

EXPLANATORY STATEMENT

Issued under the authority of the Minister for Infrastructure and Transport.

Sydney Airport Demand Management Act 1997 (the Act)

Sydney Airport Slot Management Scheme 2013 (the Scheme)

Purpose of the instrument

A key aim of the *Sydney Airport Demand Management Act 1997* (the Act) is to cap aircraft movements at Sydney's Kingsford Smith Airport (Sydney Airport) at 80 movements an hour. To administer this cap, the Act provides for the development of:

- a slot management scheme, which is developed by the Slot Manager and which provides a system for the allocation of permissions for gate movements at Sydney Airport; and
- a compliance scheme, which is developed by a Compliance Committee appointed by the Minister administering the Act, and which provides for various matters relating to compliance with the requirements of the Act.

The purpose of the *Sydney Airport Slot Management Scheme 2013* (the Scheme) is to repeal the existing slot management scheme, the *Slot Management Scheme 1998* (the 1998 Scheme), and to replace it with a new scheme that resolves issues identified in the Australian National Audit Office (ANAO) Audit Report No. 29 of 2006-07 into the 'Implementation of the *Sydney Airport Demand Management Act 1997*' (the ANAO audit report). The Scheme:

- clarifies the process for prioritising slot applications;
- clarifies the operation of the historical precedence provisions so as to provide a sound basis for the allocation of movement slots at Sydney Airport;
- expressly limits the number of slots that can be allocated in any regulated hour, consistent with the maximum movement limit;
- re-writes the 1998 Scheme in a more modern, plain English style.

Details of the Scheme are set out in the Attachment.

Legislative Authority

Section 33 of the Act provides that there is to be a scheme, known as the Slot Management Scheme, for Sydney Airport. Section 35 of the Act sets out a range of matters that the Scheme must or may deal with.

Under section 42 of the Act, the Slot Manager is permitted to develop amendments of the Slot Management Scheme and submit them to the Minister for approval. Under section 44 of the Act, the Minister may approve amendments of the Slot Management Scheme, if and only if, the Minister is satisfied that Slot Management Scheme as proposed to be amended would be consistent with section 35 of the Act. The Scheme was developed pursuant to these provisions. The Minister is satisfied that the Slot

Management Scheme as proposed to be amended would be consistent with section 35 of the Act.

The Scheme is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. (See subsections 40(2) and 44(2) of the Act.)

Documents incorporated by reference

The Slot Management Scheme incorporates by reference any guidelines issued by the International Air Transport Association (IATA). The IATA publishes the Worldwide Slot Guidelines, the most recent edition being the second edition, published in January 2012. These guidelines set out an internationally recognised industry standard for management and allocation of airport slots, and can be accessed online from www.iata.org/wsg.

Operation of the instrument

The operation of the instrument is explained in the attachment.

The Scheme operates in a manner that is broadly consistent with the Worldwide Slot Guidelines. However, there are some key differences, needed to effect government policy. These differences are highlighted in the attachment.

Consultation

Section 17 of the *Legislative Instruments Act 2003* requires a rule-maker to be satisfied that any consultation they consider to be appropriate and reasonably practicable to undertake has been undertaken before making a legislative instrument.

In 2007, a Slot Management Scheme and Compliance Scheme Working Group (the Working Group) was established to consider measures, through a consultative process, to address the findings and recommendations of the ANAO audit report. The Working Group comprised representatives from the Commonwealth, Airservices Australia, the Sydney Airport Slot Manager, Sydney Airport Corporation Limited, Qantas Airways, Virgin Australia, Regional Express and the Board of Airline Representatives of Australia. The Scheme is based on the recommendations of the Working Group made in 2009.

In 2012, the abovementioned private sector and government agencies, the Regional Aviation Association of Australia and the Civil Aviation Safety Authority were provided the opportunity to comment on a final consultation draft of the Scheme.

