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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SYDNEY AIRPORT DEMAND MANAGEMENT AMENDMENT BILL 2024

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Infrastructure, Transport, Regional Development
and Local Government the Hon Catherine King MP)

SYDNEY AIRPORT DEMAND MANAGEMENT AMENDMENT BILL 2024

OUTLINE

The Sydney Airport Demand Management Amendment Bill 2024 (the Bill) will amend the *Sydney Airport Demand Management Act 1997* (the Act) to improve the use of Sydney Airport, a significant piece of national infrastructure, while maintaining community protections. The Act regulates the allocation and use of slots for aircraft to take off and land at Sydney Airport. The Act and associated legislative instruments set out a framework for the long-term management of demand at the Airport. The Bill follows engagement and consultation with stakeholders through the 2021 Review of the Sydney Airport Demand Management Scheme (Harris Review) and the 2019 inquiry report on the Economic Regulation of Airports. The Government has also been consulting on Sydney Airport demand management issues through the Aviation White Paper process.

To enhance the resilience of Sydney Airport, the Bill proposes some modest changes to the movement cap to create a strictly controlled recovery period that will help reduce delays when there is severe weather or other major disruptions. In a recovery period up to 85 aircraft movements per hour will be allowed. Importantly, the Bill does not change the existing curfew arrangements or daily movement cap at Sydney Airport. The recovery period will only allow flights that were already scheduled to happen that day to take off or land. All recovery period declarations will be published on the Department of Infrastructure, Transport, Regional Development, Communications and the Arts' website to ensure transparency on the use of the recovery period.

The Bill changes the responsibility for making the Slot Management Scheme by making the Minister for Transport responsible, rather than the Slot Manager. Ministerial responsibility for developing and making the Slot Management Scheme will enable the government to implement improved transparency and governance arrangements for the Slot Manager and to provide direction on the administration of the Slot Management Scheme.

This Bill modernises the compliance regime in the Act by introducing a new suite of civil penalty provisions covering failing to use a slot no-slot and off-slot movements, flight operations not in accordance with slot requirements, applying for slots with no reasonable prospects of use and failing to return or transfer unused slots. These new civil penalty provisions will provide additional tools for the Government to manage slot misuse at Sydney Airport. The Bill also triggers parts 4, 5, 6 and 7 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) as part of the compliance regime. The Compliance Committee is also being reformed in the Bill, with a membership that will allow the committee to effectively inform compliance action.

The Bill contains a range of enhanced transparency requirements to support the modernised compliance regime. This includes powers for the Minister to require the production of information or documents and share information with relevant parties, including civil penalty provisions for not complying with these obligations. The Bill creates the ability for the regulations to provide for the publication of information about the allocation or use of slots and gate movements at Sydney Airport, compliance with the Act, performing functions, or exercising powers, under the Act and administering or enforcing civil penalty provision of the Act. The Bill also includes protections for protected information.

Financial impact statement

The Government committed \$7.7 million in funding over the forward estimates in the 2024-25 Budget, and \$1.5 million per year ongoing, to implement reforms to the Sydney Airport Demand Management regime.

Impact Analysis

The Office of Impact Analysis assessed an Impact Analysis Equivalent as sufficiently relevant to the proposals (OIA21-01225). The Impact Analysis Equivalent supports this explanatory memorandum and links to the 2021 Review of the Sydney Airport Demand Management Scheme and the Productivity Commission's 2019 Economic Regulation of Airports inquiry are in the additional analysis included at the end of this Explanatory Memorandum.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Sydney Airport Demand Management Amendment Bill 2024

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The purpose of the Bill is to amend the *Sydney Airport Demand Management Act 1997* (the Act). The Act regulates the allocation and use of slots for aircraft to take off and land at Sydney Airport. The Sydney Airport Demand Management Amendment Bill 2024 (the Bill) will amend the Act to improve the efficiency and use of Sydney Airport, a significant piece of national infrastructure, while maintaining community protections.

The Government is committed to improving outcomes for the wider travelling public to increase consumer confidence and choice in the aviation industry and build resilience across the aviation network.

The Bill addresses anti-competitive behaviour by producing a stricter compliance regime to better align with the Worldwide Airport Slot Guidelines and facilitate the efficient use of slots to reduce the potential for slot-hoarding and slot-misuse. New civil penalties, along with a reformed Compliance Committee, will allow Government to hold operators more accountable through ensuring airline compliance thus providing consumers with better protections benefiting the wider aviation industry.

The Bill provides consumers with better information about airline performance through providing the Minister with the power to compel airlines to produce information. The Slot Manager will also be required to publish information about how slots are issued and used by airlines as well as information about airlines that lose slots when they misuse them.

Access to slots for new entrants looking to use Sydney Airport will be improved through changes to the Slot Management Scheme therefore increasing competition. The reduction of significant barriers to entry of new entrants and regional NSW communities through allowing for retiming of slots, consideration of giving priority to regional NSW airlines asking for peak period slots and increasing the flexibility of the size of aircraft flown allows for greater consumer choice in the long-term.

The Bill does not impose new noise impacts on the Sydney community as it does not change the existing curfew arrangements or movement caps at Sydney Airport. Instead, the Bill intends to increase efficiency of aircraft movements within the current movement caps to ensure that slots are effectively allocated and utilised across the day to avoid excessive numbers of flights occurring in busy periods.

Human rights implications

This Bill engages the following rights:

- Right to health (airplane noise and emissions)
- Right to a fair hearing (civil penalty provisions, infringement notices and enforceable undertakings and injunctions)
- Right of privacy and reputation (information powers)
- Right to freedom of opinion and expression (information powers)

Right to health (airplane noise and emissions)

Article 12(1) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) sets out an obligation for the Australian government to ensure the highest standard of physical and mental health of the Australian people. The ICESCR has stated that the right to health extends to the underlying determinants of health including the promotion of a healthy environment.

Public submissions to the Sydney Airport Demand Management Review found that some community groups held concerns on the wellbeing of their residents due to the noise from flights entering and exiting Sydney Airport. The Act continues to uphold and enhance existing community protections through maintaining the movement cap, by allocating slots more efficiently and maintaining the existing curfew arrangements. As the Bill does not inherently increase the number of, nor frequency of aircraft movements through Sydney Airport, an increase to air pollution is unlikely. Therefore, the Bill promotes the right to health, specifically in relation to aircraft noise.

Right to a Fair Hearing (civil penalty provisions)

Articles 14 and 15 of the International Convention on Civil and Political Rights (ICCPR) require a fair hearing to be provided for all criminal provisions. The Parliamentary Joint Committee on Human Rights Practice Note 2 provides that civil penalty provisions may engage criminal process rights under Articles 14 and 15 of the ICCPR, regardless of the distinction between criminal and civil penalties in domestic law. When a provision imposes a civil penalty, an assessment is required as to whether it amounts to a ‘criminal’ penalty for the purposes of ICCPR.

The civil penalty provisions in the Bill should not be considered ‘criminal’ for the purposes of human rights law. The majority of provisions are aimed at objectives that are regulatory or disciplinary in nature. For instance, most provisions do not apply to the general public, but to a sector or class of people who should reasonably be aware of their obligations under the Bill (i.e. airline operators) and should be considered ‘disciplinary’ rather than ‘criminal’. The civil penalty provisions in the Bill are provided as disciplinary alternatives to the punitive or deterrent criminal offences.

Civil penalty provisions in the Bill include slot misuse and failure to produce, publish, or keep records of information. These provisions intend to regulate and discipline the aviation industry to remove anti-competitive behaviours by slot operators. By discouraging certain behaviours, the provisions seek to increase the effectiveness and efficiency of the operation of slots at Sydney Airport to improve industry standards and increase consumer confidence.

Flexibility of the civil penalty provisions will be ensured through the opportunity of exemptions or exceptions including where an outcome such as a gate movement was outside an operators' reasonable control. An evidential burden, aligning with section 96 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) will also be in place. Both Acts will allow flexibility to ensure that civil penalties are not imposed unjustly upon operators. All of the proposed civil penalties are pecuniary penalties (rather than a more severe punishment like imprisonment) and there is no sanction of imprisonment for non-payment of penalties.

Penalties are adjusted according to the offence to allow for consideration of the severity of various misdemeanours. Penalties are further adjusted to accommodate the differing responsibilities of natural persons and bodies corporate, with the latter subjected to higher penalties (in accordance with section 4B(3) of the *Crimes Act 1914*). It would be rare for a penalty to be issued against an individual person, as slots are almost exclusively allocated to bodies corporate. The provisions only operate prospectively.

Right to a Fair Hearing (infringement notices)

Infringement notices form part of the compliance and enforcement powers that are available when it is believed that a civil breach has occurred such as failing to use a slot. The Regulatory Powers Act triggers the use of infringement notices in the Bill as another tool for enforcement providing operators with measured levels of penalty for less weighty breaches. Penalty units attached to infringement notices are less than that of their civil penalty counterparts. The intent of these notices is to modify operator behaviour to produce greater efficiency through slot usage at Sydney Airport to improve industry standards and increase consumer confidence in airlines use of Sydney Airport.

Notices also differentiate between the status of natural persons and bodies corporate, with the latter subjected to higher penalties (in accordance with section 4B(3) of the *Crimes Act 1914*). In doing so, the infringement notices allow for an appropriate method of compliance allowing for a variety of mechanisms to encompass a range of severity.

Right to a Fair Hearing (enforceable undertakings and injunctions)

To complement the enforcement measures of civil penalty orders and infringement notices, the Bill will enable the use of enforceable undertakings and injunctions in order to moderate the behaviour of slot operators. Articles 14 and 15 of the ICCPR require a fair hearing to be provided for all criminal provisions. Domestic civil enforcement measures may be categorised as criminal in nature for human rights purposes through assessment of nature and severity, and therefore will attract fair hearing obligations.

Enforceable undertakings are understood to be a legally enforceable agreement which involves the duty holder (i.e. the slot operator) promising to take agreed. Such power allows a named person (the Minister, Secretary, SES, and acting SES employees) to request the airline enter an agreement, rather than imposing a financial penalty. The enforceable undertaking can be tailored to facilitate monitoring of future compliance through additional reporting obligations, an approach consistent with the intention of the Bill to support voluntary compliance where possible. Enforcement of a breach will be undertaken by the relevant court. This provision will enliven Part 6 of the Regulatory Powers Act.

An injunction can be pursued under the Bill in order to restrain a person from contravening a civil penalty provision, or to compel compliance with such a provision. It is anticipated that use of this provision will be rare, however, is included in the event that it would be the most suitable method of compliance. An injunction would be requested from a court a person named in the Bill (the Minister, Secretary, SES, and acting SES employees). This provision will enliven Part 7 of the Regulatory Powers Act.

For both a breach of an enforceable undertaking or an application for injunction, the Federal Court, and relevant State courts, will have jurisdiction to preside over enforcement and compliance. Judicial standards of fair hearing and procedural fairness will be enlivened, with possibility for merits review available if necessary. Thus, enforceable undertakings and injunctions should not be categorised as criminal for human rights concerns, and should be seen as reasonably adapted as a low-level compliance mechanism of the Bill.

Right of privacy and reputation (information powers)

Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence, and unlawful attacks on a person's reputation. The right to privacy includes respect for informational privacy, including in respect of storing, using and sharing personal information, and the right to control the dissemination of this information. It also provides that persons have the right to protection of the law against such interference or attacks. The rights contained in Article 17 of the ICCPR may be subject to permissible limitations where limitations are authorised by law and are non-arbitrary. For limitations to be non-arbitrary they must be reasonable, necessary and proportionate to a legitimate objective.

Within the Bill, information powers empower the Minister to make regulations creating recordkeeping and publication obligations, compel information from operators, and share information with specified parties. These provisions are intended to increase the transparency of the management and allocation of Sydney Airport slots. The nature of the information provided, published, or shared, through these provisions may include information of personal or commercial confidentiality. However, information will typically refer to the allocation of slots to an operator, and information about whether the nature and manner of which the slot was used by that operator. Such information is intended to be utilised to determine patterns in the use of slots, and to identify recurring patterns of slot misuse.

Several of the information provisions will provide protections for the providers of information. The Bill upholds the privilege against self-incrimination, allowing for operators to access this protection against compulsion notices. Disclosure of personal information will be limited to only information that is relevant to the administrative or decision-making capacity of the individual with regard to slots. As per 70G(3), personal information is captured under the definition of sensitive information and consequently is subject to the prohibition on disclosure of information under 70G.

