's scheduled domestic aeronautical charges (or rack rates), at \$15.86 compared with \$34.08 per passenger return²⁵. The Productivity Commission noted the difference is likely smaller in practice, as the actual charges that domestic airlines negotiate with Australian airports are likely to be lower than the published rack rates. The Australian Airports Association (AAA) found that the major Australian airports discounted charges for domestic and international flights by an average of 24.0 and 9.8 per cent respectively in 2016–17²⁶.

As discussed above, the ACCC will allow price increases where the airport has demonstrated the need for an increase (e.g. given passenger volumes). The price cap is not intended to keep regional prices artificially low so the disparity in prices between regional and non-regional services can be explained by increases in charges for non-regional services over this time.

A new Declaration regarding the regional price cap and notification scheme was made ahead of the release of the PC's draft report. The Declaration commenced on 1 July 2019 and will cease on 30 June 2022. It may be appropriate for the ACCC's next price monitoring determination to allow for the gap between regional and non-regional aeronautical charges to close somewhat over time.

²² <https://www.accc.gov.au/regulated-infrastructure/airports-aviation/airports-aviation-price-notifications>

²³ Under certain circumstances it may be an offence if Sydney Airport charges a price after the ACCC has objected to it and has proposed a lower price.

²⁴ Productivity Commission 2019, *Economic Regulation of Airports*, Report no. 92, Canberra (p.227).

²⁵ Sydney Airport, Submission No. 53 to Productivity Commission *Inquiry into the Economic Regulation of Airports*, 3 September 2018 (pp. 80-81).

²⁶ Australian Airports Association, *AAA submission to the Productivity Commission*, 2018, p. 32.

However, this would probably involve regional aeronautical charges increasing at above inflation for a number of years and would need to give consideration to the impacts of COVID-19 on affected stakeholders.

K. Should there be further relaxation or other changes to the ACCC's price cap and monitoring regime?

The Government supports in-principle the Productivity Commission recommendation that future declarations relating to the regional price cap and notification regime at Sydney Airport only apply to aeronautical services that are not covered in commercial agreements between Sydney Airport and regional airlines. This would facilitate better access outcomes through commercial-in-confidence agreements, while preserving the existing protections for airlines that do not reach such agreements. However, it is important that the implementation of the recommendation not introduce any other distortions into the system.

L. Are there adverse outcomes in implementing the Productivity Commission recommendation regarding the scope of future price declarations? Are specific safeguards needed to mitigate any impacts of implementing this recommendation?

The ACCC price cap and monitoring occurs under Competition and Consumer (Price Notifications—Aeronautical Services to NSW Regional Airlines) Declaration 2019 and Competition and Consumer (Prices Surveillance—Aeronautical Services to NSW Regional Airlines) Direction 2019, both of which commence on 1 July 2019 and are due to cease on 30 June 2022.

M. Are there any matters, not discussed already, which the Government should consider when developing any future Direction for regional price monitoring at Sydney Airport by the ACCC?

4. Slot management

The *Sydney Airport Demand Management Act 1997* (the Act) prescribes Parliament's intention to limit aircraft movements through a Slot Management Scheme in combination with penalties to encourage compliance. A 'slot' permits an aircraft to conduct a gate movement in preparation for a take-off, or following a landing at Sydney Airport. A slot is allocated for a specified time, on a specified day. All commercial and private aircraft require a slot to land or take-off at Sydney Airport.

At Sydney Airport, slots are used to manage the movement cap. The maximum number of slots that can be issued is 80 per hour. In doing so, slot management has been implemented as a noise mitigation tool. Internationally, slots are coordinated at many airports to manage congestion and increase the productive capacity of the airport. This is also relevant to Sydney Airport during peak periods where demand is approaching or has reached the deliberately constrained capacity (as defined by the movement cap). Seven other Australian airports have implemented a slot system to manage congestion²⁷ without the need for legislation.

For Sydney Airport, the Legislation establishes a scheme for the allocation of slots, institutes the position of Slot Manager and creates a compliance framework.

4.1. Alignment with international practices

When initially created, the Legislation closely reflected the industry-developed and widely adopted International Air Transport Association (IATA) Worldwide Slot Guidelines (WSG), which was in place at the time. Some parts of the Legislation are very prescriptive and mirror that version of the WSG, while other parts make reference to the WSG. However, there were and remain deliberate provisions in the Legislation that differentiate it from the WSG, including, the movement cap to have regard to the impacts of aircraft noise on the community, and other distinctions related to the providing slots for New South Wales (NSW) regional services, exclusion of the ability to trade slots, a size of aircraft test and the compliance regime to encourage on-time performance.

Over time, IATA has progressively reviewed and updated its guidelines and governance arrangements. The first edition of the Worldwide Airport Slot Guidelines (WASG) in June of this year was the outcome of a strategic review and the first to be endorsed by IATA, the Airports Council International (ACI) and the Worldwide Airport Coordinators Group (WWACG). All parties to the new industry-wide governance arrangement agree that increased collaboration provides an opportunity to further modernise slot allocation mechanisms to the benefit of the travelling public and the aviation community at large. The reformed governance also paves the way for regular reviews of the slot allocation process.

The objectives of the WASG are:

1. To facilitate consumer choice of air services, improve global connectivity and enhance competition at congested airports for passengers and cargo;
2. To provide consumers with convenient schedules that meet demand, are consistent from one season to the next, and reliable in terms of their operability;
3. To ensure that slots are allocated at congested airports in an open, fair, transparent and non-discriminatory manner by a slot coordinator acting independently;

²⁷ Adelaide, Brisbane, Cairns, Darwin, Gold Coast, Melbourne and Perth airports

4. To realize the full capacity potential of the airport infrastructure and to promote regular reviews of such capacity and demand that enable effectual capacity declarations for slot allocation on a seasonal basis;
5. To balance airport access opportunities for existing and new airlines;
6. To provide flexibility for the industry to respond to regulatory and changing market conditions, as well as changing consumer demand; and
7. To minimize congestion and delays²⁸.

