AVIATION WHITE PAPER CONSULTATION

AIRLINES FOR AUSTRALIA & NEW ZEALAND'S SUBMISSION TO THE AVIATION GREEN PAPER

30 NOVEMBER 2023

AIRLINES FOR AUSTRALIA & NEW ZEALAND

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PREFACE

Airlines for Australia and New Zealand (A4ANZ) welcomes the opportunity to contribute to the development of an Aviation White Paper, and to shaping the policy direction for the aviation sector out to 2050.

In drafting this submission, A4ANZ has been cognisant of the fact that the delivery of a White Paper in 2024 will follow a time of unique challenges for the sector. The four preceding years will have delivered far more severe economic shocks than our sector – and our country – have experienced before. Beyond the initial impacts of the pandemic and the challenges faced in the early stages of recovery, there have been persistent headwinds in the form of global instability, higher oil prices, inflation, supply chain, and workforce shortages, impacting the entire aviation ecosystem. There is therefore no more important moment to focus on what will give the aviation industry its best path to delivering reliable, sustainable, and affordable air travel for all Australians, for years to come.

While airlines form A4ANZ's membership, our intent has always been to frame our contribution to Government policy through a broader lens of public interest, and the social and economic potential of aviation.

In this submission, we have not responded in detail to each of the questions posed in the Green Paper, but instead have outlined some key principles that A4ANZ believes ought to underpin the aviation policy framework. Our goal is to contribute to an informed conversation about shaping effective aviation policy to deliver better outcomes for the sector, consumers, and the economy. Wherever possible, we have drawn on existing evidence and recommendations that could be readily translated into policy and reforms.

Just as we have done throughout the Green Paper consultation process, we would be pleased to work with industry and other stakeholders, including consumers and Government, to further develop some of the potential solutions that A4ANZ and others have put forward.

ABOUT A4ANZ

A4ANZ is an industry group representing airlines based in Australia and New Zealand, including international, domestic, regional, full service, and low-cost carriers. Established in 2017, A4ANZ's members include Air New Zealand, Qantas, Virgin Australia, Regional Express (Rex), and Jetstar.

A4ANZ works collaboratively with Government and other stakeholders, representing the interests of members, their staff, and customers, in relation to public policy issues. In all areas, A4ANZ strives to provide evidence-based, cost-effective solutions to the Australian Government to ensure practical and efficient implementation of policy, together with the preservation and strengthening of access to air transport for all Australians.

A4ANZ member airlines are also making their own submissions to the Green Paper.

Acknowledgement

Airlines for Australia & New Zealand acknowledges the Traditional Owners and Custodians of the lands, waters and skies in which we work. We pay our respects to their Elders past and present.

PRINCIPLES FOR AN EFFECTIVE AVIATION POLICY FRAMEWORK

A4ANZ shares Minister King's view that a safe, efficient, sustainable, productive, and competitive aviation sector is critical to the economy and the standard of living of all Australians.[i]

The following principles have guided A4ANZ's response to the Green Paper. In our view, they should underpin the policy framework for the Aviation White Paper, if it is to successfully take the aviation sector out to 2050.

1. Competition in the aviation sector is about more than just airlines. With airport charges representing the second or third largest contributor to airline costs, and therefore a key contributing factor in route selection, scheduling, and airfare pricing, the White Paper cannot afford to ignore this element.
2. The fact that the airports' regulatory regime lacks an efficient, effective, and enforceable dispute resolution mechanism between airports and airlines deserves appropriate attention in the Aviation White Paper – and must not be sidelined to a Productivity Commission Inquiry, or consumers will lose out.
3. Policy should reflect the ACCC's view that if the Aeronautical Pricing Principles (APPs) can be made more effective, this would unlock the full benefits of the APPs to airlines and thereby protect Australian businesses and consumers from excessive prices or declining service quality.
4. The APPs – which have been so central to Government policy statements in the decades since airport privatisation – should be placed in the Airports Regulations to ensure alignment with policy; but this alone will not make them enforceable. Other measures, such as a Code of Conduct, must be considered to support their effective implementation.
5. Policy and regulatory responses to consumer protections issues should be:
    i. proportionate to the scale of the problem;
    ii. based on evidence of what actually works;
    iii. focused on outcomes (reduced disruption, better complaints handling, affordable fares);
    iv. subject to an impact assessment to ensure they deliver a net benefit, and to reduce the risk of unintended consequences.

[i] *Minister's Foreword*, Aviation Green Paper: Towards 2050, Sept 2023.

6. All passengers with disability have the right to safe and accessible air travel – especially the right to be treated with dignity and respect. There is need for specific actions and commitments to remove barriers to safe, accessible air travel.
7. Government and industry must work constructively and collaboratively with representatives from disability organisations to co-design safe and feasible solutions that reduce barriers to air travel and improve the whole journey experience for passengers with disability.
8. Aviation is vital for Australia's regional and remote communities – supporting our regions through tourism, small business, access to medical care, and critical freight including food and medicines. Government policy support is essential to ensure the viability of routes impacted by increasing landing and security charges.
9. To safeguard the viability and sustainability of essential air services to Australia's regional and remote communities, Government must work with industry to ensure fit-for-purpose regulation of regional airports, and efficient, sustainable, and transparent aviation security charging practices.
10. Industry has been leading efforts to decarbonise the sector. Sustainable Aviation Fuel (SAF) will be the single biggest facilitator of the Australian aviation sector reaching net zero emissions by 2050 but for this to succeed, it will require Government to work constructively with industry – including through the Australian Jet Zero Council – to design and implement supportive policies and investment to encourage the development of a domestic SAF industry.
11. A balanced policy approach will be critical to encourage domestic SAF production and supply, and to stimulate demand – no individual policy will drive SAF growth on its own. For example, mandates alone are not enough to drive SAF uptake, and must be coupled with incentives to help bridge the significant cost gap between SAF and conventional jet fuel.
12. Government must reject the notion that sector governance is currently fit-for-purpose, or will be for the future. What is needed instead is the recognition and development of a viable solution to address the complexities and challenges industry experiences in interfacing with multiple areas of Government.
13. Consistent with other sectors, and indeed other parts of the aviation ecosystem, periodic reviews of the efficiency and effectiveness of monopoly service providers – including Government agencies – are appropriate.
14. It is more important now than ever that aviation stakeholders and the Government work together to take an holistic approach to ensure that our aviation policy settings are fit-for-purpose, providing important safeguards to enable Australians continued access to affordable air travel into the future.

Ensuring an Efficient and Competitive Aviation Sector

COMPETITION IN THE DOMESTIC AIRLINE SECTOR IS INCREASING...

Prior to the pandemic, there were two routes serviced by three or more airline groups.[i]

Now, there are thirteen routes where three or more airline groups compete.[ii]

A 550% increase.

These routes include Australia's six busiest, collectively carrying over 21 million passengers annually.[iii]

...WHILE AIRPORTS PROTECT THEIR MONOPOLY

Airports continue to reject greater transparency, despite recommendations by the Productivity Commission and the ACCC.

Extract from ACCC Final Advice on *More detailed information on financial performance of airports* (2023)

4.45 Overall, we do not consider the additional cost of the ACCC's proposed approach to be disproportionate to the benefits that would be derived from greater information transparency over the performance of monitored airports, given their economic significance in the economy and the impact on the consumers and broader community.

4.46. Monopolies, such as the monitored airports, have the ability and incentive to charge higher than efficient prices, reduce service levels, operate inefficiently, and may over or under-invest in infrastructure. Enhanced monitoring can help detect an airport's exercise of market power and enable the Government to better assess whether the current regulatory framework is adequate. Further, enhanced monitoring may deter an airport from exercising its market power. This ultimately benefits competition, consumers, and the economy.

4.47. The ACCC considers that the changes to the monitoring regime will align with the objectives of the Airports Act, which seeks to facilitate comparison of airport performance in a transparent manner and have due regard to the interests of airport users and general community.