The Scheme was drafted in consultation with the Office of Legislative Drafting and Publishing, the Australian Government Solicitor and the Attorney-General's Department.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) considers that these amendments are machinery in nature. Therefore a Regulation Impact Statement is not required." The OBPR regulatory impact statement exemption number is 14533.

Statement of compatibility

This legislative instrument is compatible with human rights as it does not raise any issues in relation to the human rights and freedoms recognised or declared in the

international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Commencement

The Scheme comes into force on 31 March 2013.

Empowering Provision

Subsection 44(2) of the Act.

Details of the Sydney Airport Slot Management Scheme 2013

Part 1 – Preliminary

Part 1 is a preliminary part. It provides the title by which the Scheme may be cited and includes definitions of the key terms used in the Scheme.

Section 1 – Citation

This section provides that the Scheme is the *Sydney Airport Slot Management Scheme 2013*.

Section 2 – Interpretation

Section 2 contains provisions that relate to interpretation of the Scheme.

The definition of ‘regional service’ has been clarified to implement a recommendation of the Working Group, to ensure that the definition describes air services operating directly between two points within New South Wales. This amendment is intended to remove any doubt that a flight from Sydney Airport to Lord Howe Island is considered to be a ‘regional service’ for the purpose of the Scheme.

Section 3 – Meaning of *new entrant*

Section 3 defines the term ‘new entrant’ in relation to a particular day. An operator is able to be a ‘new entrant’ for up to 4 slots on a day. After the initial allocation of slots on the basis of historical precedence each scheduling season, further allocations for the day give preference to operators that currently have fewer than 4 slots on that day, and are therefore ‘new entrants’ for that day (see paragraph 16(2)(a)). Under the Scheme, new entrants are treated more favourably than under the Worldwide Slot Guidelines.

A ‘new entrant’ is normally not a new operator; it may already operate services on other days.

Section 4 – Meaning of *allocated*

Section 4 defines the term ‘allocated’.

Section 5 – References to aircraft size

Section 5 sets out 8 groups of aircraft size, and provides that an aircraft within a particular group is taken to be the same size as another aircraft within that group. The aircraft size is relevant under the ‘size of aircraft’ test: see section 8.

Section 6 – Meaning of *permanent regional service series*

Section 6 defines the term ‘permanent regional service series’. A policy aim of the Scheme is to ensure equitable access to Sydney Airport for regional airlines. This is achieved by quarantining certain slot series used to provide regional services (known as ‘permanent regional service series’).

Permanent regional service series can be for peak or for non-peak periods. In 2001, the Act and the 1998 Scheme were amended to cap the number of peak permanent regional service slots at the then-current levels. Since 2001, it is possible that additional permanent regional service slots might have been created. However, no new permanent regional service slots have been allocated during peak periods. Additionally, since 2001, it is possible that some slots (both during peak and non-peak periods) might have ceased to be permanent regional service slots under the operation of the 1998 Scheme. The Scheme differs from the Worldwide Slot Guidelines in quarantining regional service slot series in this way.

Subsection (1) has the effect that a slot series will be a permanent regional service series if it was such a slot series in the previous equivalent scheduling season. This provision will ‘grandfather’ permanent regional service series under the 1998 Scheme, and will also continue permanent regional service series from year to year under the Scheme.

Subsection (2) provides for how a permanent regional service series is able to be extended.

Subsection (3) provides for how new permanent regional service series can be created under the Scheme. As a result of subsections 11(2) and 18(5), such series cannot be created in a peak period.

Subsection (4) provides for how a slot series can cease to be a permanent regional service series.

Section 7 – ‘use it or lose it’ test

Section 7 sets out the ‘use it or lose it’ test. The ‘use it or lose it’ test is relevant for operators gaining historical precedence to slots (section 10).

The underlying policy of the ‘use it or lose it’ test is to encourage more efficient use of airport infrastructure, by requiring operators to use a certain portion of the slots in a particular slot series, or risk losing the series in the following equivalent scheduling season.