Recent changes to the WSG – and now the WASG, following IATA’s strategic review – include enhancements in respect to:

- the definition of new entrants;
- allocation priorities;
- coordination committees; and
- slot monitoring.

While the industry developed WSG has been enhanced, the Act has not been updated since 2008 and the instruments have not been updated since 2013. This creates two key issues.

Firstly, the Legislation does not reflect the enhancements and changes over many years designed to address previous competition, compliance and other issues in the WSG. Consequently, the slot management scheme prescribed for Sydney Airport does not reflect contemporary worldwide practices.

Further, the differences between the WASG and the Legislation create complexity for the Slot Manager and airlines which are accustomed to operating globally within the former WSG and now the WASG framework. Therefore, stakeholders are required to navigate and understand the bespoke arrangements at Sydney Airport, and manage the two similar approaches which are operating almost in parallel but have growing divergences.

- N. How significant is the impact of implementing a bespoke slot scheme for Sydney Airport? Is there reason to implement a slot management scheme that is substantially different from the WASG? What challenges do inconsistencies between the WASG and Legislation create?**
- O. What risks and opportunities could be realised by adopting the WASG?**

²⁸ <https://www.iata.org/en/policy/slots/slot-guidelines/>

4.2. Allocation priorities

Achieving a balance between providing certainty of slots for incumbent airlines, and encouraging competition through making slots available for new entrants, is a key priority of the Legislation at present.

The concept of historical precedence is fundamental to the allocation of slots in both the Legislation and the WASG. Historical precedence to a slot series²⁹ is obtained if an operator satisfies the 'use it or lose it' test and any 'size of aircraft' test for slots series allocated in the previous equivalent scheduling season.

To satisfy the 'use it or lose it' test requires the relevant gate movements to have been conducted by the airline for at least 80 per cent of the slots allocated in the series. This is also referred to as to 80/20 rule. Reasons for not using the slots are considered in assessing satisfaction of the test.

To satisfy the 'size of aircraft' test, at least 80 per cent of the relevant gate movements in the series are required to have been conducted by the airline using an aircraft in the size category for which the slot was allocated.

On-time performance – even when the cause for not being on time may have reasonably been within the control of the airline – does not factor into the assessment of compliance with the 80/20 rule.

Slots which remain available after allocation based on historical precedence are allocated in accordance with section 16 of the Sydney Airport Slot Management Scheme 2013 (SMS) so that at least 50 per cent of slots would be allocated to a new entrant (if new entrants have applied for the slots) and slots preserved for regional services are offered to an operator that proposes to conduct a regional service³⁰. Section 19 of the SMS also specifies that priority for allocation of slots is to be given to:

1. changes to historic slot allocations before new applications;
2. applications for larger aircraft over smaller aircraft; and
3. year round services over single season or shorter allocations.

The Slot Manager is to resolve competing applications through consultation and negotiation and aim to maintain or introduce a regional service where no regional service operates.

Following the strategic review of the WSG, IATA removed the priority for changes to historic slot allocations before new applications. This means that under the WASG, but not under the SMS, all airlines operating into airports that have adopted WASG now have equal access to slots which remain available following allocation of slots based on historical precedence.

Airlines are permitted to swap slots (within guidelines) but not to trade them for consideration. Other countries, including the United States and United Kingdom have allowed slot trading since 1985 and 1999 respectively. Lessons learned in other fields demonstrate that where a limited public resource - such as a capped airport movement - is managed by trading, the greater may be the need

²⁹ Slot series means five (5) or more slots that authorise the same kind of gate movement at the same time or, if that is not possible, approximately the same time, on the same day of consecutive weeks within one scheduling season (e.g. a takeoff slot at 5pm every Monday during a specified period).

³⁰ For more on this refer to Chapter 3.

for careful design to ensure consumer and wider interests (tourism, for example) than those of the direct negotiating parties continue to be delivered.

While the United States has previously proposed auctioning slots, and China briefly trialled auctioning at Guangzhou airport in 2015, there is not a clear international precedent for auctions. Auctioning has been opposed by IATA who note the confusion that would be caused if an airline failed to win auctions at both ends of a route.

- P. Do the allocation priorities in the Legislation, including historical precedence, remain appropriate? Should they be aligned with the WASG or be otherwise amended to fulfil the varied objectives of demand management? If so, how? Please provide your rationale.**

4.3. New entrants and expanding airlines

A new entrant is defined in the Legislation as an operator with not more than four (4) slots allocated for the day new slots are sought. This definition was consistent with the WSG when it was adopted. However, as an outcome of the strategic review, IATA now defines a new entrant as an airline requesting a series of slots at an airport on any day, where if the airline's request was accepted, it would hold fewer than seven (7) slots at that airport on that day.

The definition of a new entrant is relevant as following reallocation of slots based on historical precedence (refer to the allocation priorities section 4.2 above) the Slot Manager must ensure that as close as possible to the first 50 per cent of slots applied for by both a new entrant and another operator are offered to the new entrant. This is a principle common to both the Legislation and the WASG.

The broadened definition of a new entrant adopted in the WASG should have positive competition outcomes, yet it is presently a key divergence between the Legislation and the WASG.

Once an airline exceeds the number of slots prescribed in the definition of a new entrant, preferential slot allocations cease. From henceforth, there is no allocation priority in the Legislation for airlines seeking to expand, potentially broadening the markets served from Sydney Airport or bringing competition to routes.

- Q. Should the definition of a new entrant align with the definition used in the WASG? Why or why not?**
- R. Do the current arrangements create specific barriers to new entrants or airlines expanding services at Sydney Airport? Are there any changes that should be made to reduce these barriers?**

4.4. Size of aircraft test

The 'size of aircraft' test may apply to a slot series for determining eligibility for historical precedence. Where the 'use it or lose it' test applies to all slot series, the 'size of aircraft' test only applies to series where it has been specified by the Slot Manager that the rule applies. After the completion of a slot series where the 'size of aircraft' rule was applied, the Slot Manager must assess whether the operator used an aircraft that satisfied the size requirement for at least 80 per cent of the slots.