4.48. The ACCC considers that the benefits from imposing higher information reporting requirements under our final position would outweigh these additional costs.

i Source: ACCC. 2023. Airline Competition in Australia – June 2023 Report. Supplementary Data (Jan 2019-May2023). At: https://www.accc.gov.au/about-us/publications/serial-publications/airline-competition-monitoring-reports/airline-competition-in-australia-june-2023-report
ii Source: Skyscanner, accessed X November 2023: https://www.skyscanner.com.au/
iii BITRE. 2023. Australian Domestic Airline Activity—time series. Accessed 24 Oct 2023. At: https://www.bitre.gov.au/publications/ongoing/domestic_airline_activity-time_series

AIRLINES FOR AUSTRALIA & NEW ZEALAND

1. COMPETITION IN THE AVIATION SECTOR

Key points in this chapter

- Domestic airline competition is increasing. Prior to the pandemic, there were just 2 routes with 3 airline groups competing. There are now 13 routes, carrying over 20 million passengers annually.
- Australian consumers also now have more choice. On the popular Melbourne to Gold Coast route – carrying more than 2.2 million passengers each year – travellers can choose from 5 airlines: Qantas, Virgin, Jetstar, Rex and Bonza, and a variety of fare types when making their booking.
- Aviation competition outcomes could be improved by implementing the ACCC's recommendations to improve transparency in the regulation of monopoly airports – with the Productivity Commission having said that this will benefit users of airports and the broader community.
- Competition outcomes could also be improved by considering measures to prevent further increases in the concentration of ownership of Australia's monopoly airports.
- International research indicates that there is little evidence to suggest that the removal of cabotage restrictions actually leads to growth in tourism. An impact assessment of the effects of allowing foreign carriers to operate domestic routes in Australia is needed before any changes are made.

In responding to this part of the Green Paper, it is important to note that competition in the Australian aviation sector is about more than just airlines. If the focus is on ensuring that there continues to be downward pressure on airfares, and improved choice for consumers, it is important to also consider the role of other players within the aviation ecosystem in achieving this goal. With airport charges representing the second or third largest contributor to airline costs,[1] and therefore a key contributing factor in route selection, scheduling, and airfare pricing, the White Paper cannot afford to ignore this element in a discussion about competition.

In this chapter, therefore, we address not only the key considerations for airline competition, but also look at how consumer interests can be better served by improvements to the way in which Australia's monopoly airports – which are not subject to competition – are regulated. This is consistent with the 2009 Aviation White Paper, which dedicated a whole chapter to the regulation of airports.

As the sector continues its recovery from the pandemic, it will be more important than ever that aviation stakeholders and the Government work together to take an holistic approach to ensure that our aviation policy settings are fit-for-purpose, providing important safeguards to enable Australians continued access to affordable air travel into the future.

Understanding the Australian domestic airline sector

High market concentration is not a new phenomenon

As the Green Paper notes, factors such as Australia's geography and population mean that the domestic aviation market is concentrated. This is not a situation that has just arisen post-COVID, despite attempts by some to suggest it is a new phenomenon; it was in fact well-documented for many years prior to the pandemic.[2]

The concentration of the domestic airline market has not escaped the focus of Governments over time, and it has previously attracted attention when reviewing and adjusting policy settings, from the time of the two-airline policy in the 1980s, to the competition policy reforms in the 1990s and the 2009 Aviation White Paper. Today, Australia has what is described as one of the most liberal aviation markets in the world – with policies enabling domestic airlines to be up to 100% foreign-owned. As the ACCC has noted, it is these rules that enabled the launch of Low-Cost Carriers (LCCs) Virgin Blue, Tiger Airways and Bonza.[3] Despite this, for would-be competitor airlines, and those that have attempted to break into the domestic market, factors such as high costs and regulatory requirements are cited as barriers to entry, on top of the existing challenges for airlines such as low profitability and vulnerability to economic shocks. Aviation Expert Neil Hansford described the unique features of Australia as a factor in this market concentration, "*because we've only got 26 million people on the fifth-largest continent. And basically 70 per cent of us live on the eastern seaboard. That's why it's difficult*."[4]

It is important to note that domestic aviation in other countries is also often highly concentrated.[5] In Canada, for example, two airlines (Air Canada and West Jet) held about 85% of the Canadian domestic aviation market before the pandemic.[6] In fact, as the Green Paper notes, Australia's market actually mirrors mature aviation markets internationally, such as in the United States, which are characterised by competition despite having few major domestic players.[7]

Appearing before the recent Senate Select Committee on Commonwealth Bilateral Air Service Agreements, Professor Rico Merkert[ii] was asked about whether the concentration of Australia's domestic aviation market was problematic. In response he said, "*I have always been of the view that the Australian market is large enough for two or three operators and that there should be two or three. We're seeing Rex expanding onto the golden triangle. We also see Bonza trying certain things, connecting regional centres*."[8]

[ii] Professor of Transport and Supply Chain Management, and Deputy Director, Institute of Transport and Logistics Studies, University of Sydney Business School

As short-term pressures following the pandemic and a period of global instability had begun to ease, the market adjusted to its "new normal", with evidence of an expansion of competition – as noted above. These changes in the domestic airline market resulted in increased direct airline competition on several routes, and an expansion of consumer choice. Data from January 2020, just prior to the pandemic, show the Qantas Group (including Jetstar) and Virgin Australia (then including Tigerair) together operating 98.4% of all the available routes.[9] By May 2023, this had reduced to 94%, reflecting changes including the impact of Bonza as the new market entrant. With both Rex and Bonza's further expansion, as outlined below, we expect this will have been reduced further.

Indeed, successive reports published under the ACCC's domestic airline monitoring directive (2020-2023) documented the growing competition in the airline market post-pandemic, noting the positive impact of Rex's entry into intercity networks and then Bonza's emergence in the regions[10], which we explore in more detail in the following sections. Importantly, in 12 successive airline monitoring reports, the ACCC made no findings of anticompetitive behaviour in the domestic airline market.[11]

Therefore, while the Australian domestic aviation market may be concentrated, it is not accurate to say that it isn't competitive, nor that consumers lack choice. As the Green Paper highlights, there is evidence that – despite these market structures – airlines clearly do compete on price and services when there are multiple operators on routes.

Declining airfares have been a consistent trend

The development of Australia's domestic aviation market since airline deregulation in the 1990s has led to periods of fierce competition (including the infamous "capacity wars" of 2014), spurring airlines to invest and innovate to reduce costs, and deliver benefits for consumers in the form of lower prices, better services and more choice – of routes, frequency and fare types.[12] The 2009 Aviation White Paper noted that "*Within five years of the abolition of the two airlines policy, airfares had fallen by 22 per cent. Consumer benefits have continued to flow, with the best discount fares in 2009 a further 40 per cent cheaper, in real terms, than equivalent fares in 1995*."[13]

Global benchmarking has confirmed the relative efficiency of Australian airlines[14], and in the decade prior to the COVID-19 pandemic these efficiencies enabled investments and a reduction in airfares – with the cheapest fares again decreasing – this time by 25%.[15] A 2018 study by the Bureau of Infrastructure and Transport Research Economics (BITRE) found that discount airfares had fallen almost 50 per cent below equivalent fares in 1993, in real terms.[16] It is important to note here that there are few, if any, other sectors which share this trend of the past 30 years.