Subsection (1) sets out the basic requirements of the ‘use it or lose it’ test. This test essentially requires, for a particular slot series, the operator to conduct a gate movement of the kind permitted by the slot for at least 80% of the slots in the series. If not, the Slot Manager is required to make a declaration that the operator did not comply with the ‘use it or lose it’ test, and notify the operator and Secretary of the Department of Infrastructure and Transport of that fact.

Subsection (2) provides for when an operator has satisfied the ‘use it or lose it’ test.

Section 8 – ‘size of aircraft’ test

Section 8 sets out the ‘size of aircraft’ test. The ‘size of aircraft’ test is relevant for operators gaining historical precedence to slots (section 10). The ‘size of aircraft’ test is peculiar to Australia; there is no similar test under the Worldwide Slot Guidelines.

Subsection (1) sets out the basic requirements of the ‘size of aircraft’ test. If, for a particular slot series, there was a requirement as to the size of the aircraft to be used, this test essentially requires the operator to use an aircraft of at least that size for at least 80% of the slots in the series. The Slot Manager is able to impose such a requirement under subsection 18(4) of the Scheme.

Section 5 is relevant to this test, and provides that aircraft within the specified groups are taken to be of the same size as other aircraft in the relevant group.

Section 9 – Administration of ‘size of aircraft’ test and ‘use it or lose it’ tests

Section 9 sets out the general process for how the ‘size of aircraft’ and ‘use it or lose it’ tests are administered.

Subsection (1) requires the Slot Manager, before making a declaration under section 7 or section 8, to consult the operator concerned.

Subsection (2) is a mechanism that effectively excuses non-compliance with a ‘size of aircraft’ requirement, or with a requirement to use a slot, in certain circumstances. This subsection provides the operator is taken to have complied with the relevant requirement so long as the Slot Manager is satisfied that the reasons for the operator not complying were not within the operator’s control, or that, taking into account any other relevant matters known to the Slot Manager, the operator had a reasonable excuse for not complying. If the Slot Manager is satisfied of either of these matters, subsection (3) requires the Slot Manager to notify the Secretary of that fact. This provides greater transparency in the process overall.

Subsection (4) specifies reasons that are taken to be, and not to be, within the operator’s control for the purposes of this section.

Subsection (5) specifies the slots the Slot Manager is to take into account for making the calculations for the ‘use it or lose it’ and ‘size of aircraft’ tests.

Section 10 – Meaning of *historical precedence*

Section 10 provides for when operators have ‘historical precedence’ to slots within slot series.

Under the Scheme, operators can only have historical precedence to slots within slot series. In this respect, the Scheme differs from the 1998 Scheme, under which operators could have historical precedence to slots within slot groups, or to single slots. The policy underlying this change is that allowing operators to have historical precedence to slots within slot groups, or to single slots, might restrict other operators from using slot series, and therefore create inefficiencies in the slot allocation and usage process.

Historical precedence is important in the slot allocation process (Division 2 of Part 2).

Subsection (1) sets out the main rule for when operators have historical precedence to slots within slot series. Historical precedence to a slot within a slot series is usually gained by satisfying the ‘use it or lose it’ test in relation to the series in the previous equivalent scheduling season.

Subsections (2) and (3) set out more specific rules that apply in certain situations.

Part 2 – System for allocation of slots (Act s 35(1))

Part 2 sets out the system for allocation of slots, as required by subsection 35(1) of the Act.

Division 1—Applying for slots

Division 1 of Part 2 deals with applying for slots.

Section 11 – Who can apply for slots

Section 11 sets out who can apply for slots.

Subsection (1) provides that any operator may apply for a slot.

Subsection (2) provides that an operator may apply for a slot to provide a regional service only if any of the additional conditions listed in paragraphs (a), (b) or (c) are satisfied. This subsection implements the policy that was introduced in 2001 of capping regional slots allocated in peak periods at the then-current levels.

Subsection (3) provides that an operator may apply for a slot series to operate a service that will be provided using an aircraft that has fewer than 18 passenger seats only if either of the additional conditions listed in paragraph (a) or (b) is satisfied.