This rule, intended to support efficient use of the constrained capacity at Sydney Airport, is unique to the Legislation and not featured in the WASG. However, the WASG does consider airlines operating a slot with a different equipment type than was detailed in the allocation as a possible form of slot misuse which may result in enforcement actions.

S. Should the ‘size of aircraft’ rule be retained? If so, what rationale or application criteria should be used?

4.5. Compliance monitoring and enforcement

Access to slots is a key requirement for all airlines, particularly new or expanding airlines, to operate services in or out of slot-constrained airports, such as Sydney Airport. In its September 2020 “Airline competition in Australia” report, the Australian Competition and Consumer Commission (ACCC) explained that competition concerns may arise where airlines schedule flights for the purpose of retaining a slot but with no real intention of operating a flight. This behaviour might restrict competition between airlines if it prevents potential new entrants or those seeking to expand their services from acquiring slots needed to provide competitively scheduled flights. Ensuring that the slot allocation system promotes and encourages a competitive environment, including through appropriate governance, monitoring and compliance functions, is therefore fundamental to an effective slot management scheme.

Monitoring of compliance with the 80/20 ‘use it or lose it’ test or ‘size of aircraft’ test is conducted by the Slot Manager. Failure to meet the requirements of these tests, once taking into account bad weather, closure of the airport and public holidays, can result in slots being cancelled and the operator being ineligible for historical precedence for reallocation of the corresponding slot series in the next equivalent season.

The Act also allows penalties to be applied where an aircraft operator knowingly or recklessly allows the aircraft to engage in movements that occur without a slot (i.e. no-slot movements) and when aircraft movements are conducted outside of defined timing tolerances before or after allocated slots (i.e. off-slot movements) and cannot provide an acceptable reason. The compliance framework includes a system of infringement notices as an alternative to civil prosecution.

A Compliance Committee and the Slot Manager oversee compliance by operators and, where necessary, apply enforcement provisions in relation to slot management, including through instituting proceedings in the Federal Court or issuing infringement notices at the rates detailed in the Legislation.

The functions of the Compliance Committee are to develop, administer and amend the Compliance Scheme and to decide to direct the Slot Manager to issue an infringement notice for a no-slot or off-slot movement. Committee members are appointed in writing by the Minister (or delegate). Membership of the Compliance Committee was established to be industry based to provide advice on the networking and organisational issues that impact on slot compliance. The Committee is comprised of up to seven members with at least:

- three members nominated by airlines that regularly use Sydney Airport (or their representative organisation) with at least one of these members nominated by a regional service operator (or their representative organisation);
- one member nominated by the operator of Sydney Airport (e.g. the airport–lessee company); and

- one member nominated by the body that provides air traffic control services at Sydney Airport (Airservices Australia).

Since the coordination of the northern winter 2019/2020 season, the WSG (now WASG) contains a new chapter on slot monitoring. Slot monitoring is defined as “the continuous process of reconciling the operations of airlines and other aircraft operators to the slots allocated... This is one of the methods available to ensure the most efficient use of airport infrastructure”³¹. Slot monitoring according to the WASG is to:

1. ensure that operations at a slot controlled airport are in accordance with the slots as allocated;
2. ensure that slots are used in line with the ‘use it or lose it’ rule;
3. help ensure scarce capacity is not wasted;
4. help ensure the smooth operation of airports for all stakeholders; and
5. prevent the misuse of slots.

While the Legislation focuses on no-slot and off-slot movements as compliance issues, the WASG identifies eight actions as misuses of slots. These are:

1. operating at a slot controlled airport without an allocated slot;
2. operating a flight at a significantly different time from the allocated slot;
3. operating a flight in a significantly different way to the allocated slot – including a different service type, aircraft subtype, aircraft capacity, or origin/destination – without the prior confirmation of the coordinator;
4. holding slots that the airline or other aircraft operator does not intend to operate, transfer, swap, or use in a shared operation;
5. holding slots for an operation other than that planned for the purpose of denying capacity to another airline or aircraft operator;
6. requesting new slots that the airline or other aircraft operator does not intend to operate;
7. requesting slots for an operation other than that indicated, with the intention of gaining improved priority; or
8. where applicable, operating in curfew or another restricted operations period without holding an allocated slot for that period.

T. What considerations should be given for an effective compliance scheme?

U. Does the focus of compliance being on off-slot and no-slot movements remain appropriate? Should slot management at Sydney Airport include compliance provisions for broader aspects, such as

³¹ WASG, Edition 1

the actions the WASG consider to be slot misuse? If so, would this support the objectives of demand management being met?

- V. Are the penalties, if implemented, significant enough to encourage compliance? Are there alternative compliance mechanisms which could be considered?**

4.6. Ministerial Directions

The Minister may direct the Slot Manager to issue, vary, suspend or cancel slots that have been allocated under the Scheme. The Minister must outline his or her reasons for giving the direction and provide a copy of the direction to be tabled in each House of Parliament. The Slot Manager, and any person authorised under the Legislation, must comply with a direction by the Minister.

Directions have predominately been used to waive the 80/20 'use it or lose it' rule when there have been shocks which impede services operating normally. Recently they have been issued in response to impacts from the COVID-19 pandemic, civil unrest in Hong Kong and Cyclone Debbie. Directions can be used for other reasons, such as occurred when Ansett collapsed and Directions were implemented to detail exceptional allocation rules for the returned slots to ensure competition in the domestic market would not be adversely effected.