Post-COVID, as the country began to open up from state border restrictions and lockdowns, a series of Government incentives – including the Tourism Aviation Network Support (TANS) program[17] – pushed airfares to new lows in 2021. Soon after, inflationary pressures, supply chain delays and higher fuel prices impacted airlines all around the world. Australia was not immune from the impacts of these global phenomena, and domestic airfares spiked higher in 2022, unfortunately at the same time as operational performance was significantly challenged through workforce absences and shortages occurring in every part of the aviation ecosystem – from airport security, ground handling, and air navigation providers, to critical airline staff including pilots and engineers. While some of these issues within the broader aviation ecosystem persist in 2023 – not only in Australia[18] but around the world[19,20] – domestic airfares are again on a downward trajectory. As at October 2023, most fare categories were below pre-pandemic levels.[21]

The 13-month moving averages for business and restricted economy fares are well below where they were prior to the pandemic, as the charts below (Fig. 1.1. and 1.2) show.[22]

The moving average for best discount fares has also now returned to and even gone below pre-pandemic levels (see Fig. 1.3, below). It is important when looking at each of these charts to consider that there was a period during 2021 in which the Tourism Aviation Network Support (TANS) program (one of the Government's COVID-19 Support programs) was in place, delivering "half-price" fares.[23]

Figure 1.1 – Domestic Air Fares (Business)

Figure 2.2 – Domestic Air Fares (Restricted Economy)

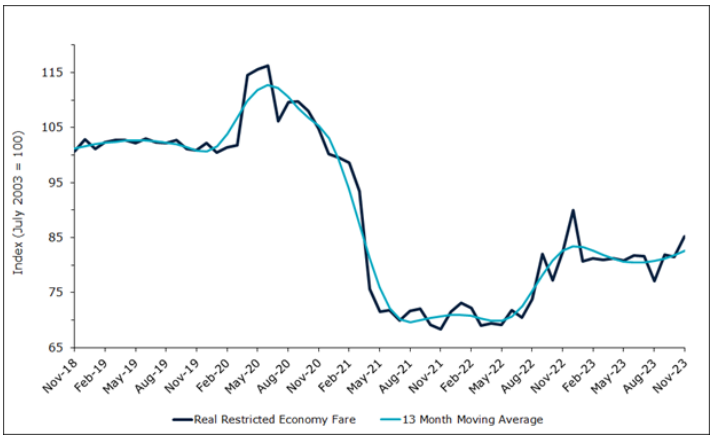
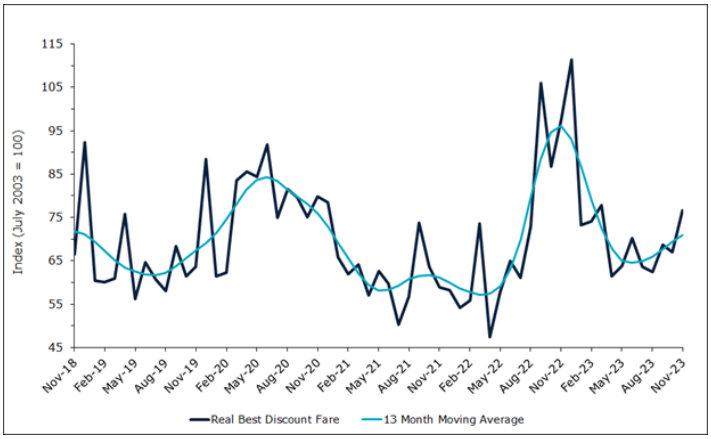


Figure 3.3 – Domestic Air Fares (Best Discount)



While the overall trend has been positive, there is no doubt the airline sector is – at the time of writing this submission – facing some challenging headwinds. As analysts note, with the price of fuel now expected to remain elevated for some time, placing pressure on airlines to manage their costs, any further reductions in airfares in the short-term may be more modest, but are still expected to remain below the highs of 2022.[24]

Given the Aviation White Paper asks us all to take a longer-term view of the industry, it is important to take in this bigger picture; and to also note the historical trends which point to the fact that when these pressures ease and airlines are able to reduce costs in any part of their business (including fuel), they have repeatedly demonstrated a commitment to reinvesting in improving the consumer experience – including increased frequency of flights, additional routes, and fare reductions.[25,26]

Thus, if competition is increasing and fares are declining overall, it will be important for all stakeholders – but especially the Government – to clearly articulate what problem we are seeking to solve for consumers in relation to competition in the airline market, particularly before introducing any significant and long-term policy measures in the Aviation White Paper.

Short-term challenges have been easing

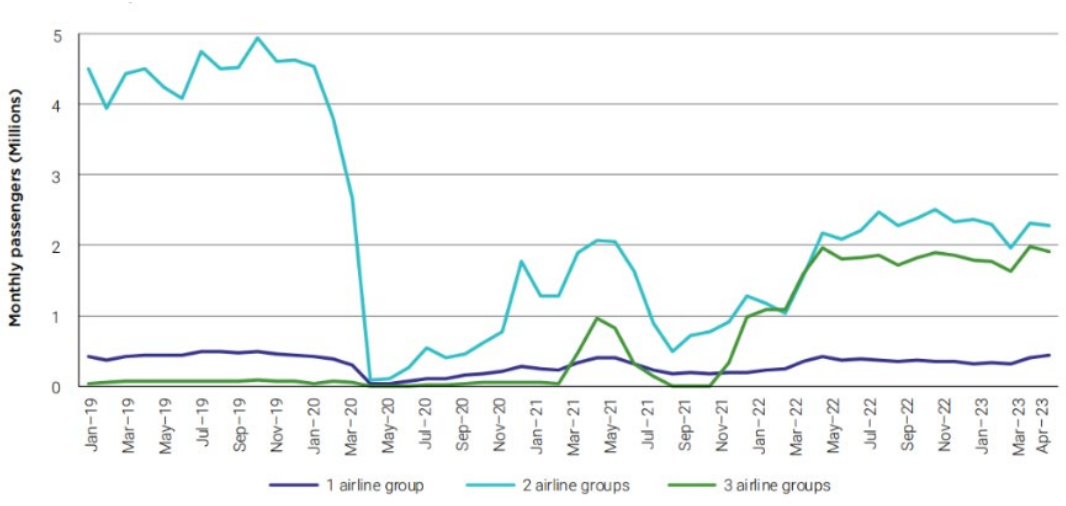
The domestic airline industry was described rightly in June 2023 as being at a critical juncture,[27] but when looking at where it was before the pandemic, and what has happened since, there are strong signs that things are headed in the right direction. The White Paper will therefore need to consider – when taking a long-term view of the policy settings required to deliver the desired outcomes for consumers and to take the sector to 2050 – whether valid arguments can be made that significant government intervention is required.

Unique operational challenges, not a lack of competition, are responsible for performance issues

No one in the airline sector – whether in Australia or globally – is denying that since travel restarted, the experience for travellers has in many cases fallen well short of what passengers, and industry itself expect. A4ANZ member airlines have all acknowledged this, and have taken significant steps to improve the customer experience (see individual airline submissions for more).[28] While these acute performance issues and negative customer experiences have dominated headlines, no evidence has actually been presented which shows a causal link between them and the longstanding features of the domestic aviation market, such as high concentration. As documented earlier, a variety of factors in all parts of the aviation ecosystem, in Australia and elsewhere, created the conditions for this decline in operational performance. It is therefore important when considering the questions within the Green Paper, and attempting to shape long-term aviation policy, to focus on the facts rather than conjecture.

Firstly, as the ACCC's monitoring came to an end in June 2023, none of the twelve reports had made any finding of anticompetitive behaviour. In fact, despite a number of commentators seeking to decry the levels of competition in the market or assert that it had "materially declined" in recent months, the ACCC reports documented a significant increase in competition and choice for consumers – with 42% of passengers flying on routes serviced by three or more airline groups as at May 2023. To put this figure into context, immediately before the Covid-19 pandemic in January 2020, fewer than 1% of passengers were travelling on routes serviced by 3 airline groups, as Figure 1. 4 (below) shows.

Figure 4.4 – Number of passengers serviced by 1,2 and 3 airline groups – January 2019 to April 2023



Source: Data collected by the ACCC from Qantas, Jetstar, Virgin Australia, Rex and Bonza.
Note: Airline groups comprise Qantas Group (including Jetstar), Virgin Australia (including Tigerair), Rex and Bonza. There were no routes on which all 4 airline groups offered services.