The condition in paragraph (a) is that the operator must have historical precedence to those slots. As a result of subsection 10(3), the operator will have historical precedence to those slots only if the slot series is a permanent regional service series. During the initial allocation each scheduling season, the slots for which the operator has historical precedence will be allocated under section 15.

The condition in paragraph (b) is that the slot series must be a permanent regional service series. During the initial allocation each scheduling season, the slots for which the operator does not have historical precedence will be allocated under section 16.

Subsection (3) implements the policy that was introduced in 2001 of introducing an aircraft seat limit for allocating new slots. These rules are peculiar to Australia; there are no similar rules under the Worldwide Slot Guidelines.

Section 12 – How many slots can be applied for at once

Section 12 sets out how many slots can be applied for at once. An operator is able to apply for a single slot, a slot series, or a slot group.

Section 13 – How to apply

Section 13 sets out how to apply for slots.

Subsection (1) requires an application to be in writing, to be in the form approved, in writing, by the Slot Manager, and to be sent to the address of the Slot Manager. The address of the Slot Manager can be found in the IATA Worldwide Scheduling Guidelines and on the Slot Manager's website.

Subsections (2) and (3) set out the information that an application must contain.

Subsection (4) requires the Slot Manager to acknowledge receiving an application.

Division 2 – How slots are allocated

Division 2 of Part 2 deals with how slots are allocated.

Section 14 – Preparation for allocation before scheduling season starts

Section 14 sets out the general process that the Slot Manager is required to apply in preparation for allocation of slots in the next scheduling season, before each scheduling season starts. This process generally accords with the process set out in the Worldwide Slot Guidelines.

After reaching an agreement with operators about the slots to which they have historical precedence (known internationally as the 'slot historic list'), the Slot Manager invites operators to apply for slots for the following scheduling season, no later than a date nominated by the Slot Manager (the 'initial submission deadline'). The Slot Manager then allocates slots on the basis of applications received, in accordance with the following provisions. Allocations under sections 14 and 15 form the 'initial coordination' under the Worldwide Slot Guidelines.

Section 15 – Allocation of slots based on historical precedence

Section 15 sets out how the Slot Manager allocates slots applied for before the initial submission deadline, to operators who have applied for slots to which they have historical precedence (subsections (1) and (2)). Such allocations must be consistent with section 18 (which sets out rules that apply to all slot allocations).

Subsection (3) is directed towards implementing the policy of quarantining regional series, and ensures that permanent regional service series are offered, under paragraph 16(2)(b), to operators who propose to conduct regional services.

Section 16 – Allocation of other slots as part of initial coordination

Section 16 sets out how the Slot Manager allocates other slots applied for before the initial submission deadline, and which were not allocated under section 15 (subsection (1)).

Subsection (2) is directed towards implementing the policies of ensuring that slots are provided to new entrants (paragraph (a)), and quarantining slot series for regional services (paragraph (b)). Subsection 15(3) and paragraph 16(2)(b) operate to require the Slot Manager to ensure that, if a slot series is a permanent regional service series, if possible, it is offered to an operator that proposes to conduct a regional service. If

no regional airline takes up the offer, the slot may then be offered to an operator for a service other than a regional service. This could eventually lead to the loss of the slot series' status as a permanent regional service series under subsection 6(4).

Allocations under this section must be consistent with sections 17 and 18.

Section 17 – Allocation of slots after initial coordination

Allocation of slots continues after the initial coordination, up to the start of the scheduling season, and throughout the scheduling season. Section 17 provides a mechanism for this. Allocations under this section must be consistent with sections 18 and 19.

Section 18 – Rules that apply to all slot allocations

Section 18 sets out general rules that apply whenever the Slot Manager allocates slots under the Scheme (subsection (1)).

Subsection (2) prevents allocations that would be likely to lead to the maximum movement limit being exceeded, that would permit a gate movement in a curfew period, or that would produce an unacceptable degree of clustering in gate movements.