Finally, powers of monitoring and investigation are deemed unnecessary for the operation of these provisions, as financial sanctions through infringement notices and civil penalty provisions will allow for enforcement of these behaviours. These features of the Bill will serve to ensure that the information provisions allow for the fair compelling of information, and apt protection of persons involved.

The Bill provides protection of the information provided through these provisions as outlined in Part 7A. A non-disclosure duty is contained within the Bill to support the administration of the regulatory framework and protect commercially sensitive information. A breach of the non-disclosure duty will be included within the appointment instruments or contracts of the Compliance Committee and Slot Manager. Additionally, a breach of the non-disclosure duty may further enliven a criminal offence through section 122.4 of the *Criminal Code Act 1995*. Hence, these protections will ensure that when information is provided, it is accessed and stored in a manner respectful to its confidential nature.

Right to freedom of opinion and expression (information powers)

Articles 19(1) and (2) and 20 of the ICCPR outlines the right to hold opinions without interference and protects the freedom of expression in any medium including both popular and unpopular ideas. Article 20 also ensures that vilification of persons on national, racial or religious grounds is outlawed. The non-disclosure obligation under 70G is designed to protect commercially sensitive and sensitive personal information. This is likely for the legitimate purpose of respecting the rights or reputations of others, as well as national security through protecting information regarding to the movements of Heads of State. The provision is likely also proportionate and reasonable, as the definitions of these two types of information are narrow in scope due to the definitions provided at 70G(4) and 70G(5). Commercially sensitive information must "reasonably be expected to substantially prejudice commercial interests". While sensitive personal information requires that it "could reasonably be expected to" endanger the individual's safety, cause them harm, have a substantial adverse effect on their lawful business, expose them to substantial risk of being victim of identity fraud, or expose them as a confidential informant. Further the obligation is only imposed on entrusted persons which are also narrowly defined at 70G(2).

70H of the Bill in creating an exemption provision to the non-disclosure obligation at 70G also indicates that the limitation on the freedom is proportionate allowing for disclosure in a variety of circumstances that also respect the right to privacy. Specifically, 70E allows the regulations to make provision in relation to publishing information held by information holders in relation to the allocation of slots at Sydney Airport, gate movements, and compliance with this Bill. This includes provisions concerning what information must not be published (70E(3)(a)). The purpose of this provision is to increase transparency by requiring the publication of information in certain circumstances, while balancing this with a need to protect commercial and sensitive information. This indicates that any non-disclosure obligations that may be created in the regulations are likely for the legitimate purpose of respecting the rights or reputations of others. This will need to be weighed against the penalty of 60 penalty units created at 70E(5) for failure or refusal to comply with an obligation created in the regulations through this provision.

The Minister can impose conditions on the use of information or documents given to a receiving entity and prohibit the further sharing of the information or documents as expressed in 70F(5). The purpose of this provision is to limit the distribution of information to those with a need-to-know by limiting/preventing forward sharing of information regardless of the classification/sensitivity. This is not clearly linked to one of the legitimate purposes in Article 19, but may have tangential connections to respect of the rights or reputations of others and protection of national security.

Conclusion

The Bill is compatible with human rights because it promotes the protection of human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**Minister for Infrastructure, Transport, Regional Development, Communications, and
the Arts, the Hon Catherine King MP**

NOTES ON CLAUSES

Clause 1: Short Title

1. Clause 1 provides that the Bill, when enacted, may be cited as the *Sydney Airport Demand Management (Amendment) Act 2024*.

Clause 2: Commencement

2. Clause 2 provides for the commencement of the Bill. Each provision of the Bill specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table.
3. Sections 1 to 3 of the Bill, and anything in the Bill not covered in the table, commence on the day of Royal Assent. Schedule 1 of the Bill commences on a day, or days, to be fixed by Proclamation, or if any of the provisions do not commence within 12 months of the day of Royal Assent, the day after the end of the 12-month period following Royal Assent.
4. Operational commencement timeframes need to account for the time needed by regulated entities and other stakeholders (including the government-appointed Slot Manager) to adjust to the changed requirements. Worldwide slot-scheduling seasons will also need to be considered when determining the day or days to be fixed by Proclamation.

Clause 3: Schedules

5. Clause 3 provides that the legislation that is listed in the Schedule is amended or repealed as set out in the items specified in the Schedule. There is one Schedule to this Bill, which contains amendments to the *Sydney Airport Demand Management Act 1997*.

SCHEDULE 1 – AMENDMENTS

Sydney Airport Demand Management Act 1997

Item 1 – Title

6. This item adds the words “and optimise” to the long title of the Act. This has been included given that the reforms are intended to maximise the efficiency of aircraft movements at Sydney Airport.

Item 2 – Subsection 3(4)

7. This item repeals the table in subsection 3(4) and substitutes it with a new table. The table outlines the terms that are defined in Schedule 1 of the Act but are not identified with an asterisk. The terms in this table are not identified with an asterisk given that they are used frequently throughout the Act.

Item 3 – At the end of subsection 4(2)

8. Section 4 provides an overview of the Act. This item provides for an addition to subsection 4(2) to include reference to recovery periods which are to be dealt with in Part 2 of the Act.

Item 4 – Subsections 4(3) to 4(6)

9. This item repeals subsections 4(3) to 4(6) and substitutes new subsection 4(3) to 4(6A) to provide an updated overview of Parts 3-7A of the Act.

Item 5 – Part 2 (at the end of the heading)

10. This item adds “and recovery periods” to the heading of Part 2 of the Act to recognise that the Part will also deal with the concept of recovery periods.

Item 6 – Part 2 (after the heading)

11. This item provides for the addition of Division 1A and a heading for Division 1 at the beginning of Part 2 of the Act.
12. Prior to the introduction of this Bill, Part 2 of the Act did not contain any divisions.
13. Division 1A deals with preliminary matters and contains a single provision which provides a simplified outline of the Part.
14. Simplified outlines are included to assist readers to understand the key elements and provisions of the legislation. The Act was drafted before the inclusion of simplified outlines was standard practice and simplified outlines are being inserted by this Bill to assist readers. The simplified outline is not intended to be comprehensive and readers should rely on the substantive provisions for a comprehensive understanding of this Part.
15. Division 1 relates to the maximum movement limit and incorporates the existing provisions within Part 2 noting that a new Division dealing with recovery periods has also been added to the end of the Part.

Item 7 – Subsection 6(1)

16. This item repeals and replaces subsection 6(1). This subsection has been amended to provide that the maximum number of aircraft movements at Sydney Airport during a recovery hour is 85, rather than the usual limit of 80 aircraft movements that applies during a regulated hour. Further provisions have been included to outline the Minister’s power to make a recovery period declaration at Division 2 of Part 2 – see item 15.
17. Subsection 6(1A) replicates the previous subsection (1) noting that the maximum movement limit is different for a regulated hour and a recovery hour.
18. Subsection 6(1B) provides that the maximum total number of aircraft movements during non-curfew periods, that is between 0600 – 2300 Sydney Local Time, is 1360 movements.

Item 8 – Subsection 6(3)

19. This item repeals and replaces subsection 6(3) to amend the provision to provide that a period is not a regulated hour if it starts during, or less than 60 minutes before a recovery hour.
20. For example, if a recovery period was declared to start at 5:15pm, the final regulated hour before the recovery period would run from 4:15pm to 5:15pm. The period of 4:30pm to 5:30pm would not be a regulated hour because it would start less than 60 minutes before the recovery period. If this period was a regulated hour, this would impact the theoretical number of movements that could take place in the first 15 minutes of the recovery period.

Item 9 – Subsection 6(5)

21. This item amends subsection 6(5) to omit the words “subsection 35(2) (which requires the *Slot Management Scheme to be consistent with the limit)” and substitutes a more general reference to “the Slot Management Scheme”. This amendment is consequential due to the repeal of Division 1 of Part 4 – see item 26.

Item 10 – Subsections 7(1) and 7(3)

22. This item amends subsections 7(1) and (3) to substitute references to “subsection 6(1)” with “paragraph 6(1)(a)”. This is because the Minister’s power to determine a lower maximum movement limit is limited to regulated hours. This power does not apply in relation to a recovery hour and therefore needs to be confined.

Item 11 – Subsection 8(1)

23. This item amends subsection 8(1) to remove an outdated requirement that a notice is published in the Gazette in relation to a proposed decision to determine a lower maximum movement limit under subsection 7(1). Instead this requirement will be discharged by the publication of a notifiable instrument.
24. This is not intended to provide an exemption for an instrument that would otherwise be legislative in character given that a decision to undertake consultation for the purposes of a potential determination under subsection 7(1) is an administrative decision that is made by the Minister.

Item 12 – Subparagraph 8(1)(b)(i)

25. This item amends subparagraph 8(1)(b)(i) to specify that for the purposes of the subparagraph the relevant entity is “the airport-operator company (within the meaning of the *Airports Act 1996*) for Sydney Airport or, if there is more than one such company, the airport-management company (within the meaning of that Act) for Sydney Airport”. This is intended to provide a clearer description of the entity by adopting the relevant *Airports Act 1996* definitions.

Item 13 – Subsection 8(4)

26. This item amends subsection 8(4) to provide that the section does not limit the operation of section 17 of the *Legislation Act 2003* which provides that rule makers should consult before making legislative instruments. Previously section 8 of the Act was specified not to apply to determinations where the consultation requirements in section 17 of the *Legislation Act 2003* apply to the making of the determination.

Item 14 – Section 9

27. This item repeals and replaces section 9. This amendment removes the requirement for Airservices to provide a quarterly report to the Minister.
28. Subsection 9(4) provides that the regulations may require Airservices Australia, or a person mentioned in subsection (3) who provides air traffic services, to publish information about compliance with the maximum movement limit.

29. To improve transparency, it is intended that Airservices Australia and the Department will be required under the regulations to provide information about the movement cap and recovery periods on a more regular basis and in a more accessible format than previously specified under section 9 of the Act.

Item 15 – At the end of Part 2

30. This item inserts a new Division 2 into Part 2 which contains provisions relating to recovery periods.

New section 9A – Minister may make recovery period declaration

31. Section 9A provides for the Minister to make recovery period declaration in circumstances where aircraft movements at Sydney Airport are significantly disrupted.
32. Subsection 9A(2) defines **recovery period declaration** to mean a declaration made under subsection 9A(1). A recovery period declaration is not a legislative instrument as it is an ordinary administrative decision made by the Minister.
33. During each recovery period, there can be up to 85 movements per hour for up to two hours which will allow up to 10 additional movements to help address a backlog of flights impacted by a significant disruption.
34. In order for the Minister to make a recovery period declaration, the Minister is required to receive a recommendation from Airservices Australia and the cause or circumstances of the disruption must meet certain criteria that are to be specified by the regulations.
35. It is intended that the criteria in relation to the circumstances that may give rise to significant disruptions will be based on relevant data with a view to ensuring that the significant disruption threshold is a precise test that is not met too frequently. The specific criteria are yet to be settled and will be subject to consultation.
36. Subsections 9A(3) to (7) provide further requirements for recovery period declarations, which include that the declaration must be made on the same day as the period to which it relates, can be made regardless of whether the disruption has ended or not, that the Minister can make more than 1 recovery period declaration for a day and that the Minister must cause a recovery period declaration to be published on the Department’s website.

New section 9B – Recovery periods and recovery hours

37. Section 9B further deals with the concept of recovery periods and recovery hours.
38. Subsection 9B(1) provides that a **recovery period** is the period in respect of which a recovery period declaration (under subsection 9A(1)) is made.
39. A recovery period is required to be expressed as either 1 or 2 consecutive whole hours. A recovery period declaration must specify the start and end time of the recovery period noting that any part of the recovery period may be before, during or after the disruption.
40. A recovery period must not extend into curfew hours and recovery periods will not enable the total number of aircraft movements to exceed 1,360 movements at Sydney Airport outside the curfew period for the day – see section 6(1B).
41. A recovery period declaration must also comply with any requirements for the declaration that are specified in the regulations.

Item 16 – Part 3 (heading)

42. This item amends the heading for Part 3 of the Act by substituting “Penalties for unauthorised gate movements” with “Civil penalties for slot misuse”. This is a result of

Part 3 of the Act being amended to provide a broader range of civil penalties provisions which deal with slot misuse at Sydney Airport - see item 21.