Source: Extract from ACCC Airline Monitoring Report, June 2023 (Fig.8) [29]

Furthermore, prior to the pandemic, there were just two routes with three airline groups competing. By May 2023, however, this had more than tripled to nine routes.[30] At the time of writing this submission, there were at least four more direct routes offering a choice of 3 airlines – following Rex's further expansion in Adelaide, Hobart, and Cairns[31,32] – with the now thirteen competitive routes representing a 550% increase from pre-pandemic. The context is also important to note here, as these routes include Australia's six busiest, collectively carrying over 21 million passengers annually.[33]

In practice, with the Qantas Group offering both full service and low-cost carrier options, alongside the options provided by its competitors, this means a wide choice of different fare types for the large majority of consumers. On the popular Melbourne to Gold Coast route – Australia's 5th busiest, carrying more than 2.2 million passengers each year[34] – travellers can now choose from five airlines: Qantas, Virgin, Jetstar, Rex and Bonza, and a variety of fare types when making their booking.

These are the facts about competition in Australia's domestic airline market. It presents a very different picture to much of what others have sought to place on the public record, some examples of which are outlined below.

False claims have driven headlines, but often do not reflect reality

In July 2023, for example, the Australian Airports Association (AAA) made the claim that, "*Following the pandemic, domestic aviation has become one of the most concentrated markets in Australia*," and went on to say that "*Qantas alone has a greater market share with 66% of the market*."[35] This was despite the fact that the June 2023 Monitoring Report from the ACCC clearly showed evidence of increased competition and not greater concentration, and the supplementary data tables listed the Qantas Group's market share at 61.2%, compared to 61.4% pre-pandemic, confirming that it had not, in fact, increased its market share.[36]

The AAA separately, and falsely, claimed that Australia was approaching a point *"where new competitors are too scared to enter the market*."[37] This comment was also made in July 2023, following the release of the final ACCC Airline Monitoring Report, which had documented that, since the start of the pandemic, Bonza had launched and was at that time operating 21 routes, and Rex had expanded beyond its regional network into domestic city-pair services, resulting in a tripling of the number of routes with 3 or more airline groups competing for customers.[38] As we outlined above, this has only increased since.

None of this is an attempt to say that Australia's domestic airline market *isn't* concentrated, as it clearly has two main players in Qantas and Virgin. But the suggestion that this has worsened since the pandemic is simply not true. As the Green Paper notes, *"Australia's domestic aviation market has structurally changed post-COVID. Virgin Australia is pursuing a revised business model, the low-cost airline Bonza has launched services connecting regional hubs to holiday destinations and Regional Express has expanded beyond its regional footprint, bringing increased competition to capital city routes."*[39]

Industry stakeholders, consumers and policy makers may wonder, as we did, at the motivation of the airports' lobby group – representing some of Australia's most profitable monopoly businesses, occupying a market position devoid of competition, and owned by an increasingly concentrated pool of investors – choosing to push false narratives about the airline market, particularly when they are simply not borne out by either the current reality or longer-term trends. A4ANZ asks the Government to consider instead the facts when determining a policy framework for the future.

ACCC monitoring in the aviation sector

In light of the fact that the White Paper will look at policy measures out to 2050, A4ANZ believes it remains important to consider the purpose and value of monitoring in the aviation sector. It is also key to answering the first of the consultation questions in this section of the Green Paper:

What types of data and analysis should the Australian Government produce to support aviation competition outcomes?

Given that the question asks about *aviation* competition, it is essential to expand our collective focus beyond airline competition and also look at the monopoly airport sector, exploring how the Government could support more efficient and cost-effective outcomes across *all* parts of the aviation ecosystem.

Airline monitoring – background and focus

Although the Green Paper did not explicitly ask stakeholders to consider whether the ACCC Monitoring of Airlines should be reinstated, it was always A4ANZ's intention to address it in this submission, given it had been put forward by a range of groups as a solution to perceived competition issues in the sector, and requested by the ACCC. The Government subsequently announced – in October 2023 – that the ACCC's role in monitoring airlines would be reinstated by the end of 2023, for a further three years.[40]

The original Direction for the ACCC to commence the monitoring program was issued in June 2020[41] for a period of three years, with the then-Treasurer explaining clearly that its intention was to "*assist in protecting competition in the domestic passenger airline market, for the benefit of all Australian airline travellers*,"[42] in the context of an expected emergence from the pandemic.

The reports, which were delivered quarterly, highlighted how short-term factors could influence analysis and interpretation, with a period of higher airfares (Dec 2022)[43] immediately followed by one characterised by falling fares (March 2023).[44] "*While the industry continues to recover and respond to the impacts of COVID-19, things can change very quickly*."[45]

By June 2023, with domestic air travel having reached to more than 90 per cent of pre-pandemic levels, and 12 successive reports making no findings of anticompetitive behaviour[46], it was not particularly surprising that an extension of the program was not pursued by the Government at that time.

To be clear, this did not mean that airlines would not be subject to any regulatory oversight. It is important to consider the powers that the ACCC already had – and still has – in relation to monitoring and protecting competition in the airline sector, and to identifying and pursuing allegations of anticompetitive behaviour.[47] Just as it does in other markets, the ACCC relies upon information – and in particular from smaller competitors

– to inform it of potential anticompetitive conduct, as a basis for commencing investigations. As the final report under the original monitoring direction noted, "*While the Australian Government's direction is expiring, the ACCC will continue to watch the airlines' conduct and where necessary use our broad enforcement powers to take action to achieve compliance with competition law and the Australian Consumer Law*."[48] There are examples, separate from the monitoring program, where the ACCC has used its powers to conduct investigations and inquiries into, and indeed to launch action against, airlines.[49,50]

Airports' campaign for airline monitoring did not seem to be about consumers

With much discourse on the topic of airline competition, it was remarkable to observe that some of the loudest and most persistent voices in the campaign to reinstate the ACCC's monitoring of airlines, were those of the airports and their industry association, the Australian Airports Association (AAA), in what was clearly an orchestrated lobbying campaign – even going so far as to write to the Treasurer to warn they would engage in "further media and advocacy" on the topic.[51] And indeed they did, rating the airline sector as worse than banks[52] (an interesting comparison to choose, given that pre-COVID, banks had 17% of their profits classed as "super normal", with airports at 50%.[53] At the same time, most of Australia's airlines were making losses.)

With the AAA asking, via one of many media interviews on the topic, "*Who knows what will happen when the monitoring stops?*"[54] A4ANZ hopes that this submission provides some reassurance in answer to that question, with the decades of data that exist from the pre-COVID period – when there was no monitoring of airlines in place – showing domestic airfares steadily declining, as well as more recent data again showing the same. Not to mention the three years of monitoring in which no findings of anti-competitive conduct were made.