- W. Do you have any comments on the Ministerial Direction provision in the Act?**

4.7. Changes to the slot management scheme and compliance scheme

When the Legislation was introduced, industry stakeholders – reflected in the roles of the Slot Manager and Compliance Committee – were considered best placed to understand the slot scheme and compliance scheme and their impacts. Therefore, the Legislation establishes a process whereby changes to the slot and compliance schemes are the responsibility of the Slot Manager and Compliance Committee respectively. The Minister may request amendments and has a role in approving amendments.

- X. Does it remain appropriate for the Slot Manager and Compliance Committee to be principal instigators for changes to the slot scheme and compliance scheme?**

4.8. Slot manager qualifications and requirements

The Act defines the function of the Slot Manager as being:

- to develop, administer and amend the slot management scheme; and
- such other functions as are conferred on the Slot Manager by the Act and the Legislation.

The Slot Manager may be a body corporate, including an incorporated company. The Minister must consider the body corporate has, through its members or employees, a good understanding of aviation generally and of the issues involved in slot allocation processes. Appointments are for a specified period not exceeding three years, unless terminated at any time for any reason.

The Slot Manager may authorise Airservices Australia or the operator of Sydney Airport to exercise the Slot Manager's powers relating to the allocation of slots or in connection with a slot that has been allocated.

Where an application for an ad hoc slot is made outside the normal working hours of the Slot Manager, Airservices Australia will assess the application and make a decision to approve or reject the application.

- Y. Given the maturity of slot management and the WASG, does the scope of the Slot Manager's functions remain appropriate?**
- Z. What process should be undertaken to identify and appoint a Slot Manager and how often should the position be reviewed?**

4.9. Coordination of apron and terminal slot allocations

The Act describes a slot as a permission for a gate movement. Gate movement means:

- a. the first movement of an aircraft after its external doors have been closed in preparation for an aircraft that is a take-off; or
- b. the last movement of an aircraft immediately before the moment when, after an aircraft movement that is a landing, it comes to a standstill and the engines are turned off³².

The Legislation also provides that the slot management scheme is required to be consistent with the maximum movement limit (i.e. the movement cap)³³. This establishes a fundamental relationship between gate movements (i.e. slots) and aircraft movements – which are the landing or taking off of an aircraft from a runway³⁴. In this way, slots are the primary mechanism for managing the Sydney Airport movement cap. However, runways are only one aspect of an airport's capacity and are not the only point where congestion can occur. Capacity and functioning of the terminals, terminal gates and aprons are interdependent. Therefore, the management of each aspect of capacity contributes to the efficient use of a major airport like Sydney Airport.

The Legislation references the relationship between gate movements and other capacity and efficiency considerations by requiring the Slot Manager, before offering a slot, to have regard to any advice about the likely effect of the slot allocation on the operational efficiency or the capacity of the airport³⁵. Notwithstanding this, it may be possible for the Slot Manager to allocate slots, while a separate entity manages the coordination of terminal and apron capacity.

By comparison, under the WASG, a slot allocation is an approval for the use of all infrastructure required to carry out the airline operation and the WASG infers a single, independent, entity conducts slot allocations encompassing all relevant infrastructure. For a passenger service this includes all terminal passenger flow points, aircraft parking, use of the runway and any additional point of congestion that has been identified³⁶.

At Sydney Airport, the Slot Manager is established to manage gate movements (akin to runway slots) and has traditionally also managed apron and terminal slots (with the exception of T3 when Qantas managed the capacity for their own operations). Internationally, the approach to coordinating the

³² Sydney Airport Demand Management Act 1997, Schedule 1

³³ Sydney Airport Demand Management Act 1997, Section 35(2)

³⁴ Sydney Airport Demand Management Act 1997, Schedule 1

³⁵ Sydney Airport Demand Management Scheme 2013, Section 18(3)

³⁶ While a slot allocation in accordance with the WASG takes into account the capacity of all relevant areas, the approved time provided by a slot is based upon the on/off blocks time, which is usually at the gate or an apron

physical components of a slot vary from airport to airport. At many major airports, the slot manager, consistent with the WASG, coordinates slots for the runway and all associated relevant areas and constraints. At other airports, for example JFK Airport in the United States, runway slots and terminal and apron slots are managed by separate entities.

AA. Does the current definition of a slot (and associated terms and processes) in the Legislation ensure the most efficient use of the infrastructure and implementation of the movement cap?

BB. What opportunities and risks could arise from closer alignment to the WASG inferred approach to slot coordination (i.e. a single entity to make slot allocations which reflect all airport capacity factors)?

4.10. Record keeping and transparency

The Legislation includes requirements in relation to the Slot Manager maintaining and transferring records. Records must be maintained for at least seven years. They include records of:

- slots allocated to operators of aircraft;
- declarations made that an operator did not comply with the 'use it or lose it' test;
- gate movement times;
- the reasons (if any) an operator of an aircraft has given relating to times and reasons for a specified gate movements;
- documents prepared by the Slot Manager in relation to a proceeding in the Federal Court
 - for the payment of a pecuniary penalty under the civil penalties of the Act and
 - in which the Slot Manager is the applicant;
- infringement notices; and
- evidentiary certificates made under section 70 of the Act.

The Secretary of the Department of Infrastructure, Transport, Regional Development and Communications can access Slot Manager records.

CC. Do the record keeping requirements provide the appropriate balance between treatment of any commercially sensitive information and providing sufficient transparency to afford stakeholders confidence slots are being managed appropriately?

4.11. Exceptional circumstances

Over the last twenty years, the Government has considered additional measures for the allocation of slots following a significant industry disruption – e.g. when Ansett collapsed and now in response to the impacts of the COVID-19 pandemic (refer to Chapter 5). In response to the collapse of Ansett, the Minister issued Directions to establish a pool of slots which had special reallocation rules to ensure competition – particularly in the domestic market – could be maintained. The options being considered in response to a potential influx of slots being returned due to the downturn in activity as a result of the impacts of the pandemic are similar in both objectives and implementation. A

Ministerial Direction can be implemented to address the current and potential future exceptional circumstances, which have the potential to significantly disrupt the market. However, consideration should be given as to whether the solution should be incorporated into the Legislation.