Item 17 – Before Division 1 of Part 3

- 43. This item inserts a new Division 1 into Part 3 of the Act. Division 1 contains a single provision which provides a simplified outline of Part 3 of the Act. This includes a brief description of the types of activities which constitute slot misuse for which civil penalties will apply.
- 44. Simplified outlines are included to assist readers to understand the key elements and provisions of the legislation. The Act was drafted before the inclusion of simplified outlines was standard practice and simplified outlines are being inserted by this Bill to assist readers. The simplified outline is not intended to be comprehensive and readers should rely on the substantive provisions for a comprehensive understanding of this Part.

Item 18 – Division 1 of Part 3

- 45. This item provides that Division 1 of Part 3 is to be renumbered as Division 2. This is a consequential amendment due to the insertion of the new Division 1 to provide a simplified outline of the Part - see item 17.

Item 19 – Section 10 (notes)

- 46. This item repeals and replaces the two legislative notes under section 10.
- 47. Note 1 has been amended to remove the asterisks from the defined terms “gate movement”, “aircraft movement” and “curfew period”. OPC Drafting Direction No. 1.6 provides that asterisks are not to be used in notes or examples.
- 48. This item also removes the asterisks from the defined terms “aircraft movement” and “curfew period” in Note 2 and provides for a consequential amendment to the note to reflect that subsection 37(2) is now the relevant provision that provides that slot cannot be allocated under the Act for times during curfew periods – see item 26.

Item 20 – Sections 11 to 13

- 49. This item repeals sections 11 to 13 of the Act. Section 11 is being repealed because the definitions of no-slot and off-slot movement are to be provided in Division 3 of Part 3 (see new sections 12 and 13). Sections 12 and 13 are being repealed and have been replaced by new civil penalty provisions contained in Division 4 of Part 3 (see new sections 16 and 17) – see item 21.

Item 21 – Divisions 2, 3 and 4 of Part 3

- 50. This item repeals Divisions 2, 3 and 4 of Part 3 and substitutes new Divisions 3 and 4.
- 51. Division 3 contains key concepts relating to gate movements and Division 4 contains a number of civil penalty provisions for slot misuse.

Division 3 - Key concepts relating to gate movements

- 52. This Division sets out the meaning of ‘gate movement’, ‘no-slot movement’, ‘off-slot movement’, and ‘block time’.

New section 11 – Meaning of gate movement

53. Section 11 defines **gate movement** as either the first aircraft movement after the closure of aircraft doors in preparation for an aircraft movement that is a take-off or the last aircraft movement before the aircraft parks at a bay after landing. This definition is repealing the previous definition in Schedule 1 of the Act which relied upon when an aircraft's engine was turned on or off to determine a gate movement. This will better capture the 'departure' and 'arrival' times of an aircraft without relying on variable operator-specific measurements such as 'breaks engaged/released' or 'engines off/on'. The timestamp of a gate movement enables measurement of block times and determination of whether an off-slot movement has occurred - see section 13 which defines off-slot movement and section 17 which provides a civil penalty for off-slot movements.

New section 12 – Meaning of no-slot movement

54. Section 12 defines a **no-slot movement** as a gate movement on a day where no slot permitting the movement on the day on which the movement occurs has been allocated under the Slot Management Scheme. This provision repeals and replaces s 11(1) of the Act.

New section 13 – Meaning of off-slot movement

55. Section 13 defines the meaning of an **off-slot movement** to be the circumstance when a slot is allocated through the Slot Management Scheme, but for a flight with a block time of less than three hours, a gate movement occurs more than 15 minutes before or after the time of the slot, or for a flight with a block time of more than three hours, a gate movement occurs more than 30 minutes before or after the time of the slot.

56. Additionally, the regulations can specify other circumstances in which a gate movement will be an off-slot movement. This section intends to remove the parameters of an off-slot movement from the Compliance Scheme, and place them into the regulations as appropriate. It repeals and replaces the previous definition in section 11(2) of the Act.

New section 14 – Meaning of block time

57. Section 14 defines the meaning of **block time** for a flight as the scheduled time between the first movement of an aircraft after external doors have been closed in preparation for an aircraft movement that is a take-off and the last movement before the aircraft parks at a bay after landing. In operation, the block time is the scheduled time between the two gate movements of the aircraft.

Division 4 - Civil Penalty provisions for slot misuse

58. This Division sets out the operation of civil penalty provisions for slot misuse, including failure to use an allocated slot, no-slot movement, off-slot movement, flight operation not in accordance with slot requirements, applying for slots with no reasonable prospect of use, and failure to return or transfer unused slots. These civil penalties are broadly based on the Worldwide Airport Slot Guidelines (WASG), noting that the fault elements in the WASG have not been included having regard to the nature of the conduct being regulated as well as the difficulty in establishing fault for these types of conduct. The penalty amounts have been set consistently with the Guide to Framing Commonwealth Offices, Infringement Notices and Enforcement Powers.

New section 15 – Civil penalty – failure to use an allocated slot

59. Section 15 sets out a civil penalty for failure to use an allocated slot.

60. Subsection 15(1) provides that a person will contravene the provision if they are an operator of an aircraft that has been allocated a slot under the Slot Management Scheme to permit a gate movement of the aircraft on a day and do not engage in gate movement on the day. A person who contravenes the subsection will be subject to a civil penalty of 60 penalty units.
61. This provision is only intended to capture circumstances where no gate movement was conducted for the slot on that day. For example, if an aircraft operated at another time on that day, it would be an off-slot movement contravention only (see section 17).
62. Additionally, if the aircraft operated but in a different way to the allocated slot (for example, the flight departed from Sydney Airport but the destination was different), this would be a flight operations not in accordance with slot requirements contravention only (see section 18) and would not enliven a civil penalty under section 15.
63. Exceptions to this provision are set out in subsections 15(2) to (4). These include that the gate movement is covered by a declared exemption under section 47 or 48, the Slot Manager has agreed in writing to the operator not using the gate movement at the time of allocating the slot, and where the operator has returned the slot to the Slot Manager or transferred the slot to another person by the day under the Slot Management Scheme before the day on which the gate movement was permitted by the slot.
64. For all three exemptions, the defendant bears the evidential burden (consistent with section 96 of the Regulatory Powers Act). This is because the information required to make out each of the exceptions is peculiarly within the knowledge of the defendant and a defendant should be able to readily prove that a gate movement was covered by a declared exemption, that an agreement was reached with the Slot Manager not to use the slot, or that the slot had been returned to the Slot Manager or transferred as required.
65. This new provision seeks to hold airlines accountable to use slots allocated to them to enable a more efficient aviation industry.

New section 16 – Civil penalty – no-slot movement

66. Section 16 sets out the civil penalty provision for a no-slot movement to replace section 12 of the Act.
67. A person will contravene subsection 16(1) if they are the operator of an aircraft and engage in a gate movement without an allocated slot for that movement on the relevant day. The civil penalty for a breach of this provision is 60 penalty units.
68. Subsection 16(2) provides an exemption to a breach if the circumstances which caused a gate movement to occur were outside the reasonable control of the operator. For example, if the no-slot movement was caused by an emergency. This is intended to avoid unfair punishments imposed upon airlines. The defendant will bear the evidential burden in relation to this exemption (consistent with section 96 of the Regulatory Powers Act) given that the relevant information required to make out this exception, that the circumstances which caused a gate movement to occur were outside the reasonable control of the operator, is peculiarly within the knowledge of the defendant.

New section 17 – Civil penalty – off-slot movement

69. Section 17 sets out the civil penalty provision for an off-slot movement to replace section 13 of the Act.
70. Subsection 17(1) provides that a person contravenes this subsection if they are an operator of an aircraft and engage in a gate movement that is categorised as an off-slot movement for that day. Pursuant to section 13, an off-slot movement occurs when a slot is allocated through the Slot Management Scheme, but for a flight with a block time of less than three hours, a gate movement occurs more than 15 minutes before or after the time of the slot,

or for a flight with a block time of more than three hours, a gate movement occurs more than 30 minutes before or after the time of the slot. The civil penalty for a breach of this provision is 60 penalty units.

71. Subsections 17(2) and (3) allow for an exemption if the gate movement is covered by a declared exemption under sections 47 or 48 or if the circumstances that caused the gate movement to occur at the time it did were outside of the operator's reasonable control (for example if the off-slot movement was caused by severe weather or a closure of the airport). For both exemptions, the defendant bears the evidential burden (consistent with section 96 of the Regulatory Powers Act). This is because the information required to make out each of the exceptions is peculiarly within the knowledge of the defendant.
72. This provision intends to place responsibility on airlines for delay and cancellations of services to ensure accountability for the use and operation of allocated slots.

New section 18 – Civil penalty – flight operations not in accordance with slot requirements

73. This provision creates a new civil penalty to deal with circumstances in which a person is the operator of an aircraft which performs a gate movement in a manner that is different from the requirements of the allocated slot. The specific requirements to which this provision relate will be specified in the Slot Management Scheme. The civil penalty for a breach of this provision is 60 penalty units.
74. Specific requirements for the slots for the purposes of paragraph 18(1)(d) will be provided in the Slot Management Scheme. It is necessary for such matters to be dealt with in the Slot Management Scheme which will provides the system for allocation and management of slots, to enable a degree of flexibility to impose relevant requirements and conditions that align to the WASG as the Guidelines are updated.
75. This provision is not intended to capture time-related requirements which would be captured by other civil penalty provisions dealing with no-slot movements and off-slot movements (see sections 16 and 17).
76. Subsections 18(2) and (3) allow for an exemption if the gate movement is covered by a declared exemption under sections 47 or 48 or if the Slot Manager has agreed in writing to the gate movement for the aircraft not complying with the requirement of the slot for the movement. For both exemptions, the defendant bears the evidential burden (consistent with section 96 of the Regulatory Powers Act). This is because the information required to make out each of the exceptions is peculiarly within the knowledge of the defendant.
77. Subsection 18(3) does not specify a timeframe within which the Slot Manager is required to provide agreement to the gate movement for the aircraft not complying with the requirement of the slot for the movement and this could be provided after the gate movement has been conducted.
78. This new provision intends to ensure that operators are not applying for and operating slots in a manner inconsistent with the intention presented to the Slot Manager as well as ensuring that consumers are provided with the service as intended. This will also address issues regarding operators using allocated slots with different sized aircraft which can lead to terminal constraints. The exemptions included in this provision are intended to provide flexibility in relation to unforeseen circumstances preventing an operator from using the slot in the allocated manner.

New section 19 – Civil penalty – applying for slots with no reasonable prospects of use

79. This provision creates a new civil penalty for circumstances in which an airline applies for the allocation of one or more slots under s Slot Management Scheme with no reasonably practicable plans to operate one or more of the gate movements of the slots. The civil penalty for a breach of this provision is 60 penalty units.

80. This provision uses the term ‘airline’ rather than referring to the operator of an aircraft, as has been done in the earlier civil penalty provisions. This has been done to move away from the definition of **operator** provided in Schedule 1 of the Act, given that term is defined in terms of a person making a specific gate movement using a specific aircraft. The intent in this provision is to more generally capture the class of persons that customarily operate the aircraft providing air services.
81. An airline will always be a legal person. Where an airline is a body corporate, the body corporate multiplier rule will apply which provides that the maximum penalty that can be imposed on a body corporate is 5 times higher than the penalty that can be imposed on a natural person (see subsection 4B(3) of the *Crimes Act 1914*, see also subsection 82(5) of the Regulatory Powers Act).
82. In determining a breach of this provision, it is not necessary to prove that the airline has no reasonably practicable plans to conduct a particular gate movement permitted by a particular slot. This is because the relevant plans would be within the knowledge of the airline and it would be difficult and costly for the prosecution to establish that the airline had no reasonably practicable plans to conduct a particular gate movement.
83. Subsection 19(4) provides a non-exhaustive list of matters a court may have regard to in determining a possible breach of subsection 19(1) which include the airline’s conduct generally in relation to gate movements, applications for slots, use of slots, variations of slots, and surrender of slots. This would enable the court to have regard to patterns of behaviour of the operator.
84. This provision intends to ensure that airlines are not holding slots which may otherwise have been used by applying without an intention to operate. This seeks to reduce slot hoarding and increase the efficiency of the operation of aviation at Sydney Airport.
85. An example of conduct that is intended to be captured is where an airline requests a large number of slots across a range of different routes, in multiple series. If that airline does not own or lease enough aircraft to service that route, or does not have the crew to support that number of flights, the airline would have requested more slots than it intended to use.
86. Another example would be where an airline requests slots to an international airport for a range of different airports for which they do not have permission to land.
87. An exemption is available for this provision which allows an operator to notify the Slot Manager at the time of making the application that the airlines does not plan to conduct one of more slots. The defendant will bear the evidential burden in relation to this exemption (consistent with section 96 of the Regulatory Powers Act) given that the relevant information required to make out this exception, that notification to the Slot Manager was provided, is peculiarly within the knowledge of the defendant.