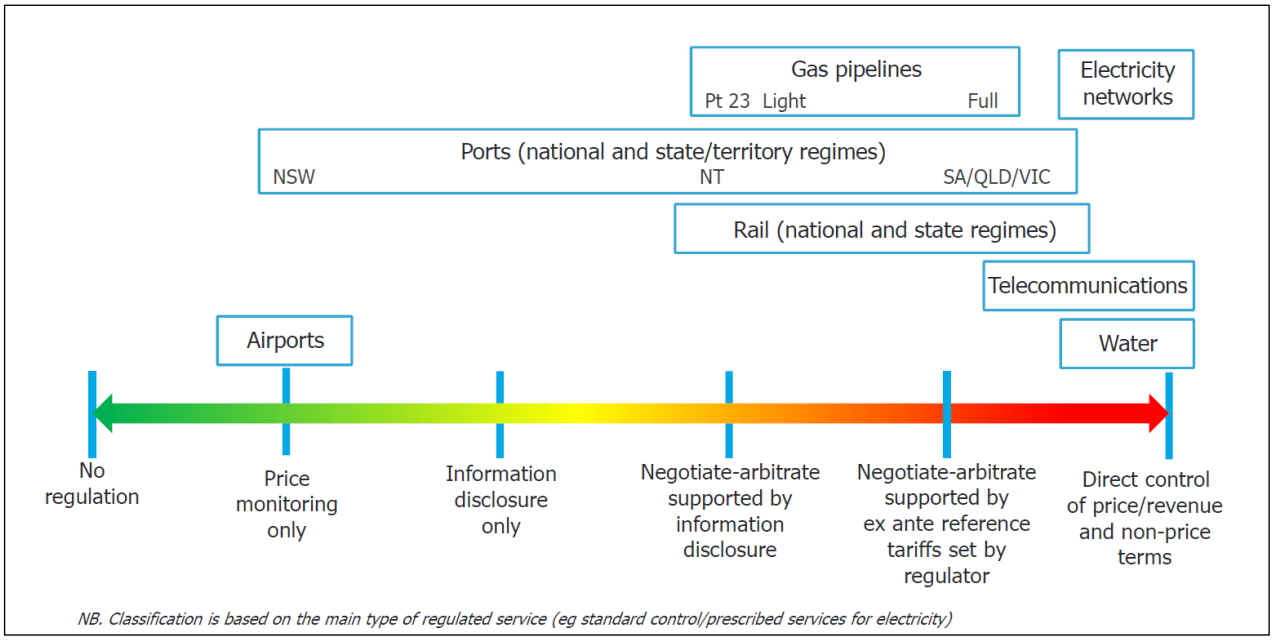
No real rationale was provided for why this issue was so important to the airports, other than apparently for consistency's sake – with AAA asking the government to deliver a "*regulatory framework that promotes competition in the aviation sector, holding airlines to a similar regulatory standard as airports, particularly on the exercise of market power*."[55]

Far from being an argument based on evidence that this would improve things for consumers (the case for monitoring alone as a regulatory intervention is weak, as explored below), it may instead have been an attempt to distract from PC and ACCC-recommended reforms currently being targeted toward the role airports play in the efficiency of the aviation ecosystem, their own market power and the impact of their pricing on consumers (see next section).

Firstly, the argument for consistency conveniently ignores the fact that a concentrated market is not the same as a monopoly, and it also ignores that this intervention would see Australian airlines subject to *greater* regulatory oversight – in terms of both frequency of reporting and scrutiny of performance – than airports.

Secondly, airports in Australia are subject to some of the most light-handed regulation of any monopoly infrastructure in the country (see Fig. 1.5 below)[56], and are among the least regulated airports around the world.[57]

Figure 1.5 – Monopoly infrastructure regulation in Australia



Source: Australian Energy Market Commission 2019 – Classification of Australian infrastructure services[58]

Furthermore, and in contrast to the growing competition and declining prices in the airline sector, successive ACCC airport monitoring reports have documented steep rises in airport charges over time (not always matched by increases in quality) and repeatedly called out the market power of airports as not being in the best interests of consumers.[59]

Only four of Australia's airports even come under the ACCC's monitoring function, despite most of them being monopolies, and a report is only delivered annually. For airlines, on the other hand, the ACCC is required to report quarterly – placing an additional cost burden on both the ACCC and market participants, which has not, to our knowledge, been subject to a regulatory impact assessment. Furthermore, it may be out of step with the original intention of the monitoring, which was for it to be conducted *"in conjunction with the [annual] airport monitoring work already undertaken by the ACCC."*[60]

A concerted lobbying effort by airports, much of which was based on misinformation, as shown above, should not form the basis for making sound, long-term aviation policy. Moreover, it should be noted that at the same time as the airports were seeking greater regulatory oversight of airlines, they were pushing back against measures to improve their own transparency and scrutiny,[61] ignoring recommendations of the Productivity Commission (PC) in 2019 and the subsequent advice of the ACCC following a review undertaken in 2022, as outlined in the following section.

ACCC advice on airport monitoring must also be urgently implemented

In its 2019 Final Report of the *Inquiry into the Economic Regulation of Airports*, the PC argued that enhanced monitoring of airports by the ACCC would deliver transparency over airports' operations and assist in maintaining a credible threat of additional regulation.[62] Specifically, the PC recommended that the ACCC collect more detailed information from the monitored airports on their financial performance, to aid with transparency and the ability to more easily determine if the monitored airports are exercising their market power (Recommendation 9.4).[63] In doing so, the PC argued that appropriate scrutiny of airport performance required an improved evidence base, noting that while relatively high aeronautical charges at some airports "*could be consistent with the airports exercising their market power…the monitoring reports do not contain sufficient detail to make that assessment*."[64]

It is essential for such deficiencies in the regulatory framework to be rectified before setting in place the policy framework for the White Paper, as future PC Inquiries should only be conducted once these critical assessments are able to be conducted, enabling more conclusive findings to be made. As the ACCC noted recently, the "*lack of fulsome and consistent data*:

- *impedes the Airports Act's objective of facilitating the assessment and comparison of monitored airports' performance (for example, in provision of landside access services);*
- *limits the usefulness of published information to airport users (for example, domestic airlines cannot distil data pertaining to provision of domestic aeronautical services); and*
- *impedes the ability of the ACCC and Productivity Commission to assess whether the monitored airports are exercising their market power in relation to specific services (for example, at terminal car parking).*"[65]

Objections to the proposed expanded evidence base and increased transparency were raised by airports during the Inquiry, but the PC's response was unequivocal: "*The reforms are necessary and justified. The benefits of increasing the credibility of the threat would outweigh the costs to airports of complying with the enhanced reporting requirements and the costs to the ACCC of administering the regime.*"[66]

The then- Australian Government endorsed the above Recommendation in December 2019, and agreed, in principle, to amend Part 7 of the Airports Regulations 1997 to expand the reporting requirements for monitored airports, asserting that, "*the Government considers that increasing the transparency of prices and performance will assist it to assess airports' market power over time, for aeronautical, car parking and landside access and services.*"[67] The Government's response further noted that this action *"will benefit users of airports, both passengers and commercial users, and the broader community in the long-run*." [68]

Following delays due to the pandemic, in June 2022, the current Government requested the ACCC commence a review and provide advice on these matters. When the ACCC consulted on the potential options to implement these new transparency requirements, the ACCC's preferred option was accepted by a range of airport users – from international and domestic airlines to car rental companies.[69] Despite this, and the fact that this option was less onerous that the information disclosure requirements in New Zealand (which are still regarded as light-handed regulation), the airports and their representative body, the AAA, again pushed back against changes.[70]

It is concerning that the airports continue to reject reasonable proposals to increase transparency within their part of the aviation ecosystem, especially those recommended by the PC and arising from the ACCC's review. In delivering its advice to Government in May 2023, the ACCC said that it "*considers that the actions recommended in this advice will best achieve the objectives of the price monitoring regime and the Airports Act for the benefit of airport users and the Australian community more generally*."

Decisive action has recently been taken by Government to reinstate the air*line* monitoring regime, in the absence of a comprehensive review but nonetheless based on advice from the ACCC.[71] Given that the above changes to the air*ports* monitoring regime are also based on advice from the ACCC – but follow a consultative review undertaken in 2022, based on recommendations from the PC Inquiry in 2019 – there is arguably a far stronger case to be made for their rapid implementation, also without waiting for the White Paper. While arguing the importance of ongoing monitoring of airlines on the basis that it "*provides the evidence that both consumers and the regulator need to be able to make decisions*,"[72] the airports do not seem to see themselves as having similar obligations – objecting to enhanced transparency requirements, citing issues such as regulatory burden and cost. The ACCC responded to this in their final advice to Government (see Fig. 1.6).[73]

Figure 1.6: Extract from ACCC Final Advice on More detailed information on financial performance of airports

4.45. Overall, we do not consider the additional cost of the ACCC's proposed approach to be disproportionate to the benefits that would be derived from greater information transparency over the performance of monitored airports, given their economic significance in the economy and the impact on the consumers and broader community.