Subsection (3) requires the Slot Manager to have regard to any advice about the likely effect of an allocation, if made, on the operational efficiency or the capacity of the airport from the body that provides air traffic control at Sydney Airport or the airport operator company before offering a slot to an operator.

Subsection (4) provides that, when offering a slot or a slot series to an operator, the Slot Manager may specify that it is a requirement that an aircraft of a particular size be used for the slot or slot series. This provision is related to the 'size of aircraft' test in section 8.

Subsection (5) provides that the Slot Manager must not allocate a slot if the Slot Manager is satisfied that the application was not made in accordance with section 11.

Section 19 – Other allocations

Section 19 sets out rules that apply when the Slot Manager allocates slots other than under section 15 (subsection (1)).

Subsection (2) sets out a range of matters to which the Slot Manager is required to have regard. The general matters listed in this subsection replace the prioritisation of applications that occurred under the 1998 Scheme with a more flexible approach that places greater emphasis on negotiating with operators.

Subsection (3) sets out the conditions under which offers for a slot might lapse.

Division 3 – Slot swaps

Division 3 of Part 2 relates to slot swaps.

Section 20 – Slot swaps

Section 20 relates to slot swaps generally, and provides a framework under which slots may be swapped between operators.

Section 21 – Swaps of permanent regional service series

Section 21 is a special rule that applies only in the case of a swap of a slot that is part of a permanent regional service series for a slot that is not part of a permanent regional service series (termed the ‘other slot’), that would be in effect for more than 1 day.

Such a swap is only allowed if the other slot authorises a gate movement that is within 30 minutes of the time of the gate movement that was authorised by the slot when it first became such a slot.

Division 4 – How allocation is lost

Division 4 of Part 2 provides for how slot allocation is lost.

Section 22 – Returning slots to pool at operator’s initiative

Section 22 provides that an operator may return a slot to the slot pool at any time. A slot that is returned is then available to be allocated to another operator.

However, to ensure that scarce airline capacity is not wasted, the Scheme provides incentives to encourage airlines to return any slots they do not intend to use at an early stage in the slot allocation process. To this end:

- If a slot is returned on or before the slot return deadline, there is no adverse sanction (subparagraph 9(5)(a)(i), and noting that the slot return deadline is earlier than the historic baseline date).
- If a slot is returned after the slot return deadline, but no later than the historic baseline date, the slot is treated as if it had not been allocated for the purpose of determining historical precedence (see subparagraph 9(5)(a)(i)). However, to encourage early return of unwanted slots, there is a sanction set out in the Worldwide Slot Guidelines that might apply in this case. In particular, paragraph 7.5.4 of the 2012 edition provides that operators that intentionally return slots after the slot return deadline will receive a lower priority during the initial coordination of the next equivalent scheduling season. The Slot Manager is able to take this sanction into account by virtue of paragraph 19(2)(b), which requires the Slot Manager to have regard to any guidelines published by IATA when allocating slots other than under section 15.
- If a slot is returned after the historic baseline date, it is treated as if it had been allocated for the purpose of determining historical precedence, and non-use of the slot would count against the operator when the ‘use it or lose it’ test is applied (section 7).

Section 23 – Operators that do not comply with relevant statutory requirements

Section 23 sets out a further rule that applies in the case of operators that do not comply with certain statutory requirements which are required to operate the proposed service at the time they are allocated slots. This section is particularly relevant in the case of new operators that are not running air services at the time they apply for slots, and could result in allocated slots being returned to the slot pool if operators do not

comply with specified statutory requirements in sufficient time before the start of a scheduling season.

Section 24 – Operators that fail to comply with statutory requirements

Section 24 sets out a further rule that applies to all operators, which could result in slots being returned to the slot pool if operators cease to comply with relevant statutory requirements.

Part 3 – Review of decisions (Act s 35(6))

Subsection 35(6) of the Act permits the Scheme to include a mechanism for the reconsideration of decisions made under the Scheme, or of decisions made by the Slot Manager for the purposes of the Act. Part 3 of the Scheme sets out such a mechanism.