New section 20 – Civil penalty – failure to return or transfer unused slots

88. This provision creates a new civil penalty for circumstances in which an airline has been allocated one or more slots under the Slot Management Scheme and either decide not to offer an air service for which the slots were sought, or become aware of circumstances which make the operation of the slot unlikely and do not return the slot to the Slot Manager, or transfer the slots to another person who holds slots under the Slot Management Scheme within 14 days. The civil penalty for a breach of this provision is 60 penalty units.
89. This provision uses the term ‘airline’ rather than referring to the operator of an aircraft, as has been done in the earlier civil penalty provisions. This has been done to move away from the definition of **operator** provided in Schedule 1 of the Act, given that term is defined in terms of a person making a specific gate movement using a specific aircraft.

The intent in this provision is to more generally capture the class of persons that customarily operate the aircraft providing air services.

90. An airline will always be a legal person. Where an airline is a body corporate, the body corporate multiplier rule will apply which provides that the maximum penalty that can be imposed on a body corporate is 5 times higher than the penalty that can be imposed on a natural person (see subsection 4B(3) of the *Crimes Act 1914*, see also subsection 82(5) of the Regulatory Powers Act).
91. It is immaterial whether the contravention of the airline occurs before, on or after any deadline for the return of unused slots provided for in the Slot Management Scheme.
92. In determining a breach of this provision, it is not necessary to prove that the airline would not have conducted or was unlikely to conduct a gate movement of a particular allocated slot. This is because the provision is primarily concerned with the failure to return or transfer unused slots rather than conduct in relation to the specific gate movement.
93. Subsection 20(4) provides a non-exhaustive list of matters a court may have regard to in determining a possible breach of subsection 20(1) which include the airline's conduct generally in relation to gate movements, applications for slots, use of slots, variations of slots, and surrender of slots. This would enable the court to have regard to patterns of behaviour of the operator.
94. This new provision intends to prevent slot hoarding by airlines, by encouraging airlines to only apply for slots they intend to operate. Flexibility of the 14-day period is provided to not disadvantage airlines by allowing for unforeseen circumstances.
95. This provision is intended to allow for circumstances in which an airline holds slots, having legitimately applied for them with reasonably practicable plans to use the slots but circumstances change that mean that those slots will no longer be used. For example, with lower than expected ticket sales a route may turn out to not be as commercially viable as hoped, prompting an airline to cancel those flights and use the aircraft for a different route.

Item 22 – Section 29 (heading)

96. This item amends the heading for section 29 by substituting “grants dispensation” with “makes declared exemption”. This is required given that the Slot Manager's power to grant dispensations under section 31 has been replaced by a power to make declared exemptions as provided in Division 4 of Part 4 of the Act – see item 31.

Item 23 – Paragraph 29(b)

97. This item repeals and replaces paragraph 29(b) to provide that an aircraft may make a gate movement at Sydney Airport in circumstances that would otherwise result in the operator contravening a civil penalty provision if a declared exemption made under section 48 covers the gate movement. This is required given that section 31 which previously provided for the Slot Manager to grant a dispensation in exceptional circumstances is being repealed with a new equivalent power to make a declared exemption being provided at section 48.

Item 24 – Section 31

98. This item repeals section 31. Section 31 is no longer required because the Slot Manager's power to grant a dispensation in exceptional circumstances has been replaced by an

equivalent power to make a declared exemption under Division 4 of Part 4. Declared exemptions are intended to replace both the Slot Manager's power to grant a dispensation under section 31 (see section 48) and the Slot Manager's power to declare that certain gate movements are not required to take place in accordance with their allocated slots under subsection 11(4) (see section 47) and consolidate these powers in a single division of the Act.

Item 25 – Subparagraph 32(a)(ii)

99. This item amends subparagraph 32(a)(ii) to provide gender neutral language in line with modern drafting practice.

Item 26 – Divisions 1 and 2 of Part 4

100. This item repeals Divisions 1 and 2 of Part 4 and substitutes two new divisions.

101. This serves to replace the previous regime which included processes for the development of the Scheme by the Slot Manager and for the Minister to request amendments.

102. Division 1 contains a single provision which provides a simplified outline of the Part.

103. Simplified outlines are included in Bills to assist readers to understand the key elements and provisions of the legislation. The Act was drafted before the inclusion of simplified outlines was standard practice and simplified outlines are being inserted by this Bill to assist readers. The simplified outline is not intended to be comprehensive and readers should rely on the substantive provisions for a comprehensive understanding of this Part.

104. Division 2 deals with the Slot Management Scheme and provides a simplified process whereby the Minister will develop the Scheme.

105. It is necessary for the Slot Management Scheme, which provides for the system for allocation and management of slots, to be made by legislative instrument rather than the Act itself, given the need to provide for a degree of flexibility to impose relevant requirements. In particular, the Scheme will seek to align to global aviation practices as outlined in the WASG noting that these Guidelines are subject to change. There are a number of factors that will likely impact demand management at Sydney Airport in the coming decades, including continuing changes to international guidelines (such as the WASG), Western Sydney International Airport coming online and increased passenger numbers. To future proof the operation of the Act and promote resilience/flexibility at Sydney Airport it is considered appropriate for the allocation and management of slots to be dealt with in the Scheme to allow for responsive changes to the act as the operating environment changes. The Slot Management Scheme has always been set by an instrument made under the Act and this new Division is continuing that practice.

New section 34 – Minister to make Slot Management Scheme

106. Section 34 provides that the Minister must make a scheme for the allocation and management of permissions for gate movements at Sydney Airport. This is the Slot Management Scheme. The Slot Management Scheme is a legislative instrument and is subject to standard disallowance and sunseting requirements.

107. Subsection 34(2) provides the definition of a slot which is a permission for a gate movement.

New section 35 – Core contents of Slot Management Scheme

108. Section 35 provides that the Scheme may deal with any matter relating to a system for the allocation and management of slots at Sydney Airport. Subsection 35(2) provides a non-exhaustive list of matters the Scheme may deal with which include the allocation of slots, conditions imposed on the use of slots, variation of slots, swapping of slots, suspension of slots, surrender of slots, and cancellation of slots.

New section 36 – Other matters covered by Slot Management Scheme

109. Section 36 outlines the other matters to be covered by the Slot Management Scheme.
110. Subsections 36(1) and (2) deal with required matters which include that the Scheme set out the circumstances in which the Slot Manager may make a declared exemption (see item 31) and that the Scheme must be consistent with any additional requirements for the Scheme specified in the regulations.
111. The remaining subsections deal with permitted matters which the Scheme may make provision for. This includes provisions for the exercise of the Slot Manager's functions, authorising persons other than the Slot Manager to exercise the powers or perform the functions of the Slot Manager in relation to the allocation of slots or the management of slots that have been allocated, conferring functions and powers on the Minister, and providing for the reconsideration of decisions made under the Scheme by the Minister or the Slot Manager.
112. An authorisation process has previously been provided for in section 29 of the *Slot Management Scheme 2013*. It is intended that the new Scheme will impose stricter requirements including that authorisations are recorded in writing and provide further detail in relation to the scope of the authorisation.

New section 37 Restrictions on Slot Management Scheme

113. Section 37 outlines specific restrictions on the Slot Management Scheme. These include that the Scheme must be consistent with the maximum movement limit for aircraft movements at Sydney Airport (see section 6), must not allow slots to be allocated for times during curfew periods and must be consistent with any requirements of the *Sydney Airport Curfew Act 1995* relating to aircraft movements before or after curfew periods.
114. Subsection 37(4) provides that except as provided in section 37, Division 2 of Part 4 does not limit the matters that may be dealt with by the Scheme.

New section 38 Key features of a slot

115. Section 38 provides the key features of a slot. A slot allocated under the Scheme permits a specified gate movement at a specified time on a specified day. Conditions may be imposed on the use of a slot and a slot allocated under the Scheme is not transferable unless permitted by provisions in the Scheme about swapping slots.
116. Subsection 38(4) provides that a slot is not property and does not create rights or obligations that are enforceable against any person.
117. Subsection 38(5) provides that the permission granted by a slot is subject to other laws that impose requirements or restrictions on or in relation to aircraft movements or gate movements.

Item 27 – Division 3 of Part 4 (heading)

118. This item repeals the heading of Division 3 of Part 4 and substitutes a new heading of "Minister's powers in relation to slots". This new heading removes reference to the

Compliance Committee and is required due to the repeal of s 47 which previously provided the Compliance Committee with some powers in relation to slot allocation.

Item 28 – Subsection 46(2)

119. This item repeals subsection 46(2) and substitutes it with a more simplified provision. The effect of the provision is that specified persons, that is, the Slot Manager or person authorised by the Slot Manager (see subsection 36(4)) must comply with the direction made by the Minister under subsection 46(1) noting that this direction does not have to be consistent with the Slot Manager Scheme.
120. Directions under subsection 46(1) have been made by the Minister on a number of occasions. For example, to assist airlines impacted by COVID-19 restrictions by allowing them to retain historical precedence to certain slot series. This has assisted in providing for market certainty.

Item 29 – Subsection 46(6)

121. This item omits the words “to be taken to be” from subsection 46(6) to more simply provide that a direction made under s 46(1) is not a legislative instrument.

Item 30 – Section 47

122. This item repeals section 47. It is intended that the role and functions of the Compliance Committee will change significantly through the reforms provided in this Bill which include the removal of the Compliance Committee’s powers in relation to slot allocation provided under s 47.

Item 31 – At the end of Part 4

123. This item adds a new Division 4 to the end of Part 4 which deals with the Slot Manager’s power to make declared exemptions.
124. Previously the Slot Manager had separate powers to make a declaration that certain gate movements do not have to be in accordance with allocated slots under s 11(4) and to grant a dispensation authorising an aircraft to make a gate movement in exceptional circumstances under s 31.
125. This amendment seeks to impose a more streamlined exemption process noting that the Slot Manager’s powers in sections 11 and 31 have been repealed – see items 20 and 24.

New section 47 – Declared exemptions relating to allocated slots

126. Section 47 provides that the Slot Manager may declare that one or more specified gate movements that occur, or that are scheduled to occur, during the period covered by the declaration are not required to be conducted in accordance with their allocated slots, or at all.
127. The Slot Manager is to exercise this power by instrument in writing. This is instrument is not a legislative instrument – see section 49(6).
128. A gate movement which takes place and is subject to a declared exemption under s 47 will be included in the movement cap for the purposes of section 6 of the Act.

New section 48 – Declared exemptions in exceptional circumstances

129. Section 48 provides that the Slot Manager may authorise the operator of an aircraft to conduct a gate movement in circumstances where the conduct of the gate movement would otherwise contravene a civil penalty provision in exceptional circumstances.
130. The Slot Manager is to exercise this power by instrument in writing. This instrument is not a legislative instrument - see section 49(6).
131. Subsection 48(2) provides that a declared exemption under subsection 48(1) may only be made if the Slot Manager is satisfied that the gate movement permitted by the exemption is necessary to protect the health or safety of any person or the security, defence or international relations of the Commonwealth.
132. A gate movement which takes place and is subject to a declared exemption under s 48 will not be included in the movement cap for the purposes of section 6 of the Act – see item 23.