4.46. Monopolies, such as the monitored airports, have the ability and incentive to charge higher than efficient prices, reduce service levels, operate inefficiently, and may over or under-invest in infrastructure. Enhanced monitoring can help detect an airport's exercise of market power and enable the Government to better assess whether the current regulatory framework is adequate. Further, enhanced monitoring may deter an airport from exercising its market power. This ultimately benefits competition, consumers, and the economy.

4.47. The ACCC considers that the changes to the monitoring regime will align with the objectives of the Airports Act, which seeks to facilitate comparison of airport performance in a transparent manner and have due regard to the interests of airport users and general community.

4.48. The ACCC considers that the benefits from imposing higher information reporting requirements under our final position would outweigh these additional costs.

Limitations of monitoring alone

Increased transparency is of course only part of the solution to addressing issues of competition or market power. A4ANZ has held a long-standing position – supported by regulatory experts – that monitoring on its own is not effective regulation,[74, 75] as it does little more than shine a light on the challenges of dealing with monopoly airports.[76]

In a speech titled "*How did the light-handed regulation of monopolies become no regulation?*", former ACCC Chair, Rod Sims AO, acknowledged that "*experience has shown that monitoring will have little or no long-term impact on the conduct of the monopoly infrastructure owner*."[77]

The ACCC's views on this do not appear to have changed, with the latest airport monitoring report (released August 2023) including a section on the limitations of monitoring. "*Typically, monitoring is limited in its ability to address behaviour that is detrimental to the market and consumers, particularly as a longer-term measure where the threat of regulation is diminished. Monitoring does not directly restrict airports from increasing prices or allowing service quality to decline. It also does not provide the ACCC with the ability to intervene in airports' setting of terms and conditions of access to airports' infrastructure*."[78] While the words are applied to airports – and more importantly, to monopolies – the principle is an important one to consider.

Perhaps most importantly, it has been a consistently expressed view of the ACCC – under successive Chairs – that the current light-handed regulatory regime for airports, which is based around annual monitoring, "*is not working well enough to effectively protect Australian businesses and consumers from the exercise of monopoly power by airports.*"[79]

We have made further comments on mechanisms to address the deficiencies in the airports' regulatory regime – including through mandating the aeronautical pricing principles – in Chapter 2 of this submission.

Alongside the White Paper process, issues around competition in key industries such as aviation will be considered by The Treasury's Competition Taskforce, which has been established to identify where reforms can be made to Australia's competition settings.[80] A4ANZ looks forward to also contributing to these discussions, to ensure that the setting across all parts of the aviation ecosystem are fit-for-purpose and, most importantly, deliver the intended outcomes for consumers.

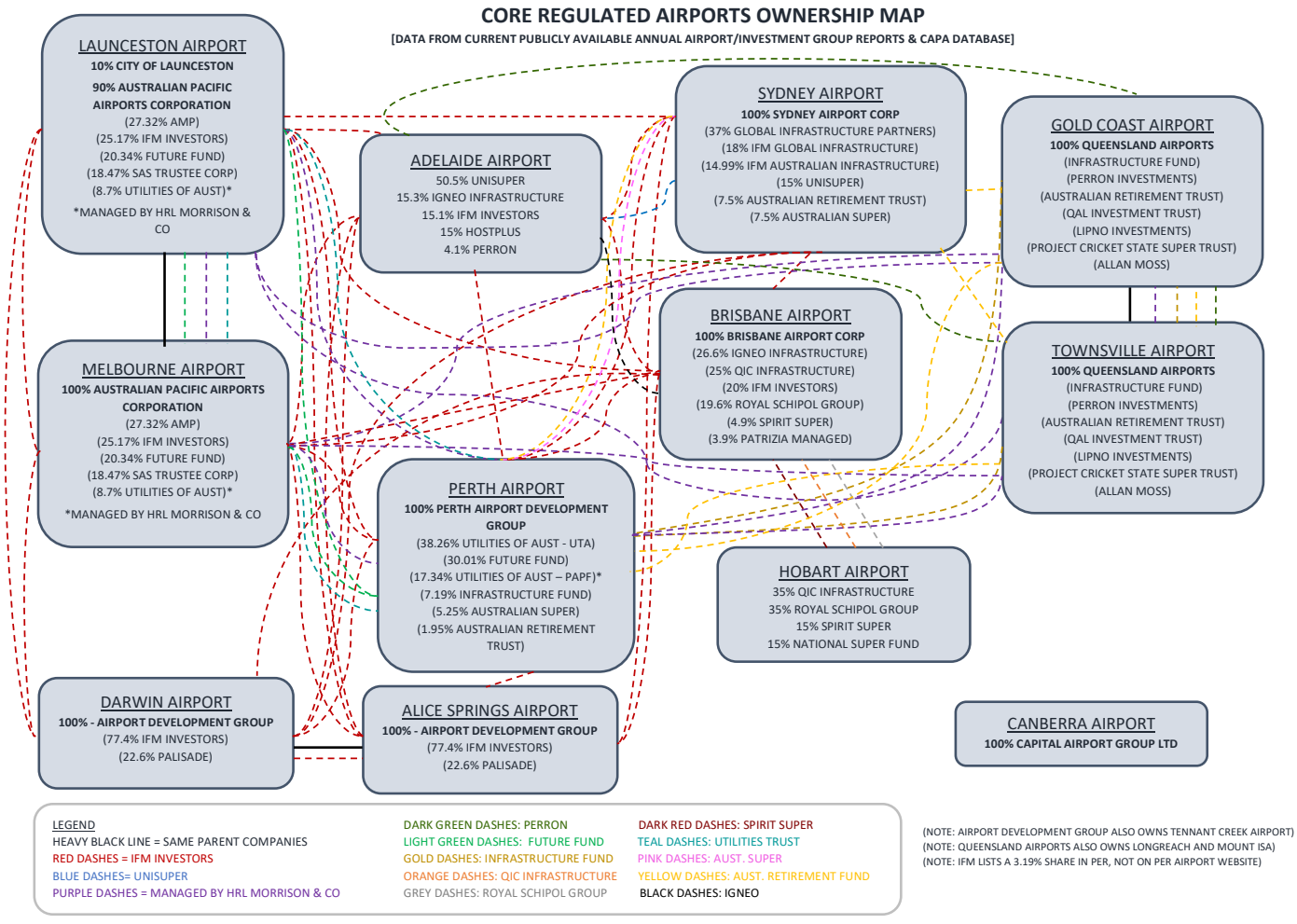
Increasing ownership concentration has increased airport market power

The Green Paper asks *What measures should be taken to ensure Australian aviation markets operate efficiently, improve competition settings, and deliver optimal consumer outcomes?*

This question has been partially addressed above. However, in order to achieve more efficient investment and pricing at airports (in turn delivering better outcomes for consumers), consideration also needs to be given to the regulations surrounding cross-ownership of airports. Indeed, one of the key reasons that restrictions on cross-ownership were included in the Airports Act 1996 and associated regulations, was to "*promote efficient and economic development and operation of airports*."[81]

The privatisation of our airports over the past two decades, however, has led to a significant increased the concentration of ownership of the leased federal airports – creating an intricate web of multiple cross-ownership situations (see Fig 1.7).

Figure 1.7: Ownership of Australia's core regulated airports



While none of the above cross-ownership arrangements currently breach the provisions in the *Airports Act* – as they only apply to certain airport pairs that were deemed relevant at the time (SYD-MEL, SYD-BNE and SYD-PER) – the significant concentration of ownership indicates that the intent of Act's provisions is likely no longer being served by limiting it to just these pairs.