DD. Should there be a legislated framework for handling influxes of returned slots due to significant industry disruptions?

5. COVID-19 impacts

The aviation industry continues to be severely affected by COVID-19. Even where air travel restrictions do not exist, airlines are still experiencing significantly reduced demand. This has contributed to passenger loads remaining significantly below pre-COVID-19 levels. Domestic passenger numbers through Sydney Airport in July 2020 for example were 88 per cent below activity in July 2019.

Domestic aviation is expected to be slower to recover than the broader economy, and international aviation will take even longer to return to strength. As a consequence, Australian airlines have made significant changes regarding their future operations.

In August 2020, Virgin Australia Holdings announced a plan to streamline its services as it prepares to exit voluntary administration under the new ownership of Bain Capital. Virgin Australia explained it was “resetting... to meet lower global and Australian demand”. This will include reducing its cost base by reducing staff numbers until demand recovers, streamlining its fleet of aircraft by operating an all-737 mainline fleet and the retention of the regional and charter fleet, but removing ATR, 777, A330 and A320 aircraft types, and discontinuing its low-cost carrier brand, Tigerair (although it plans to retain an option to restart a low-cost carrier)³⁷.

In response to the changing market due to the pandemic and drastically reduced demand, the Qantas Group announced that as part of its COVID recovery plan, it would cut at least 6,000 positions as part of restructuring the business in response to border closures and more permanent structural changes to the aviation industry. Qantas also reported it would significantly reduce planned capital investment and has proposed to outsource ground handling at 10 airports³⁸. The planned reductions to Qantas’s fleet include: retiring its six remaining 747s, grounding up to 100 aircraft for 12 months or longer, including most of the international fleet; returning leased aircraft as they fall due; and deferring the delivery of new A321neo and 787-9 aircraft orders.

In contrast with the decisions of Virgin and Qantas to reduce operations, in June 2020, Regional Express Holdings (Rex) announced it would look into expanding its operations to undertake domestic flights on more routes to major cities. On 22 September 2020, Rex announced it had entered negotiations with a private equity firm regarding an investment of up to \$150 million to be used exclusively to support the launch of domestic major city jet operations in 2021³⁹.

In July 2020, the International Air Transport Association (IATA) noted that overall, air travel demand is down by 58.4 per cent in the first half of 2020 compared to the same period of last year. IATA believed consumer confidence would remain low for the foreseeable future due to COVID-19, and that it could take until 2024 for passenger demand to return to pre-pandemic levels⁴⁰. While these figures are only one estimate, it shows the inherent uncertainty for airlines in the current market.

³⁷ <https://newsroom.virginaustralia.com/release/virgin-australia-group-announces-plan-focus-core-strengths-re-establishing-itself-iconic>

³⁸ <https://www.qantasnewsroom.com.au/media-releases/qantas-group-fy20-financial-results-navigating-exceptional-conditions/>

³⁹ <https://rex.com.au/MediaAndPressClippings/MediaReleaseList.aspx?Site=MC>

⁴⁰ <https://www.iata.org/en/iata-repository/publications/economic-reports/Five-years-to-return-to-the-pre-pandemic-level-of-passenger-demand/>

5.1. Government response

During the health crisis, the Government has focused on supporting the sector's ability to deliver minimum essential connectivity, provided rebates for fuel excise and domestic security charges, made solvency support available to safeguard regional airlines, provided assistance in re-establishing global supply chains and waived domestic Airservices Australia charges. The industry-wide assistance to the aviation sector is more than \$1.31 billion so far and when added with other programs that also benefit the aviation industry more generally, this figure increases to \$2.7 billion.

The Government has kept Australians connected during this challenging period by supporting a minimum air transport network under the Domestic Aviation Network Support (DANS) and Regional Airline Network Support (RANS) programs. RANS and DANS cover the cost shortfall for losses incurred by airlines on key inter-city and regional regular public transport (RPT) routes which operate without commercial passenger levels. The design of the programs has evolved over time to reflect the changing situation and increased understanding of the challenges facing the sector.

In addition to financial assistance, to provide maximum medium term (six month) certainty whilst also providing immediate operational flexibility for airlines during COVID-19, as demand for air travel plummeted and the outlook for airline activity was uncertain, the Deputy Prime Minister issued Directions to the Sydney Airport Slot Manager on 12 March 2020 and 31 August 2020. These Directions, issued in accordance with section 46 of the Act, apply to the northern summer 2020 (NS20) scheduling season (29 March 2020 to 24 October 2020) and the northern winter 2020/21 (NW20) scheduling season (25 October 2020 to 27 March 2021).

The Directions effectively waive the need for airlines holding historical slots at Sydney Airport to comply with a 'use it or lose it' rule, whereby they must ordinarily operate at least 80 per cent of allocated slots during a scheduling season to be reallocated those slots in the equivalent subsequent season.

5.2. Impact of existing Directions

Incumbent airlines, both international and domestic, have generally welcomed the greater certainty afforded by the Directions. However, the Directions have implications for future scheduling seasons that, as the economic situation and unpredictable demand for travel continues to evolve unevenly in response to the pandemic impacts, are worth further monitoring and review to ensure they remain fit for purpose.

The likely protracted and unpredictable recovery for air travel and reduced need for slots by incumbent airlines, is of particular relevance, as is the possible emergence of airlines seeking to diversify their markets. Due to the waiver of the 'use it or lose it' rule in NS20 and NW20/21 the Directions allow slots to be allocated to airlines in NS21 and NW21/22 based on historical precedence, even if an airline does not intend to use all allocated slots. The absence of a waiver for NS21 and NW21/22 could be an incentive to resume normal slot usage if there is sufficient demand to enable flights to operate commercially. However, if airlines do not operate flights using the slots for NS21 and NW21/22, the unused slots are a potential productivity loss for the airport and the community and businesses it serves. An airline which retains but doesn't use 20 per cent of allocated slots can have the remainder of their slots in that series cancelled for the season and will not be able to obtain historical precedence to them for the following equivalent seasons. Therefore, the slots would become available for allocation to other airlines, but not until after the season has started, which could be too late for other airlines to practically schedule, market and sell flights, so may not provide useable capacity until NS22 and NW22/23.