New section 49 – General matters relating to declared exemptions

133. Section 49 deals with general matters relating to declared exemptions including the interaction with the Slot Management Scheme.
134. This includes that a declared exemption may only be made in circumstances permitted by the Scheme and may be made subject to conditions. By allowing the circumstances in which declared exemptions are to be permitted to be provided in the Scheme, it is intended to provide for flexibility to amend the circumstances as required in order to evolve with the aviation landscape and ensure that exemptions are not provided by the Slot Manager too regularly or in circumstances that are not appropriate.
135. Subsection 49(3) provides that a declared exemption may be made in relation to a specified gate movement of a specified aircraft on a specified day, the gate movements of some or all aircraft on a specified day, or the whole or a part of a specified day. This is intended to provide flexibility in relation to how an exemption is to be made noting that the Scheme may further prescribe details of what constitutes exceptional circumstances.
136. The Slot Manager is also required to provide notification in relation to the making of a declared exemption in accordance with the requirements which are to be outlined in the Slot Management Scheme.
137. Subsection 49(6) provides that a declared exemption is not a legislative instrument. This is not intended to provide an exemption for an instrument that would otherwise be legislative in character given that a decision to provide a declared exemption is an administrative decision that is made by the Minister.

New section 50 – When declared exemption covers a gate movement

138. Section 50 is provided for clarity to outline the circumstances under which a declared exemption under Division 4 of Part 4 covers a gate movement. This includes where a declared exemption allows the operator to conduct a gate movement, where a declared exemption allows the operator to not conduct a gate movement that the operator is permitted to conduct and where a declared exemption allows for a movement to be conducted otherwise than in accordance with the requirements of the slot.

Item 32 – Part 5

139. This item repeals and replaces Part 5 of the Act. Part 5 previously dealt with the Compliance Scheme. It is intended that the *Sydney Airport Compliance Scheme 2012* will be repealed with compliance matters to be dealt with in the Act and other subordinate legislation. The new heading for Part 5 is “Compliance and enforcement”.

New section 51 – Simplified outline of this Part

140. Section 51 contains a simplified outline of the new Part 5. The new Part 5 applies the framework established by the Regulatory Powers Act in relation to certain compliance and enforcement matters, including enforcement of civil penalty provisions and the use of infringement notices, enforceable undertakings and injunctions.
141. Simplified outlines are included in Bills to assist readers to understand the key elements and provisions of the legislation. The Act was drafted before the inclusion of simplified outlines was standard practice and simplified outlines are being inserted by this Bill to assist readers. The simplified outline is not intended to be comprehensive and readers should rely on the substantive provisions for a comprehensive understanding of this Part.

New section 52 – Civil penalty provisions

142. Section 52 provides that each civil penalty provision in the Act is enforceable under Part 4 of the Regulatory Powers Act. Part 4 of the Regulatory Powers Act creates a framework for the use of civil penalties to enforce civil penalty provisions.
143. For the purposes of Part 4 of the Regulatory Powers Act this section provides that an authorised applicant is the Minister, the Secretary and an SES or acting SES employee. The relevant court in relation to the civil penalty provisions in the Act is the Federal Court of Australia, the Federal Circuit and Family Court of Australia (Division 2) and a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.
144. Subsection 52(4) provides that Part 4 of the Regulatory Powers Act, as it applies to the civil penalty provisions in this Act, extends to every external Territory.
145. Subsection 52(5) makes it clear that Part 4 of the Regulatory Powers Act, as it applies to the civil penalty provisions in this Act, does not make the Crown subject to civil penalties proceedings for contravening a civil penalty provision. The Crown is bound by the Act in each of its capacities under section 72 of the Act. Where actions of the Crown, including government agencies, are considered to contravene a civil penalty provision, it is intended that these matters will be dealt with administratively.

New section 53 – Infringement notices

146. Section 53 provides that the civil penalty provisions in the Act are subject to an infringement notice under Part 5 of the Regulatory Powers Act. Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to civil penalty provisions.
147. For the purposes of exercising powers under Part 5 of the Regulatory Powers Act, an infringement officer is the Minister, the Secretary, an SES employee or acting SES employee in the Department and the Secretary is the relevant Chief Executive.
148. Subsection 53(4) provides that Part 5 of the Regulatory Powers Act, as it applies to the civil penalty provisions in this Act, extends to every external Territory.
149. It is important to note that payment of an infringement notice is not an admission of guilt or liability. If a person issued with an infringement notice pays the penalty by the time specified, then civil proceedings cannot be initiated in relation to the alleged contravention and the matter is finalised without an admission of guilt or liability. Alternatively, if a person wishes to dispute an infringement notice, then they can decide not to pay the infringement notice amount. However, if they do not pay the infringement notice amount then civil penalty proceedings can be brought against them in a relevant court. The content of an infringement notice issued under this Act will be consistent with the Regulatory Powers Act and the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers.

New section 54 – Enforceable undertakings

150. Section 54 provides that the civil penalty provisions in the Act are enforceable under Part 6 of the Regulatory Powers Act. Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with civil penalty provisions.
151. For the purposes of Part 6 of the Regulatory Powers Act this section provides that an authorised applicant is the Minister, the Secretary, an SES employee or acting SES employee in the Department. The relevant court is the Federal Court of Australia, the Federal Circuit and Family Court of Australia (Division 2) and a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.
152. Subsection 54(4) provides that an authorised person may publish an undertaking given in relation to a provision of this Act on the Department’s website.
153. Subsection 54(5) provides that Part 6 of the Regulatory Powers Act, as it applies in relation to the provisions of the Act, extends to every external Territory.

New section 55 Injunctions

154. Section 55 provides that the civil penalty provisions in the Act are enforceable under Part 7 of the Regulatory Powers Act. Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce civil penalty provisions.
155. For the purposes of Part 7 of the Regulatory Powers Act this section provides that an authorised applicant is the Minister, the Secretary, an SES employee or acting SES employee in the Department. The relevant court is the Federal Court of Australia, the Federal Circuit and Family Court of Australia (Division 2) and a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.
156. Subsection 54(4) provides that Part 7 of the Regulatory Powers Act, as it applies in relation to the provisions of the Act, extends to every external Territory.

Item 33 – Before section 60

157. This item provides a simplified outline of Part 6 of the Act which deals with the role and function of the Slot Manager.
158. Simplified outlines are included to assist readers to understand the key elements and provisions of the legislation. The Act was drafted before the inclusion of simplified outlines was standard practice and simplified outlines are being inserted by this Bill to assist readers. The simplified outline is not intended to be comprehensive and readers should rely on the substantive provisions for a comprehensive understanding of this Part.

Item 34 – Subsection 60(2)

159. This item omits the words “of the Slot Manager” from subsection 60(2) and substitutes “of the *Slot Manager” to provide an asterisk for the defined term.

Item 35 – Paragraph 60(2)(a)

160. This item repeals and replaces paragraph 60(2)(a) given that the Slot Manager will no longer have a role in developing or amending the Slot Management Scheme. The Minister will be responsible for the design of the Slot Management Scheme.

Item 36 – Paragraph 60(2)(b)

161. This item repeals and replaces paragraph 60(2)(b) given that the functions of the Slot Manager are to be specified in the Act and not in subordinate legislation.

Item 37 – Subsection 61(1)

162. This item omits the words “Slot Manager” from subsection 61(1) and substitutes “*Slot Manager” to provide an asterisk for the defined term.

Item 38 – After subsection 62(2)

163. This item inserts a new subsection 62(2A) to make clear that the officers, employees and agents of the Slot Manager are not an ‘official’ for the purposes of the finance law (as defined in the *Public Governance, Performance and Accountability Act 2013*).

Item 39 – Paragraph 62(5)(c)

164. This item repeals and replaces paragraph 62(5)(c) to provide that any person authorised by the Slot Manager, under the Slot Management Scheme, to exercise powers or perform functions of the Slot Manager in relation to the allocation or management of slots will be deemed to be a Commonwealth public official for the purposes of the specified sections of the *Criminal Code*.
165. This amendment is consequential due to the repeal of Division 1 of Part 4 and replaces a redundant reference to subsection 35(3) – see item 26.

Item 40 – Paragraph 64(3)(a)

166. This item omits the words “of the Slot Manager” from paragraph 64(3)(a) and substitutes “of the *Slot Manager” to provide an asterisk for the defined term.

Item 41 – Paragraph 64(3)(b)

167. This item amends paragraph 64(3)(b). This amendment is consequential due to the repeal of Division 1 of Part 4 and replaces a redundant reference to subsection 35(3) – see item 26.

Item 42 – At the end of Part 6

168. This item inserts a new provision, section 65A at the end of Part 6.
169. Section 65A provides that the Slot Manager may charge a fee in relation to anything done in performing its function of allocating and managing slots under the Slot Management Scheme but that the fee must not be such as to amount to taxation.
170. This provision is intended to allow the Slot Manager to charge a fee for services involved in activities in relation to the allocation or management of slots, inclusive of issuing declared exemptions and reporting on slot use. The Slot Manager is not permitted to charge a fee in relation to services that are not attributable to Sydney Airport.

Item 43 - Sections 66 to 69

171. This item repeals sections 66 to 69 and substitutes a number of new provisions which deal with the Compliance Committee.

New section 66A – Simplified outline of this Part

172. This section provides a simplified outline of Part 7 of the Act which deals with the membership and functions of the Compliance Committee.
173. Simplified outlines are included to assist readers to understand the key elements and provisions of the legislation. The Act was drafted before the inclusion of simplified outlines was standard practice and simplified outlines are being inserted by this Bill to assist readers. The simplified outline is not intended to be comprehensive and readers should rely on the substantive provisions for a comprehensive understanding of this Part.

New section 66 – The Compliance Committee

174. Section 66 establishes the Compliance Committee and outlines the functions of the Compliance Committee, the processes and requirements for membership, and the Minister's power to make requests.
175. This item moves the membership requirements for the Compliance Committee into the Act noting that they were previously provided for in the *Sydney Airport Demand Management Regulations 1998* and removes the requirement for airline operators to be appointed as members.
176. Subsection 66(2) provides that membership of the Compliance Committee will consist of the Chair, a representative of the airport-operator company (or airport-management company if there is more than one such company), the Slot Manager and Airservices Australia, and 3 other members.
177. Subsections 66(3) to (5) deal with the appointment of members and provide that the Chair and the three non-representative members are to be appointed by the Minister in writing.
178. Subsection 66(4) requires that the Chair must be independent from an airport-operator company, the Slot Manager, Airservices Australia, an airline that customarily provides air services (whether or not from Sydney Airport), or other person prescribed in the regulations.
179. Subsection 66(5) provides that the Minister must be satisfied that a person has appropriate qualifications, knowledge, skills or experience in order to be eligible as a member.
180. Subsection 66(6) outlines the functions of the Compliance Committee. These include inquiring into and reporting to the Minister in relation to the allocation or use of slots at Sydney Airport, gate movements at Sydney Airport and compliance with this Act, and to publish information held by the Committee in accordance with the regulations. The Committee is also required to perform other such functions as are conferred on the Committee by this Act as well as doing anything incidental to, or conducive to, the performance of the aforementioned functions. References to 'this Act' in provision, as elsewhere in the Act, extend to the regulations, any instruments made under the Act, and the Regulatory Powers Act as it applies in relation to the Act – see item 66.
181. Subsections 66(7) to (10) deal with Minister's requests and provide that the Minister may make a request in writing to the Compliance Committee to inquire into and report to the Minister about any matter. In doing so, the Minister may determine terms of reference for conducting the inquiry and reporting to the Minister.
182. A request under subsection 66(7) must comply with any requirements prescribed by the regulations and is not a legislative instrument. This is not intended to provide an

exemption for an instrument that would otherwise be legislative in character given that a decision to make a request of the Compliance Committee is an administrative decision made by the Minister.

New section 67A – Minister may give direction to the Compliance Committee

183. Subsection 67A(1) provides that the Minister may give written directions to the Compliance Committee about the performance of its functions. These directions must be of a general nature only, so as to not subvert the role of the Compliance Committee and the Compliance Committee must comply with a direction under subsection 67A(1).
184. A direction under s 67A(1) is a notifiable instrument. This is not intended to provide an exemption for an instrument that would otherwise be legislative in character given that a decision to provide directions to the Compliance Committee is an administrative decision that is made by the Minister.