For example, if the cross-ownership restrictions in the Act were expanded to apply to any pair of the 4 major airports, some current arrangements would be in breach of this, including IFM, which has a 25.17% stake in Melbourne and a 20.01% stake in Brisbane – not to mention that at Sydney Airport it now owns two separate stakes of 14.99% and 18.0% (through IFM Australian Infrastructure Fund and IFM Global Infrastructure Fund respectively). Furthermore, if the coverage of these limits were expanded to all core-regulated airports, it would impact a number of investors, again including IFM, which also holds a 77.4% stake in NT Airports (Darwin, Alice Springs and Tennant Creek).

A 2016 analysis of pro-competition rules in airport privatisation around the world found that "*Different airports that share common control have lower incentives to compete among themselves, as there is no financial loss to the common shareholders if customers (either airlines or passengers) exchange one airport for the other. Moreover, common shareholders are capable of coordinating the actions of different airport operators so as to jointly maximize their profits. For example, if two airports are under common control, shareholders may decide to concentrate investments in only one airport, allowing it to become a hub, instead of duplicating investments to develop two competing hubs*."[82]

As the total number of owners and investors across these airports continue to shrink, there are added risks of commonality of strategy, and coordination between the airports, which worsen the existing negative impacts of monopoly airports' market power. A4ANZ is already aware of some instances of behaviour by airports in negotiations with airlines which shows there is a level of coordination on pricing, and that information sharing is occurring, especially where there are common directors. Individual airlines may provide examples.

All of this should be taken into account when considering whether the coverage and provisions within the Airports Regulations remain fit-for-purpose, given the significant changes in the operating environment since they were introduced; particularly in the context of an aviation policy framework intended to take the sector to 2050.

Cabotage

The Green Paper asks stakeholders to consider the question: *Would the Australian Government's publication, in consultation with industry, of a decision-making framework and guide for short term cabotage dispensations support clarity of current processes to manage future decisions to implement longer-term cabotage arrangements?*

In response, A4ANZ asks the Government to consider the following points.

Changes to cabotage arrangements come with risks which have not been assessed

As outlined earlier, and acknowledged in the Green Paper, Australia already has one of the most liberalised domestic aviation markets in the world. The right to refuse permission to the aircraft of other countries is enshrined in the Convention on International Civil Aviation, or the Chicago Convention, and accordingly, most countries do not permit aviation cabotage, with only the member states of the EU an exception, as mutual cabotage rights are granted to each other.[83] Removal of cabotage restrictions would put Australia at odds with the rest of the developed world in terms of domestic aviation policy, and accordingly, there has previously been bipartisan support for retention of the existing settings.

This has not prevented proposals for dispensations, or the relaxation of cabotage restrictions from being raised by stakeholders – although notably not by international airlines themselves – including, for example, as part of the 2018 *Inquiry into Opportunities and Methods for Stimulating the Tourism Industry in Northern Australia*[84] the 2019 Senate Committee Report on the *Operation, regulation and funding of air route service delivery to rural, regional and remote communities,*[85]and more recently, in June 2023, by the ACCC in its final airline monitoring report.[86]

These suggestions all appear to have been made on an assumption or expectation that easing of cabotage restrictions would increase competition and services while at the same time lowering consumer costs. Indeed, the ACCC's report posited that "*removing these restrictions could potentially promote competition on some domestic routes*."[87] However, in evidence presented to the Senate Select Committee on Commonwealth Bilateral Air Service Agreements in September 2023,[88] the ACCC acknowledged that they hadn't yet done any in-depth analysis of what particular routes might benefit, nor assessed the value of those restrictions being removed, at the same time recognising that there may be practical challenges in implementation.[89] Previous international research indicates that there is little evidence to suggest that further liberalisation of air transport/removal of cabotage restrictions actually leads to growth in tourism,[90] and a PC Inquiry noted in 2015 (as it had done before in 1998) that it was "*unlikely that consecutive cabotage (domestic carriage on a domestic leg of a foreign airline's international flight) would lead to substantial efficiency gains*."[91]

Further liberalising cabotage arrangements raises a range of risks and challenges caused – as the Green Paper notes – by the need to place a high degree of reliance on foreign regulators and regulatory frameworks to achieve policy outcomes. These include:

- Regulatory considerations, in areas such as investment, employment and safety standards. In contrast to existing 'investment cabotage' arrangements, Australia would primarily rely on foreign regulators for safety oversight.

- Issues related to the FairWork framework. As has been pointed out by others, in order for economic benefits to accrue, foreign airlines operating in Australia would need to import their lower cost base (including wages and conditions).

Airlines have pointed out some further practical considerations, including that if foreign carriers are permitted to operate on routes alongside Australian airlines, they are able to use aircraft that would otherwise remain idle in the time period between international services – meaning that the foreign carrier would need only to recoup the marginal cost of the capacity operated on the route, in contrast to the local carrier, which needs to recover the full cost of the sector.[92] While this may appear initially attractive if it enables foreign carriers to offer lower airfares, airlines have cautioned that it would inevitably lead to network rationalisation by local operators over the medium to longer term, with Australian carriers redeploying aircraft onto higher-yielding trunk routes at the expense of marginally-profitable or loss-making regional routes. [93]

The Northern Australia Inquiry referred to earlier recommended that "*the Australian Government conduct a cost-benefit analysis of the impact of current cabotage arrangements on Northern Australian airfares, flight routes, and the tourism industry*." [94] To our understanding, however, this work has not been undertaken. Absent this analysis, there is no clear business case for making changes to the current cabotage restrictions and no international precedent for doing so. Removing cabotage for specific routes, or for short timeframes is complex and could create dangerous precedents, with settings that may be hard to undo.

Accordingly, A4ANZ is opposed to any changes to the current cabotage restrictions in place in Australia. While we recognise the need for policy settings to evolve, it is important that any changes are not inconsistent with the Government's broader policy objective – for an efficient, safe, sustainable and competitive Australian aviation sector.[95] Any move to develop a decision-making framework for cabotage dispensation will need to be contingent upon first completing an impact assessment of the effects of lifting the restrictions to allow foreign carriers to operate domestic routes in Australia. As outlined above, these effects could be widespread and cause material damage to domestic airlines, including those serving regional communities. Weakening or reducing the competitiveness of Australian airlines is at odds with the stated intentions of the White Paper in relation to both the sustainability of the sector and the outcomes for consumers; as well as broader Government policy in areas such as tourism.

Enshrining the Aeronautical Pricing Principles through a Prescribed Voluntary Code of Conduct for the Australian Aviation Industry

Addressing the threshold criteria set out in Treasury's *Industry Codes of Conduct Policy Framework**

IS THERE AN IDENTIFIABLE PROBLEM IN THE INDUSTRY?

The Aeronautical Pricing Principles (APPs) are inconsistently applied by airports, to the detriment of airlines, consumers, and the broader economy, left unprotected from airports' market power.

"The ACCC considers that these findings indicate that the current light-handed regulatory regime is not working well enough to effectively protect Australian businesses and consumers from the exercise of monopoly power."

ACCC Airport Monitoring Report 2021-22

CAN THE PROBLEM BE ADDRESSED USING EXISTING LAWS AND REGULATIONS?

The regime lacks an efficient, effective, and enforceable dispute resolution mechanism between airports and airlines.

"Unlike other specialist and niche industries, there is currently no mechanism for efficient, and cost-effective approaches to the resolution of disputes between Tier 1 airports, airlines, and airport aviation users."

"The disputes process is funnelled into the existing legal system, which in some cases have taken years to progress. There is also a negative impact on consumer outcomes while commercial relationships remain fractured."

Future of Aviation Reference Panel, Final Report 2021

HAS INDUSTRY SELF REGULATION BEEN ATTEMPTED?