In NS21 and NW21/22, some airlines may seek to commence new services to Sydney Airport. Rex has indicated an intention to do this and once international border restrictions are lifted there may be other airlines interested in the Australian, and in particular Sydney, market. These new services could commence even before the industry and demand for air travel has fully recovered. However, these airlines will be restricted to only accessing slots that were either:

1. available prior to the Directions being issued - the availability of such slots during peak periods is generally very low; or
2. for NW20, temporarily made available by airlines identifying they won't use the slots for the period of the waiver. However, airlines that are allocated and use these slots will not be able to obtain historical precedence to the slots (as the original slot holder will retain this). The inability to obtain historical precedence can be a disincentive to airlines launching new routes as there is only a short period of certainty for the set-up investment (marketing, establishing service agreements, engaging local staff, etc.) to be recovered.

EE. While recovering from the impacts of the COVID-19 pandemic, how important is providing certainty for existing airlines, versus creating opportunities for new and/or expanding airlines?

5.3. Other considerations

If airlines, despite the Directions, return slots they do not intend to use for NS21 and NW21/22 and beyond (or if they were directed to do so), the slot pool could have a substantial influx of slots available for reallocation. Airlines ceasing to operate in the Sydney market would have a similar effect on slot availability. This raises a number of potential scenarios, which would not normally occur. Decisions made in the short term about the return and reallocation of this influx of slots, could impact future seasons in the following ways:

1. Airlines may not return slots with an even dispersal relative to their total slot allocations (i.e. (peak period slots may be retained and predominantly off-peak slots may be returned), this could result in a disproportionately higher number of off-peak slots becoming available compared to peak period slots. Extra capacity would be created but existing carriers could entrench an advantage by retaining peak period slots.
2. Due to the anticipated slower recovery of international aviation, domestic airlines might seek to absorb the additional capacity before international airlines are in a position to request new or additional slots, potentially reducing overall international aviation at Sydney Airport while also reducing opportunities for competition.
3. The allocation of slots takes into account size of aircraft. In the absence of competing demand for slots, the slots could be allocated for use by aircraft with lower operating capacity than might occur once the market has recovered and there is a broader range of airlines vying for the slots. This has substantial productivity implications.

5.4. Decisions for NS21 and NW21/22

The reforms which could result from the review of demand management (which this Discussion Paper will inform) are unlikely to be implemented in sufficient time for NS21 and NW21/22 planning and slot allocations. Therefore, interim measures to mitigate any ongoing impacts of the COVID-19 pandemic, reflected in reduced demand for flights (and therefore slots), may be needed. Noting this, the below options could be considered.

Option 1: No further Directions

This option could see the impacts of the existing Directions play out as described above. Any slots voluntarily returned to the slot pool for NS21 and NW21/22 would be reallocated as per the standard process outlined in the Legislation. At the same time, despite protracted recovery trajectories, airlines would not receive any new waivers of the 'use it or lose it' rule.

Option 2: Further similar waivers

Recognising the protracted recovery trajectories of the economy and aviation industry, the second option is to issue further waivers of the 'use it or use it rule'. This would extend the period of certainty and benefits of the current Directions for airlines while also extending the period for the other impacts identified above. This option would not be reflective of the stated retractions of fleets and networks as have been publically made.

As a variant, a waiver similar to what is presently in place could be implemented so it only applies to certain slots, such as slots used for international flights (due to the anticipated faster recovery of domestic and regional aviation compared to international aviation) or peak period slots.

Option 3: Full or select waiver with conditions

Option 3 is similar to option 2 in that it maintains certainty for airlines while going some way to mitigating the impacts outlined above through the addition of conditions.

Conditions could include things such as:

- a. Early (temporary) handback of slots not intended to be used in the season.
- b. Airlines that operate temporarily available slots to gain priority to be allocated those slots in the following equivalent season if they become permanently available.
- c. Mid-season, the remainder of slot series being cancelled and returned to the slot pool if more than 20% of the series is neither used nor temporarily returned to the slot pool.

Depending on the conditions implemented, this approach could provide greater support for Sydney Airport and the ancillary service providers at the airport by providing increased visibility of anticipated flight schedules and season-long or short-term slot availabilities. This increased visibility not only allows Sydney Airport and service providers to plan resources accordingly, it also increases opportunities for the schedules of all airlines to be managed with increased flexibility and airlines to potentially trial new services to Sydney Airport. This goes some way to capitalising on opportunities to grow markets or airlines which may reshape or emerge in the aftermath of the pandemic.

This option, as per option 2, could be implemented so the waiver only applies to certain slots, such as slots used for international flights.

Option 4: Reset

Option 4 would partially reset slot allocations by directing the Slot Manager to cancel a proportion of slot allocations for each hour (to mitigate the disproportional return of slots discussed above) or to direct the Slot Manager that airlines do not get historical precedence to a certain proportion of slots each hour. This would be for the applicable season/s and would prevent the airlines being guaranteed return of all slots in the following equivalent seasons. This option directly responds to statements from airlines about reduced capacity and forecast long recovery trajectories. 20 per cent would be the proportion proposed to be mandated for return. At this percentage, an airline would

not be required to hand back slots unless it has five or more slots in an hour, due to rounding in favour of an airline. Because of this, small airlines and international operators could anticipate less impact than domestic airlines as international airlines typically do not have substantial slot allocations in any given hour. Aside from addressing the reduced demand, this option provides operational flexibility and opportunities for growth and rebalancing for Sydney Airport.