New section 67 – Regulations may provide for matters relating to the Compliance Committee

185. Section 67 provides a non-exhaustive list of matters relevant to the Compliance Committee which may be dealt with in the regulations.
186. This includes the operation and procedures of the Committee, appointment, resignation, disclosures of interests and leaves of absence of members, deputies of members, meetings of the Committee, requests made by the Minister under subsection 66(7) and administrative and other support for the Committee.
187. This provision serves to provide for regulations to be made that relate to administrative matters for the purposes of the Compliance Committee that are not otherwise covered in the Act. The Compliance Committee will have an advisory role, offering industry and operational insights and analysis to support administration of the Act and regulations. It is intended that the Act will establish a flexible framework to support the functions of the Compliance Committee to be tailored on a needs-basis, and be responsive to regulatory risk.
188. There will be a Secretariat for the Compliance Committee within the Department. The Secretariat will make practical arrangements for meetings and take minutes. The Secretariat will facilitate communication between the Department and Committee, and will monitor requests and referrals to the Committee.

New section 68 – Remuneration

189. Subsection 68(1) provides for a member of the Committee to be paid remuneration as determined by the Remuneration Tribunal or as prescribed by the regulations if there is no Remuneration Tribunal determination in operation.
190. Subsection 68(2) provides that a member will not be entitled to be paid remuneration if they are a representative of an airport-operator company, the Slot Manager or Airservices Australia. Subsection 68(4) provides that the section is subject to the *Remuneration Tribunal Act 1973*. This subsection has the effect of excluding persons employed by the Department from remuneration under section 68.
191. Subsection 68(3) provides that a member that is entitled to be paid remuneration is to be paid allowances that are prescribed by the regulations.

New section 69 – Application of the finance law

192. Section 69 provides that a member is not an official of the Department for the purposes of the finance law.
193. This provision serves to exempt the *Public Governance, Performance and Accountability Act 2013* from applying to members of the Compliance Committee by

virtue of their membership of the Committee. However, some members will be officials and subject to the finance law where they are otherwise APS employees.

New section 69A – Protection from civil actions

194. Section 69A provides that a member is not liable to an action or other proceeding for damages for, or in relation to, an act done or omitted to be done in good faith in the performance or purported performance of a function of the Compliance Committee.
195. This provision seeks to protect individual members from liability from civil actions while acting in good faith to perform their functions as part of the Compliance Committee.

New section 69B – Legal position of the Compliance Committee

196. Section 69B outline the legal position of the Committee and its members when acting as such a member.
197. Specifically, this section provides that these persons are not taken to be the Commonwealth or a Commonwealth authority, to be established for a public purpose or for a purpose of the Commonwealth, to hold a Commonwealth office or to be a Commonwealth officer, or to be a public authority or an agency or instrumentality of the Crown. This position will apply for the purposes of a law of the Commonwealth, or of a State or Territory, unless that law, or regulations made for the purposes of this section, expressly provide otherwise.
198. This provision is intended to have a similar operation to the existing section 62(3) which provides the legal position of the Slot Manager.

Item 44 – Before Part 8

199. This item inserts a new Part 7A into the Act, containing provisions on information management.
200. This Part serves to impose clearer and more comprehensive provisions that support the enforcement of obligations around the keeping of records, provision of information to the Department, sharing of information by the Department, and publication of information.

New section 70A – Simplified outline of this Part

201. Section 70A provides a simplified outline of the Part which deals with information management obligations.
202. Simplified outlines are included to assist readers to understand the key elements and provisions of the legislation. The Act was drafted before the inclusion of simplified outlines was standard practice and simplified outlines are being inserted by this Bill to assist readers. The simplified outline is not intended to be comprehensive and readers should rely on the substantive provisions for a comprehensive understanding of this Part.

New section 70B – References to Slot Manager

203. Section 70B provides that a reference to the Slot Manager in Part 7A of the Act includes any person authorised by the Slot Manager to exercise powers or perform functions of the Slot Manager in relation to the allocation or management of slots.
204. Subsection 36(4) provides that the Slot Management Scheme may provide for authorisation of persons other than the Slot Manager to exercise powers, or perform functions, of the Slot Manager - see item 26.

New section 70C – Minister may require information or documents

205. Section 70C outlines the Minister's power to require a person to provide information or produce a document.

206. Subsection 70C(1) outlines the scope of the section, which is limited to circumstances in which the Minister believes, on reasonable grounds, that a person is capable of giving any information, or producing any document, that is relevant to the matters listed in the subsection. Relevant matters are the allocation or use of slots at Sydney Airport, gate movements at Sydney Airport, compliance with this Act, administering or enforcing a civil penalty provision of this Act, investigating an offence provision of the *Crimes Act 1914* or the *Criminal Code* to the extent that it relates to this Act, or performing functions, or exercising powers, under or for the purposes of this Act. References to 'this Act' in this provision, as elsewhere in the Act, extend to the regulations, any instruments made under the Act, and the Regulatory Powers Act as it applies in relation to the Act – see item 66.

207. Subsection 70C(2) provides the Minister with the power to require that a person give the information, or produce the document to one or more of the persons listed in this subsection. The listed persons are the Minister, the Secretary, an APS employee in the Department, Airservices Australia, the Slot Manager and the Compliance Committee. This power is to be exercised by written notice. Section 71, which provides for delegation by the Minister, enables the Minister to delegate this power to Departmental employees down to the EL 2 level.

208. Subsection 70C(3) outlines the requirements for a notice given under subsection 70C(2). These include that the notice specifies how the person is to give the information or produce the document, the period within which the person is to give the information or produce the document (this period is to be at least 14 days) and the effect of subsection (4) and relevant provisions of the *Criminal Code*.

209. Subsection 70C(4) provides that a person is liable to a civil penalty of 60 penalty units if the person fails or refuses to comply with a notice under section 70C.

210. Subsections 70C(5) and (6) provide exceptions to liability for the civil penalty under subsection 70C(4). Subsection 70C(5) provides that the civil penalty does not apply to the Compliance Committee or a Commonwealth entity that has functions involving matters relevant to operations at Sydney Airport and is prescribed by the regulations. The civil penalty also does not apply to extent that the person is not capable of complying with the notice. This provision is not intended to abrogate the privilege against self-incrimination in relation to recipients of notices.

211. For both exemptions, the defendant bears the evidential burden (consistent with section 96 of the Regulatory Powers Act). This is because the information required to make out each of the exceptions, that the recipient is under s 70C(5) or is not capable of complying with the notice, is peculiarly within the knowledge of the defendant.

212. Subsection 70C(7) provides that a person will not be excused from complying with a notice under section 70C due to the fact that information or document specified in the notice is or contains commercially sensitive information (including commercial in confidence information).

213. Subsection 70C(8) provides a non-exhaustive list of permitted uses in relation to information or documents obtained under section 70C. This includes using the information or document for the purpose of ensuring compliance with this Act, administering or enforcing a civil penalty provision of this Act; investigating an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to that the extent that it relates to this Act or performing functions, or exercising powers, under or for the purposes of this Act. References to 'this Act' in subsection 70C(8), as elsewhere in the Act, extend to the

regulations, any instruments made under the Act, and the Regulatory Powers Act as it applies in relation to the Act – see item 66.

214. The Note under subsection 70C(8) clarifies that where information and documents obtained under section 70C are protected information (as defined in subsection 70G(3)) sections 70G and 70H will apply to their use and disclosure.

215. While it is more likely that information collected under this provision will include commercially sensitive information, it is possible that information collected will include sensitive information under the *Privacy Act 1988*. It is intended that this provision, in conjunction with sections 70G and 70H will provide an exception to Australian Privacy Principle 3.3 which specifies that an agency must not collect sensitive information about an individual unless the individual consents to the collection of the information. This exception is necessary and proportionate given that the information collected under section 70C will reasonably be required to assist with monitoring matters under the Act including the allocation or use of slots at Sydney Airport, gate movements at Sydney Airport, compliance with this Act, administering or enforcing a civil penalty provision of this Act, and investigating an offence provision of the *Crimes Act 1914* or the *Criminal Code* that relates to the Act (or subordinate legislation).

New section 70D – Requirements in relation to records

216. Section 70D outlines the requirements in relation to records. This provision and obligations and requirements imposed is limited to the **regulated entities** listed in subsection 70D(1).

217. Paragraph 70D(1)(f) also provides for a regulated entity to be prescribed by regulations.

218. Subsection 70D(2) provides that the regulations may make provision in relation to records that are relevant to the allocation or use of slots at Sydney Airport, gate movements at Sydney Airport, compliance with this Act, administering or enforcing a civil penalty provision of this Act or performing functions, or exercising powers, under or for the purposes of this Act. References to ‘this Act’ in subsection 70D(2), as elsewhere in the Act, extend to the regulations, any instruments made under the Act, and the Regulatory Powers Act as it applies in relation to the Act – see item 66.

219. Subsection 70D(3) provides a non-exhaustive list of matters which the regulations may deal with which include keeping records, accessing records, disposing of records and transferring records.

220. It is intended that the regulations that are to be developed and made under these provisions will provide specific requirements in relation to record keeping that are fit for purpose with the view to enhancing transparency. These regulations are likely to be technical in nature and will require a detailed consultation with industry in relation to the provision of this information. Given this, it is considered appropriate for these provisions to be provided in the regulations rather than contained in the Act.

221. Regulations that are to be made under these provisions that deal with records will have the aim of maximising the efficient use of slots at Sydney Airport by improving access to information including in relation to failure to use allocated slots.

222. Where it is anticipated that records that are subject to this provision may contain personal or sensitive information, it is intended that consideration will be given to the relevant requirements under the *Privacy Act 1988* and *Freedom of Information 1982* for the purposes of the regulations. This may include providing for relevant processes to enable a person to correct or amend information about them held by an agency.

223. Subsection 70D(5) provides that a person is liable to a civil penalty of 60 penalty units if the person is a regulated entity and the person fails or refuses to comply with an

obligation that has been imposed by a regulation made for the purposes of subsection 70D(2) in relation to a record.

224. This civil penalty does not apply to the Compliance Committee given that Compliance Committee selection is subject to a competitive process and any performance issues are intended to be managed directly between the Compliance Committee members and the Department.
225. The civil penalty also does not apply to the extent that the regulated entity is not capable of complying with the obligation. The defendant bears the evidential burden (consistent with section 96 of the Regulatory Powers Act) in relation to this exemption given that the information required to make out the exception, that the recipient is not capable of complying with the obligation, is peculiarly within the knowledge of the defendant.
226. Subsection 70D(7) provides that a person will not be excused from complying with an obligation to provide access to records under section 70D due to the fact that the records are or contain commercially sensitive information (including commercial in confidence information).

New section 70E – Publication of information

227. Section 70E outlines the requirements in relation to publication of information. The obligations and requirements imposed by this section are limited the **information holders** listed in subsection 70E(1).
228. It is intended that this provision and regulations made under the Act will increase transparency including by requiring the Minister to publish information in certain circumstances.
229. Paragraph 70E(1)(h) provides for additional persons to be prescribed as an information holder by regulations. This has been included to provide flexibility to deal with additional persons who may hold information, if required.
230. Subsection 70E(2) provides that the regulations may make provision in relation to publishing information held by, or under the control of, an information holder that is relevant to the allocation or use of slots at Sydney Airport, gate movements at Sydney Airport, compliance with this Act, administering or enforcing a civil penalty provision of this Act or performing functions, or exercising powers, under or for the purposes of this Act. References to ‘this Act’ in subsection 70E(2), as elsewhere in the Act, extend to the regulations, any instruments made under the Act, and the Regulatory Powers Act as it applies in relation to the Act – see item 66.
231. Subsection 70E(3) provides a non-exhaustive list of matters which the regulations may deal with which include information that must, or must not, be published, how information is to be published and the circumstances in which an information holder is subject to an obligation to publish information.
232. It is intended that the regulations that are to be developed and made under these provisions will provide specific requirements in relation to the publication of records which are fit for purpose with the view to enhancing transparency.
233. These regulations are likely to be technical in nature and will require a detailed consultation with industry in relation to best way to publish information while ensuring that the publication of records is useful and aligns to the goal of enhancing transparency. Given this, it is considered appropriate for these provisions to be provided in the regulations rather than contained in the Act to provide for flexibility noting that it is likely that future amendments may be required in relation to these processes.
234. Subsection 70E(5) provides that a person is liable to a civil penalty of 60 penalty units if the person an information holder mentioned in paragraph 70E(1)(d), (g) or (h) and the

person fails or refuses to comply with an obligation that has been imposed by a regulation made for the purposes of subsection 70E(2) in relation to publishing information. For clarity, the civil penalty provision does not apply in relation to the Minister, the Department, Airservices Australia, the Slot Manager or the Compliance Committee. In relation to these entities, the Department will manage a failure to comply with these requirements administratively. For example, this could be managed through contractual mechanisms in relation to the Slot Manager or be considered as part of the appointment process for both the Slot Manager and Compliance Committee.