Section 25 – Internal review of decisions of Slot Manager

Section 25 sets out an internal review mechanism for reconsideration of decisions of the Slot Manager.

Subsection (1) sets out the right of operators to apply for review.

Subsections (2) and (3) set out the powers of the Board of the Slot Manager in conducting a review.

Section 26 – External review of decisions of the Slot Manager

Section 26 sets out an external review mechanism for reconsideration of decisions of the Slot Manager.

Subsection (1) sets out the right of operators to apply for review.

Subsections (2) to (6) relate to the conduct of a review.

Part 4 – Guidelines – declarations (Act ss 11(4) and 35(4))

Under the Act, an operator that conducts a gate movement other than in accordance with an allocated slot might be in breach of a civil penalty provision under the Act.

Under subsection 11(4) of the Act, the Slot Manager is able to declare, in writing, in relation to the whole or part of a day, that gate movements that occur during the period to which the declaration relates are not required to take place in accordance with their allocated slots. The effect of a declaration under this provision is that such a gate movement would not contravene the civil penalty provisions of the Act.

Subsection 11(5) of the Act provides that, in making a declaration, the Slot Manager must have regard to the provisions of the Slot Management Scheme referred to in subsection 35(4) of the Act. Section 35(4) requires the Slot Management Scheme to set out guidelines relating to the exercise of the power under subsection 11(4). These guidelines are set out in Part 4.

Section 27 – Guidelines – declaration that movements do not have to be in accordance with allocated slots

Subsection (1) sets out matters to which the Slot Manager must have regard when deciding whether to make a declaration under subsection 11(4) of the Act. These include whether it appears that the physical capacity of Sydney Airport is, or has recently been, limited to 36 or fewer arrivals per hour. The number of arrivals per hour is a primary driver of actual movement activity. Once capacity is below 36 arrivals per hour, significant system wide delays are likely to occur, so a declaration under subsection 11(4) might be appropriate.

Subsection (2) provides that the Slot Manager must, if making a declaration under subsection 11(4) of the Act on the basis of a reduction in the physical capacity of the airport, consider whether the declaration should also cover a subsequent period that would account for disrupted movements and consequential delays caused by that period of reduced capacity.

Subsection (3) provides that, before making the declaration, the Slot Manager must consult and have regard to the views of both the organisation that provides air traffic control at the airport, and the airport operator, about the expected physical capacity of the airport during the period.

Part 5 – Guidelines – dispensations (Act ss 31 and 35(5))

There are several classes of gate movements to which the civil penalty provisions of the Act do not apply – a gate movement that falls into any of those classes will not contravene a civil penalty provision, even if it is a no-slot movement or an off-slot movement. These classes include gate movements for which the Slot Manager has given a dispensation under section 31 of the Act. (See sections 10, 12, 13, 29 and 31 of the Act.)

The Slot Manager is able to grant such a dispensation under section 31 of the Act if satisfied that there are ‘exceptional circumstances’ (subsection 31(1) of the Act). A dispensation may be granted subject to conditions (subsection 31(2) of the Act). In granting a dispensation, the Slot Manager is required to have regard to guidelines set out in the Slot Management Scheme (subsections 31(3) and 35(5) of the Act). These guidelines are set out in Part 5.

Section 28 – Guidelines – exceptional circumstances and conditions

Subsection (1) sets out circumstances that constitute exceptional circumstances for section 31 of the Act.

Subsection (2) sets out condition to which a dispensation should be subject.

Part 6 – Authorisations

Subsection 35(3) of the Act permits the Scheme to provide for the authorisation of other persons to exercise the powers of the Slot Manager relating to the allocation of slots, or to slots that have been allocated. These provisions are set out in Part 6.

Section 29 – Authorisation of other persons to perform functions

Subsection (1) states which powers the Slot Manager may authorise another person to exercise.

Subsection (2) sets out which persons the Slot Manager may authorise.

Part 7 – Transitional provisions

Part 7 (section 30) provides transitional arrangements consequent upon the repeal of the 1998 Scheme and the commencement of the Scheme.