The options for a waiver of the 'use it or lose it' rule would remain as possibilities to be implemented in conjunction with this option.

FF. Given the unpredictable recovery period, should further measures relating to slot allocations be considered in response to COVID-19? What are reasonable indicators for further support in response to the COVID-19 pandemic?

GG. Which option, option variant or alternate approach is reasonable? Please provide your rationale.

Peak vs off-peak

Before the COVID-19 pandemic, slots were available (i.e. unallocated) during all off-peak hours⁴¹. Therefore, any airline wanting to obtain slots during those times can do so. The Pre-COVID-19 pandemic projections indicate off-peak slot availability would remain for several years. The impacts of the pandemic could be expected to extend the availability of off-peak slots.

There is considerably less risk of adverse outcomes arising from reallocation of off-peak slots and, as capacity is greater than demand during off-peak times, there is a less compelling case for providing peak and off peak slots the same considerations and interventions.

HH. If further interim measures are implemented in response to COVID-19, should they only apply to peak period slots?

Reallocation of returned slots

Whether slots are returned for NS21 and NW21/22 on a voluntary basis or by Direction, as discussed above, the anticipated influx of slots presents an exceptional circumstance and the reallocation could have market changing effects. While the reallocation could occur in its normal way (in accordance with the current Legislation), the unprecedented situation may warrant the establishment of a pool of slots which have specific reallocation rules. A new Pandemic Recovery Pool could operate in parallel with the standard slot pool (containing slots that were unallocated prior to the pandemic) to mitigate further potential adverse impacts and to position the industry for a strong, competitive, recovery. Following the collapse of Ansett in the early 2000's a Direction was implemented to this effect.

Permanent handback of a proportion of all slots into a Pandemic Recovery Pool creates opportunities to grow markets or for airlines which may reshape or emerge in the aftermath of the pandemic. It also manages the adverse competition impacts and inefficiencies which could arise from airlines retaining slots not intended to be used or unreasonably increasing slot holdings. The impacts of differing recovery timeframes for each market sector can be better managed.

⁴¹ Peak period is defined as 6-11am and 3-8pm, Monday to Friday. All other times between 6am and 11pm, seven days, are considered off peak. A curfew is in place between 11pm and 6am. *The Curfew Act 1995* applies during this time, i.e. the demand management scheme and Legislation do not operate during the curfew.

The special rules for a Pandemic Recovery Pool could include any number of the below, or other rules:

1. Only new entrant and expanding airlines can gain historical precedence⁴² to slots allocated from the Pool. Other airlines may be allocated the slots if they are not applied for by new entrant or expanding airlines. However, they will not be eligible to obtain historical precedence to the slots.
2. A slot which was used for an international service when it was returned, can only be reallocated for an international service. However, a domestic slot may be reallocated for a regional, domestic or international service. Regional (PRSS) slots remain regional slots.
3. The Pandemic Recovery Pool will be dissolved at the conclusion of the later of the NS22 and NW22/23 season as applicable to the relevant slots. Unallocated slots from the Pandemic Recovery Pool will become part of the standard slot pool with the normal slot allocation rules applying.

II. Would you support the establishment of a Pandemic Recovery Pool of slots? Why or why not? What parameters would make it most effective?

⁴² New Entrant is defined as an operator with not more than four (4) slots allocated for the day new slots are sought.

Expanding airlines is not defined. It could be defined to mean “an airline seeking slots to operate a route which it did not have slots to operate in the preceding two (2) seasons” or similar. This definition is flexible enough to allow incumbent airlines to obtain new slots but is intended to encourage network development.

6. Sunsetting considerations

Under Chapter 3, Part 4 of the *Legislation Act 2003*, certain legislative instruments are automatically repealed ('sunset') after a period of time (generally 10 years). The Sydney Airport Slot Management Scheme 2013, the Sydney Airport Compliance Scheme 2012 and the Sydney Airport Demand Management Regulations 1998 (together, the Legislation) are due to sunset on 1 April 2024. In light of this, a process to review and action review recommendations for each instrument is to be undertaken to determine whether there is an ongoing need for the Legislation, and if so, whether the Legislation should be remade with or without changes to its underlying policy. Sunsetting is also an important mechanism to deliver clearer laws and align existing legislation with current government policy.

For legislation which is to be remade, the review must:

1. determine if an instrument is fit-for-purpose, and
2. justify the rule-maker's decision to the Parliament, stakeholders and the public.

The review should result in a clear finding as to whether the law contained in the sunsetting instrument continues to have a purpose. If so, the review must identify any changes required to ensure the replacement instrument is current, legally effective, drafted to a high standard and reflects the outcomes of appropriate consultation. Review documentation is to be publicly released and to be tabled for parliamentary scrutiny.

The assessment of an instrument's fitness for purpose includes, at a minimum, consideration of the six issues listed below⁴³.

1. Objective of the Instruments
 - a. What is the objective of the instrument and is it still required (to achieve this objective)?
 - Are there alternative ways to achieve this objective?
 - What would be the consequences if the instrument was allowed to sunset without replacement?
 - How could it be improved (e.g. to make it no more complex than necessary to achieve that objective)?
2. Current Operation of the Instrument
 - a. What is the current context and operating environment for the instrument?
3. Broader Legal and Policy Context
 - a. Does the instrument touch on any of the following legal or policy issues?
 - Australia's obligations under international law
 - Constitutional law

⁴³Attorney General's Department [Guide to managing the sunsetting of legislative instruments](#)

- Criminal law
 - Civil penalties
 - Administrative law
 - Privacy law
 - The Government's deregulation agenda and commitment to reducing regulatory impacts.
- b. If the instrument does engage any of the issues listed above:
- How closely does it reflect Australian Government policy on that issue?
 - What would be the consequences of seeking to better reflect that policy in the replacement instrument?
 - If there are competing policy considerations, how could those be resolved in the replacement instrument?
4. Regulatory Impact
- a. Does the instrument impose significant regulatory impacts on business, community organisations and individuals? If so, how could regulatory impacts (including compliance costs) be reduced?
5. Clearer Laws
- a. Does the instrument comply with clearer laws principles? What can be done to make the replacement instrument simpler, clearer or easier to read?
6. Consultation
- a. Have you consulted with stakeholders?
- b. What were the consultation findings? Have these been addressed by the review?