235. The civil penalty also does not apply to the extent that the regulated entity is not capable of complying with the obligation. The defendant bears the evidential burden (consistent with section 96 of the Regulatory Powers Act) in relation to this exemption given that the information required to make out the exception, that the recipient is not capable of complying with the obligation, is peculiarly within the knowledge of the defendant.
236. Subsection 70E(7) provides that an information holder will not be excused from complying with an obligation to publish information under section 70E merely because the information is or contains commercially sensitive information (including commercial in confidence information). It is not intended that there would be any requirement to publish information that would be considered personal information (within the meaning of the *Privacy Act 1988*).
237. Subsection 70E(8) provides protection for information holders from liability in relation to actions, suits or other civil proceeding for or in relation to the publication, in good faith, of information in compliance, or purported compliance, with an obligation under this 70E.

New section 70F – Sharing of information and documents

238. Section 70F deals with the sharing of information and documents. This provision is intended to enable sharing of information with other relevant agencies as required to support responses across government in relation to any allegations of anti-competitive behaviour, support operational efficiency and performance of functions under the Act.
239. Subsections 70F(1) and (2) outline the scope of the provision which applies in relation to information or documents obtained by the Minister in the course of exercising powers, or performing functions or duties, under or for the purposes of this Act. This may include commercially sensitive information.
240. Subsection 70F(3) outlines the circumstances under which the Minister can share information or documents with a **receiving entity** (as defined in subsection 70F(4)). These include that the sharing is for the purposes of the Minister exercising powers, or performing functions or duties, under or for the purposes of this Act, or the receiving entity exercising the entity's powers, or performing the entity's functions or duties; and the information is relevant to the receiving entity's functions or duties; and the Minister is satisfied, on reasonable grounds, that the receiving entity has satisfactory arrangements in place for protecting the information or documents. Paragraph 70F(3)(d) also provides for conditions to be imposed on the receiving entity by the regulations and a requirement that those conditions be met for the purposes of a proposal to share information under subsection 70F(3).
241. Subsection 70F(4) clarifies that the Minister power to share information or documents under subsection 70F(3) is subject to sections 70G and 70H (which are about the use and disclosure of protected information).
242. Subsection 70F(5) provides the list of receiving entities for the purposes of subsection 70F(3). This includes the Slot Manager, the Compliance Committee, Airservices

Australia, an auditor engaged under the Slot Management Scheme or a Commonwealth entity that has functions involving matters relevant to operations at Sydney Airport and is prescribed by the regulations. Paragraph 70F(5)(f) also provides for any other person or body to be prescribed by the regulations. This has been included as a contingency to provide flexibility to allow for the provision of information to additional receiving entities, if required. If such regulations are to be made, consideration will be given to ensuring that information, including protected information (as defined in subsection 70G(4)) that is provided to receiving entities, is sufficiently protected. This would include through the power to impose limits on use or further sharing that is provided in subsection 70F(6).

243. Subsections 70F(6) to (8) provide limitations and obligations in relation to information sharing. This includes that the Minister can, by written notice, impose conditions that must be complied with by the receiving entity that limit the use of the information or documents provided or prohibit further sharing. In addition, the Minister is not required to notify any other person of plans to share the information or the documents with a receiving entity, or provide notification that the Minister has done so.
244. Subsection 70F(9) provides a restriction on receiving entities using or further disclosing information or documents received for a commercial purpose. This provision is related to the secrecy obligations imposed by section 70G.

New section 70G – Civil penalty – using or disclosing protected information

245. Section 70G provides a civil penalty for using or disclosing protected information.
246. Subsection 70G(1) provides that a person contravenes this subsection if is or has been an entrusted person, obtained or generated the protected information (or assisted another person to do so) in the course of, or for the purposes of performing functions or duties, or exercising powers, under or for the purposes of this Act, and use or disclose the protected information. The civil penalty for a breach of this provision is 60 penalty units.
247. Subsection 70G(2) provides an exception where the use or disclosure of the protected information is authorised by or under section 70H.
248. An **entrusted person** is a person listed in this subsection 70G(3). **Protected information** is defined in subsection 70G(4) to mean **commercially sensitive information** or **sensitive personal information**.
249. **Commercially sensitive information** is defined in subsection 70G(5) to be information the disclosure of which could reasonably be expected to substantially prejudice the commercial interests of a person.
250. **Sensitive personal information** is defined in subsection 70G(6). This definition is intended to capture information which could reasonably be expected to endanger the safety of the individual, cause harm to the individual's physical or mental health, have a substantial adverse effect on the individual's lawful business, professional, commercial or financial affairs or expose the individual to a substantial risk of being a victim of identity fraud. The definition also includes information that if communicated could reasonably be expected to disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of the law. This definition is intended to depart from and cover a different set of information to 'personal information' as defined in the *Privacy Act 1988*.

New section 70H – Authorisation to use or disclose protected information

251. Section 70H outlines the situations where entrusted persons will be authorised to use or disclose protected information.
252. This includes where an entrusted person:

- uses or discloses the information in performing functions or duties, or exercising powers, under or for the purposes of this Act (subsection 70H(1));
- discloses the information to a court or tribunal, or in accordance with an order of a court or tribunal, for the purposes of proceedings (subsection 70H(2));
- uses or discloses information to an enforcement body (within the meaning of the *Privacy Act 1988*), if the person reasonably believes that the use or disclosure is reasonably necessary for, or directly related to, one or more enforcement related activities being conducted by, or on behalf of, that enforcement body (subsection 70H(3));
- is authorised to use or disclose the information under another law of the Commonwealth or law of a State or Territory (subsection 70H(5));
- discloses the information to the person to whom the information relates (subsection 70H(6));
- has obtained the express consent of the person to whom the information relates (and is the first person using the information for that purpose) (subsection 70H(7));
- discloses the information to the person who provided the information (subsection 70H(8));
- uses or discloses the information to another person where the information has already been lawfully made available to the public (subsection 70H(9));
- discloses the information for the purposes of that person exercising the person's powers, or performing the person's functions or duties to: the Commonwealth Ombudsman, or another officer within the meaning of subsection 35(1) of the *Ombudsman Act 1976*, or the Australian Information Commissioner, a member of the staff of the Office of the Australian Information Commissioner, or a consultant engaged under the *Australian Information Commissioner Act 2010* (subsection 70H(10)); and
- discloses the information where the disclosure is necessary to lessen or prevent a serious threat to the safety, health or well-being of another person (subsection 70H(11)).

253. This list of permitted uses and disclosures aligns to similar secrecy provisions. It is not intended that permitted uses will extend further, for example to allow sharing with agencies such as the ATO for taxation purposes.

254. In relation to personal information (within the meaning of the *Privacy Act 1988*), Australian Privacy Principle 6 governs the use or disclosure of personal information and provides that agency that holds personal information about an individual that was collected for a particular purpose (the primary purpose), must not use or disclose the information for another purpose (the secondary purpose) unless the individual has consented to the use or disclosure of the information. Permitted disclosures under subsections 70H(2) and 70H(5) provide an exception to this principle where the use or disclose of the information is required or authorised by or under an Australian law or a court or tribunal order. This exception is necessary and proportionate given the need to comply with relevant laws and court or tribunal orders including for the purpose of enforcement.

Item 45 – Before section 70

255. This item provides a simplified outline of Part 8 of the Act which deals with miscellaneous matters.

256. Simplified outlines are included to assist readers to understand the key elements and provisions of the legislation. The Act was drafted before the inclusion of simplified

outlines was standard practice and simplified outlines are being inserted by this Bill to assist readers. The simplified outline is not intended to be comprehensive and readers should rely on the substantive provisions for a comprehensive understanding of this Part.

Item 46 – Paragraph 70(1)(b)

257. This item omits the words “no-slot movement or an off-slot movement” from paragraph 70(1)(b) and substitutes “*no-slot movement or an *off-slot movement” to provide asterisks for the defined terms.

Item 47 – Section 71

258. This item repeals section 71 and inserts two new provisions which deal with delegation.
259. Section 71 deals with delegation by the Minister. This provision enables the Minister to delegate all or any of the Minister’s functions or powers under the Act (or subordinate legislation) to the Secretary or an SES (or acting SES) employee in the Department.
260. This provision also includes the ability to delegate a narrow set of powers to an employee in the Department who holds, or is acting in, an Executive Level 2, or equivalent, position. These specific powers relate to requiring a person to produce information or documents (under section 70C), obligations to publish certain information (under section 70E) and the Minister’s power to share information with certain entities (under section 70F).
261. Delegation of these specific information management related powers to officers at the EL 2 level is required given that it is expected that these information management powers will be regularly exercised for matters of regulation and enforcement and would be best managed at a Departmental level.
262. To ensure that the relevant delegate has the necessary qualifications and skills to exercise the delegated power it is intended that the delegation will be limited and will only be exercised by officers at the EL2 level in the relevant division or that have responsibility for aviation matters including in relation to the Sydney Airport Demand Management framework.
263. Section 71A deals with delegation by the Secretary and provides that the Secretary may delegate all or any of their functions or powers under the Act (or subordinate legislation) to an SES employee, or acting SES employee, in the Department.

Item 48 – Subsection 72(1)

264. This item removes the subsection numbering from subsection 72(1). This amendment is consequential due to the repeal of subsection 72(2) – see item 49.

Item 49 – Subsection 72(2)

265. This item repeals subsection 72(2) which provided that the Act does not make the Crown liable to be prosecuted for an offence, or for a civil penalty under Division 2 of Part 3.
266. Repeal of this subsection is required given that the Act does not contain any offences and Crown immunity from civil penalty contravention is now provided for in section 52(5) – see item 32.

Item 50 – Subsection 74(1)

267. This item removes the subsection numbering from subsection 74(1). This amendment is consequential due to the repeal of subsection 74(2) – see item 52.

Item 51 – Subsection 74(1)

268. This item omits the words “, not inconsistent with this Act,” from subsection 74(1). This is required to reflect the modern approach to drafting regulation making powers and avoid issues of circularity that would otherwise arise from “this Act” being defined to include the regulations.

Item 52 – Subsection 74(2)

269. This item repeals subsection 74(2). Subsection 74(2) previously provided an non-exhaustive list of matters that the regulations may deal with. A number of these matters are no longer relevant or have been provided for in other amendments to the Act.

Item 53 – Clause 1 of Schedule 1

270. This item inserts definitions for **block time** and **Chair** into Schedule 1 of the Act. The definition of block time is contained in the new section 14 - see item 21. Chair is defined as the Chair of the Compliance Committee.

Item 54 – Clause 1 of Schedule 1 (definition of *civil penalty provision*)

271. This item repeals the definition of **civil penalty provision** and substitutes a new definition. A civil penalty provision is defined as having the same meaning as in the Regulatory Powers Act given that the Act will be triggering the relevant provisions in the Regulatory Powers Act - see item 32.

Item 55 – Clause 1 of Schedule 1

272. This item inserts a definition of **commercially sensitive information** into Schedule 1 of the Act. The definition of commercially sensitive information is contained in subsection 70G(5) - see item 44.

Item 56 – Clause 1 of Schedule 1 (definition of *Compliance Committee*)

273. This item repeals the definition of **Compliance Committee** and substitutes a new definition to mean the committee established by subsection 66(1). This amendment is consequential due to the amendment at item 43 which repeals and replaces sections 66 to 69 of the Act.

Item 57 – Clause 1 of Schedule 1 (definition of *Compliance Scheme*)

274. This item repeals the definition of **Compliance Scheme** in Schedule 1 of the Act.

275. This definition is no longer required given that the *Sydney Airport Compliance Scheme 2012* will be repealed with compliance matters to be dealt with in the Act and other subordinate legislation.

Item 58 – Clause 1 of Schedule 1

276. This item inserts definitions of **declared exemption** and **entrusted person** into the Schedule 1 of the Act.
277. A declared exemption is defined as an instrument made by the Slot Manager under sections 47 or 48 – see item 31.
278. Entrusted person is defined in subsection 70G(3) – see item 44.

Item 59 – Clause 1 of Schedule 1 (definition of *Federal Court*)

279. This item repeals the definition of **Federal Court** in Schedule 1 of the Act.
280. The definition of Federal Court is no longer required because the Bill is triggering the Regulatory Powers Act and the full name of the relevant courts are listed in the relevant provisions in Part 5 of the Act – see item 32.

Item 60 – Clause 1 of Schedule 1 (definition of *gate movement*)

281. This item repeals the definition of **gate movement** from Schedule 1 and substitutes a new definition which is contained in the new section 11 – see item 21.

Item 61 – Clause 1 of Schedule 1 (definition of *infringement notice*)

282. This item repeals the definition of **infringement notice** from Schedule 1 of the Act.
283. The definition of infringement notice is no longer required because the Bill is applying the Regulatory Powers Act. Part 5 of that Act creates a framework for infringement notices - see item 32.

Item 62 – Clause 1 of Schedule 1 (definition of *maximum movement limit*)

284. This item repeals the definition of **maximum movement limit** from Schedule 1 and substitutes a new definition which is contained in the new subsection 6(1A) – see item 7.

Item 63 – Clause 1 of Schedule 1

285. This item inserts 11 new definitions into Schedule 1 of the Act.
286. The definitions for **no-slot movement**, **off-slot movement**, **protected information**, **recovery hour**, **recovery period**, **recovery period declaration**, **regulated hour** and **sensitive personal information** are contained in other new provisions of the Act – see items 8, 15, 21 and 44.
287. **Member** is defined as a member of the Compliance Committee and includes the Chair.
288. **Regulatory Powers Act** is defined to mean the *Regulatory Powers (Standard Provisions) Act 2014*.
289. **Secretary** is defined to mean the Secretary of the Department.

Item 64 – Clause 1 of Schedule 1 (definition of *slot*)

290. This item repeals the definition of **slot** from Schedule 1 and substitutes a new definition which is contained in the new subsection 34(2) – see item 26.

Item 65 – Clause 1 of Schedule 1 (definition of *Slot Management Scheme*)

291. This item repeals the definition of ***Slot Management Scheme*** from Schedule 1 and substitutes a new definition which is contained in the new subsection 34(1) – see item 26.

Item 66 – Clause 1 of Schedule 1

292. This item inserts a definition of ***this Act*** into Schedule 1 of the Act.
293. This Act is defined to include the regulations, any instruments made under the Act and the Regulatory Powers Act as it applies in relation to the Act.

Item 67 – Application–civil penalties for slot misuse

294. This item relates to the application of the new Divisions 3 and 4 of Part 3 inserted by this Bill which relate to civil penalties for slot misuse.
295. This item provides that Divisions 3 and 4 of Part 3 apply in relation to gate movements that occur, or that are permitted to occur but do not occur, on or after the commencement of Schedule 1 of this Bill.
296. This is intended to avoid a retrospective operation in relation to the civil penalty provisions.

Item 68 – Application–record keeping requirements

297. This item relates to the application of the record keeping requirements in the new section 70D inserted by this Bill.
298. This item provides that section 70D applies in relation a record, whether the record was created before, on or after the commencement of Schedule 1 of this Bill.
299. It is intended that records that are required to be created or held under the existing framework will become subject to the new regime. Further transition arrangements will be provided for in the regulations.



Australian Government

Department of Infrastructure, Transport,
Regional Development, Communications and the Arts

Impact Analysis Equivalent (IAE) Additional Analysis

Reforms to the Sydney Airport Demand Management
Framework

Office of Impact Analysis reference OBPR21-01225

September 2024

Background

PC Inquiry and Harris Review

The Productivity Commission's 2019 *Economic Regulation of Airports* inquiry (the PC Inquiry) focused on the effectiveness of the economic regulation of services provided by airports to passengers, airlines and commercial operators that require landside access to the terminal precinct. Among other matters, the PC Inquiry made a number of recommendations about demand management at Sydney Airport.

In response to the PC Inquiry, and to consider the fitness for purpose of the Sydney Airport Demand Management framework and the continuing relevance of its objectives, the department commissioned Peter Harris AO to undertake an independent review.

The *Review of the Sydney Airport Demand Management Scheme* (Harris Review) was released by the Australian Government on 18 June 2021. It made 17 recommendations relating to the implementation of the movement cap, encouraging competition in the market, regional access, the governance of slot management, and other reforms.

Impact Analysis Equivalent (IAE) certification

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department) plans to certify that the PC Inquiry and the 2021 report of Peter Harris AO, are, together with additional analysis to be completed by the department, an Impact Analysis Equivalent (IAE).

Regulatory burden estimate

The regulatory burden to business, community organisations or individuals is quantified using the Australian Government's *Regulatory Burden Measurement* framework and is provided below.

Details of the policy problem and available data (Q1)

The PC Inquiry and Harris Review have addressed these matters.

Objectives of reform and need for government intervention (Q2)

The need for government action and alternatives

The *Sydney Airport Demand Management Act 1997* regulates the allocation and use of slots for aircraft to take off and land at Sydney Airport. It was enacted, together with the *Sydney Airport Curfew Act 1995*, to manage community expectations about noise by constraining the capacity of the airport to 80 movements per hour outside of curfew hours (11pm to 6am). It provides an essential planning mechanism for runway movements at the airport, to manage congestion, reduce delays, and support efficient use of the airport.

Other airports across Australia and globally typically rely on the global standards for slot allocation and use, the World Airport Slot Guidelines (WASG). The WASG is applied by a Slot Manager that is a private company, often part-owned by airlines, and contracted by the airport. In some cases, the Slot Manager is government-owned.

There are unique elements of the demand management framework for Sydney Airport, including the movement cap and regional access measures, which do not exist in the WASG. To retain these elements, continuing government intervention (in the form of the current Act) is required.

This framework was not designed specifically to manage competition for slots. In 1997, air traffic had not reached the level where there would be strong competition for slots. Traffic during peak hours is now reaching those constraints. There is an expectation across the aviation industry that government will better facilitate the efficient use of slots at Sydney Airport given the legislated constraints, and the dependence of the broader aviation network on the effective functioning of Sydney Airport.

There are also heightened community expectations around how active the government is in regulating competition for slots and the aviation industry more broadly, given the impacts on consumers of cancelled flights and barriers to competition between airlines.

The current framework has not kept pace with these developing expectations and global innovations in demand management, and so further government intervention to reform the framework is also required.

Objectives of reform

The PC Inquiry and Harris Review have largely addressed their respective objectives for reform. Each approach reform from a different perspective, but share common aims of increasing the efficient use of Sydney Airport as nationally significant infrastructure while managing impacts of noise for the Sydney community, and ensuring that regulatory settings support competition and consumer choice.

The Harris Review also advances reforms with the objective (among others) to support regional access to Sydney Airport. While the PC Inquiry discussed regional access matters, it noted the need for its next report (due around 2024-25) to consider the continued need for regional access arrangements at Sydney Airport in light of the development of the Western Sydney International (Nancy-Bird Walton) Airport and other future considerations.

Indicators of success

Success of the reforms would be indicated broadly by factors including:

- an increase of slot allocation and use in peak periods;

- a decrease in the number of 'stranded' slots and level of fragmentation in slot series over time (noting that the reduction of fragmentation is subject to commercial decisions of aircraft operators and is expected to be incremental);
- examples of increased transparency about slot availability, use, and relevant operations of Airservices Australia and the Slot Manager; and
- ongoing community support for airport operations.

Policy options and net benefits of each (Q3, Q4)

The PC inquiry and Harris Review have addressed policy options.

Consultation (Q5)

The Harris Review and PC Inquiry involved substantial consultation with industry stakeholders. Subsequently, the department undertook its own consultation and further consultation is required. A Senate inquiry also considered demand management matters in 2023.

PC Inquiry

The PC Inquiry received 88 written submissions in response to an issues paper prior to release of the draft report. The PC held consultations and public hearings with 32 representatives between November 2018 to March 2019 to discuss markets for jet fuel supply, content of the draft report, responses to information requests, and draft recommendations. Representatives were engaged from major and regional airports, airlines, airport and airline peak bodies, fuel suppliers, the financial sector, researchers, and relevant governments.

Following the release of the draft inquiry report in February 2019, a further 97 written submissions were received, totalling 185 throughout the consultation process. These are published online at the [PC's website](#).

Harris Review

Public consultation for the Harris Review commenced in November 2020. A discussion paper outlined the scope of the review, framework for public input, key policies underlying demand management and the impact of COVID-19 on Sydney Airport slot management. Interested parties were invited to register for targeted consultation meetings and provide written submissions on the paper. Information about the Harris Review was published online and over 100 stakeholders were directly invited to comment, resulting in 22 one-on-one consultation meetings and 41 submissions. These are published online at the [department's website](#).

Stakeholders included airlines, NSW regional airports, regional and Sydney community representatives, state and local governments, Airport Coordination Australia (the Slot Manager), Airservices Australia, and Sydney Airport. Stakeholders provided insights into operations at Sydney Airport, issues with the current demand management framework, and impacts of potential reforms across different sectors of industry and the broader community.

Department-led consultation

In August 2021, the department commenced consultation with industry, community and government stakeholders through a series of Technical Working Groups (TWGs) to assess the potential impacts of the Harris Review recommendations and to determine how, if agreed by government, reforms would be implemented. 25 TWG meetings were held between August 2021 and February 2022.

Further, targeted consultation with key industry representatives on a narrowed set of options was undertaken between May and June 2023.

Consultation on the development of the Aviation White Paper also saw stakeholders raise matters related to the demand management framework. Submissions are published online, on the department's [Have Your Say page](#).

Other consideration of the issue – Senate Committee inquiry

In September 2023, the Senate established the Select Committee on Commonwealth Bilateral Air Service Agreements to inquire into government decisions on additional services to Australia's airports since 2016. The Committee received 155 written submissions and engaged in 5 public hearings. Issues canvassed included demand management at Sydney Airport. Witnesses included representatives from the aviation industry, government departments, consumer groups, and academics.

Recommendation 7 of the Committee's final report sought the government's urgent response to the Harris Review including recommendations to improve airport slot management and a strengthening of the 'use it or lose it' rule (relevant to priority given in the allocation of slots to operators that have previously been allocated, and used, a slot).

Future consultation

We are planning further consultation with key stakeholders on specific technical elements of the Scheme.

Implementation of preferred options (Q6)

Significant reforms are required to the *Sydney Airport Demand Management Act 1997* and subordinate legislation to implement the various proposals and modernise the framework.

Key reforms requiring legislative change include:

- improving access for new entrants by broadening relevant definitions and principles;
- mandating airline reporting of slot management data and publishing that data;
- implementing the recovery period, particularly the temporary increase to the movement cap; and
- reducing the peak period and providing procedures for re-timing slots.

Administrative implementation and enforcement of the new arrangements will require substantive changes to existing administrative procedures. Some examples include undertaking the competitive selection process and governance arrangements for the Slot Manager and establishing the administrative mechanisms required to support data collection and publication. Government (including the department, Airservices and border control agencies) as well as the Slot Manager and regulated entities will need to adjust.

The reforms will commence upon proclamation, to enable operational commencement of the slot allocation and slot use provisions to be aligned with the beginning of a slot season.

We are planning further consultation with key stakeholders on specific technical elements of the Scheme to ensure effective implementation of the reforms.

Evaluation against success metrics (Q7)

Measuring the success of these proposals will rely on significant data collection and analysis and ongoing community consultation. The reforms would provide for a substantial increase in the data available to government and the public, and would support better monitoring of the performance of the demand management framework.

Where possible, monitoring and evaluation will harness existing mechanisms across government to avoid duplication and minimise costs, including the ACCC's airline monitoring activities, analysis of slot data to be collected and published, and ongoing consultation through existing mechanisms to gauge community sentiment towards aircraft operations in Sydney.

Metrics for monitoring and evaluation could be designed based on indicators of success discussed above.

A review of the operation of the demand management framework will be undertaken after commencement of the reforms as part of the evaluation of the Aviation White Paper. This would be an opportunity to explore whether further adjustments are required to ensure the framework protects community and commercial interests, and remains modern, responsive and fit for purpose.

Further Resources

[The Productivity Commission's 2019 *Economic Regulation of Airports* inquiry \(the PC Inquiry\)](#)

[Review of the Sydney Airport Demand Management Scheme \(Harris Review\)](#)