Responses to the questions contained in this Discussion Paper will be fundamental to inform the fit-for-purpose test. The Department of Infrastructure, Transport, Regional Development and Communications will also be conducting analysis to inform the more technical and legal aspects of the review. However, comments on any aspect of the fit-for-purpose test are welcome. In particular, comments are sought in response to the below questions.

- JJ. Are the objectives of the Legislation clear and relevant? Are there non-regulatory approaches to achieve the intended objectives?**
- KK. Are there opportunities, not already considered in this paper, which could make the Legislation simpler, clearer and easier to read? Do definitions and processes align with business practices?**
- LL. Would consolidating the Legislation into fewer instruments reduce complexity?**
- MM. What are the regulatory impacts imposed on you and how could they be reduced?**

Appendix A: Government's 2019 response to the Productivity Commission Inquiry into the Economic Regulation of Airports

Components relevant to Sydney Airport

Recommendation 7.1 Using any Peak-Period Slot for Regional Flights

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

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

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

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

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

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

Recommendation 7.2 Commercial Negotiations for NSW Regional Services

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

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

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

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

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

Recommendation 7.3 Measuring Sydney Airport's Movement Cap Once an Hour

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

The Australian Government **notes** this recommendation.

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

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

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

Recommendation 7.4 Alternative Types of Freight Aircraft During the Curfew

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

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

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

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

Recommendation 7.5 Reviewing Slot Management at Australian Airports

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

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

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

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

The Australian Government **notes** this recommendation.

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

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

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

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

Appendix B: Consolidated questions for consideration

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C. What means of publication would satisfy public accountability and transparency with respect to both breaches and non-breaches?	14
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H. Is there a need for dedicated regional slots in off-peak periods?	19
I. Should there be additional flexibility in allowing regional slots to be moved between peak and off peak periods?	20
J. Are additional safeguards needed in order to implement the Productivity Commission recommendation that non-PRSS slots be allowed to be used for regional flights?	21
K. Should there be further relaxation or other changes to the ACCC’s price cap and monitoring regime?	22
L. Are there adverse outcomes in implementing the Productivity Commission recommendation regarding the scope of future price declarations? Are specific safeguards needed to mitigate any impacts of implementing this recommendation?	22
M. Are there any matters, not discussed already, which the Government should consider when developing any future Direction for regional price monitoring at Sydney Airport by the ACCC?	22
N. How significant is the impact of implementing a bespoke slot scheme for Sydney Airport? Is there reason to implement a slot management scheme that is substantially different from the WASG? What challenges do inconsistencies between the WASG and Legislation create?	24
O. What risks and opportunities could be realised by adopting the WASG?.....	24
P. Do the allocation priorities in the Legislation, including historical precedence, remain appropriate? Should they be aligned with the WASG or be otherwise amended to fulfil the varied objectives of demand management? If so, how? Please provide your rationale.	26

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R. Do the current arrangements create specific barriers to new entrants or airlines expanding services at Sydney Airport? Are there any changes that should be made to reduce these barriers?	26
S. Should the 'size of aircraft' rule be retained? If so, what rationale or application criteria should be used?	27
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X. Does it remain appropriate for the Slot Manager and Compliance Committee to be principal instigators for changes to the slot scheme and compliance scheme?	29
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AA. Does the current definition of a slot (and associated terms and processes) in the Legislation ensure the most efficient use of the infrastructure and implementation of the movement cap?	31
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JJ. Are the objectives of the Legislation clear and relevant? Are there non-regulatory approaches to achieve the intended objectives?	40
KK. Are there opportunities, not already considered in this paper, which could make the Legislation simpler, clearer and easier to read? Do definitions and processes align with business practices?	40
LL. Would consolidating the Legislation into fewer instruments reduce complexity?	40
MM. What are the regulatory impacts imposed on you and how could they be reduced?	40

Appendix C: Privacy statement

Any personal information supplied in your submission is collected by the Department, in accordance with the *Privacy Act 1988* (the Privacy Act). Personal information may be needed by the Department to us to make further contact with you about the consultation process, and so that the Department can record interactions between you and the Department.

Your personal information will not be disclosed to any other parties, except in the circumstances outlined below. Submissions, in part or full, including the name of the author may be published on the Department's website or in the Government's response, unless the submission is confidential. Confidential submissions (including author name) will not be published. Private addresses and contact details will not be published or disclosed to any third parties unless required by law.

Submissions will be treated as confidential only if they are expressly stated to be confidential. Automatically generated confidentiality statements or disclaimers appended to an email do not suffice for this purpose. If you wish to make a confidential submission, you should indicate this by ensuring your submission is marked confidential.

Confidential submissions will be kept securely and will only be disclosed in the following circumstances:

- in response to a request by a Commonwealth Minister;
- where required by a House or a Committee of the Parliament of the Commonwealth of Australia; or
- where required by law.

The Department may also disclose confidential submissions within the Commonwealth of Australia, including with other Commonwealth agencies, where necessary in the public interest.

Please note that in order to protect the personal privacy of individuals in accordance with the Privacy Act any submissions containing sensitive information, personal information or information which may reasonably be used to identify a person or group of people may not be published, even if not marked as confidential.

The Department's [Privacy Policy](#) contains information regarding complaint handling processes and how to access and/or seek correction of personal information held by the Department. The Privacy Officer can be contacted at privacy@infrastructure.gov.au.