In 2022, A4ANZ drafted a code which incorporated the APPs. Intended to be voluntary and self-regulated, it was initially received positively by the AAA. However, as the industry progressed in its recovery, further attempts to work together were – regrettably – rejected by the AAA and airports, despite previously-stated support.

"Both airlines and airports have suggested a need for a set of agreed negotiating and contracting principles, including standard contract clauses and performance incentives for airports. Parties could voluntarily pursue these principles through industry-led measures, or request that the Australian Government facilitate this process."

Productivity Commission Final Report 2019

IS AN INDUSTRY CODE THE MOST SUITABLE MECHANISM FOR RESOLVING THE PROBLEM?

An industry code provides a framework for not only embedding the Aeronautical Pricing Principles, but also creates a set of shared expectations around how negations between airports and airlines will occur, and – most importantly – how disputes will be dealt with.

"Providing airlines with access to arbitration would provide a constraint on the monopolist airports' market power without jeopardising investment. It is likely that having recourse to arbitration will be enough of an incentive to come to an agreement in negotiations, meaning that in practice few parties will seek to initiate arbitration."

ACCC Submission to PC Inquiry 2019

IS THERE LIKELY TO BE A NET PUBLIC BENEFIT?

More efficient and effective negotiations and resolution of disputes when they occur, delivers benefits to the aviation sector, consumers, and the economy.

"If the Aeronautical Pricing Principles (APPs) can be made more effective, this would unlock the full benefits of the APPs to airlines and thereby protect Australian businesses and consumers from excessive prices or declining service quality."

ACCC Airport Monitoring Report 2021-22

*The Treasury, 2017. Industry Codes of Conduct Policy Framework https://treasury.gov.au/publication/p2017-t184652

2. AERONAUTICAL PRICING PRINCIPLES

Key points in this chapter

- Successive governments over nearly two decades have had a stated expectation that airports will adhere to the Aeronautical Pricing Principles (APPs) when establishing prices, service delivery and in the conduct of commercial negotiations with airlines.
- Recently, both the Productivity Commission and the ACCC have found that the APPs are inconsistently applied and are not working well enough to protect Australian businesses and consumers from the exercise of monopoly power by airports.
- There is a strong case for mandating the use of the APPs, in a manner that retains the light-handed approach to the regulation of airports, such as through a prescribed voluntary code of conduct.
- Codes of conduct offer a mechanism to improve transparency, set minimum standards, and provide for dispute resolution procedures; all of which can lead to long term changes to business culture which then drive competitiveness, sustainability, and productivity in the sector.

The Green Paper notes that *the Australian Government considers a review of Aeronautical Pricing Principles and how their implementation could be improved may be worthwhile.*

In supporting this proposal, A4ANZ notes that it is consistent with a recent recommendation from the ACCC for future work to improve the operation of the Aeronautical Pricing Principles (APPs) in commercial negotiations.[96] While the ACCC has referred to APPs as "*a framework for airports and airlines to use when negotiating prices and service levels,*" they also report that they are inconsistently applied by airports, to the detriment of airlines, consumers and the broader economy.[97]

This is an issue that deserves appropriate attention in the Aviation White Paper – not one that should be sidelined to a competition review or the next Productivity Commission Inquiry. A4ANZ welcomed the question in the Green Paper, "*Should the Australian Government mandate use of the Aeronautical Pricing Principles?*", and the short answer to this is, yes. In this chapter, we offer the following commentary in support of the proposition.

The airports' regulatory regime isn't working

As noted in Chapter 1 on Competition in Aviation, the regulatory regime for Australia's airports is no longer fit-for-purpose; as it is – in the words of the ACCC – "*not working well enough to effectively protect Australian businesses and consumers from the exercise of monopoly power by airports*."[98]

It has been a consistently expressed view of the ACCC – under successive chairs and now over multiple decades – that the current light-handed regulatory regime, which is centred on annual monitoring, is "*limited in its ability to address behaviour that is detrimental to the market and consumers, particularly as a longer-term measure where the threat of regulation is diminished. Monitoring does not directly restrict airports from increasing prices or allowing service quality to decline. It also does not provide the ACCC with the ability to intervene in airports' setting of terms and conditions of access to airports' infrastructure*."[99]

Examples of the regime's failure are not limited to those expressed by airlines. Evidence presented to the Productivity Commission (PC) demonstrated the impact that monopoly airports' market power can have on pricing and negotiating leverage for a range of other airport users.[100,101] The ACCC annually documents the impact to consumers of monopoly car parking pricing at airports, which, prior to the pandemic, could deliver as much as 70 cents in every dollar as profit to the airport operators.[102]

A 2019 collective bargaining application to the ACCC confirmed that there would be a net public benefit in allowing a rental car consortium to negotiate more favourable and commercially-reasonable terms from Cairns airport, because it would enable them to offer their customers better rates and improved services.[103] This is not surprising, given data submitted to the PC showing that rental car companies are forced to pay up to seven times more to be at the airport than at a city location, with Australia holding the invidious honour of having nine of the top ten most expensive airports in the world for rental car operators; more than Heathrow, Los Angeles, or Paris.[104]

The situation remains unchanged post-COVID, and is in fact likely to worsen, as the ownership of Australia's airports becomes increasingly more concentrated (discussed in Chapter 1). In relation to the recent acquisition of Sydney Airport, for example, the ACCC had noted stakeholder concerns that the consortium purchase "*may add to the flow of information between airports with common ownership, which could give airports more bargaining power against airlines and other users of airports.*"[105]

Furthermore, in its most recent monitoring report, the ACCC found that the outcomes of negotiations between airports and their biggest customers – the airlines – "*do not necessarily result in prices that reflect long-term efficient costs of aeronautical services because of uneven bargaining power between the parties*."[106] This is a clear sign that the system is in need of reform, and the White Paper provides an opportunity to address this.

In proposing a way forward, the ACCC referenced the role that the Aeronautical Pricing Principles are expected to play in supporting the negotiations of agreements between airports and airlines, arguing that, "*if the APPs can be made more effective, this would unlock the full benefits of the APPs to airlines and thereby protect Australian businesses and consumers from excessive prices or declining service quality*."[107]

Adherence to the Aeronautical Pricing Principles should be uncontroversial

The position of successive Governments on the principles underpinning aeronautical pricing has remained largely consistent over two decades. Initially called *Review Principles*, they were announced by the Government in 2002, in response to the PC's Report on *Price Regulation of Airport Services.*[108] They were developed to support the removal of price controls on airports, and to enable assessments of airport behaviour throughout price monitoring periods.

Amendments were made by the Government in 2007 – again in response to a PC Review – to address asset revaluation, 'good faith' negotiating and dispute resolution, and risk sharing.[109] These became the *Aeronautical Pricing Principles (APPs)*. The ACCC's 2009 Airport prices monitoring and financial reporting guideline makes explicit reference to the APPs, noting in particular, "…*that aeronautical asset revaluations by airports should not generally provide a basis for higher aeronautical prices, unless customers agree*."[110] And whilst the guideline was created to meet the Information Requirements under Part 7 of the *Airports Act 1996* and Section 95ZF of the then-*Trade Practices Act 1974*, the APPs do not actually appear in either piece of legislation. Recommendations for further amendments – to deal with anti-competitive clauses in contracts – were adopted by the Government in response to the 2019 PC Inquiry[111], but an updated version of the APPs was never published.

It was stated clearly at the time the current APPs were introduced that that "*the Government expects the price monitored airports and their customers to operate in a commercial manner consistent with the Aeronautical Pricing Principles. This includes utilising commercial processes, such as independent commercial mediation/binding arbitration, for resolving disputes*." And further, that "*the Government considers that these Pricing Principles should act as a guide for the conduct of all airports, whether price monitored or not*." [112] In its response to subsequent PC Inquiries – in 2011 and 2019 – the Government reaffirmed these expectations.

For their part, the airports have said that they too support the APPs.[113] Perth Airport, for example, said of its approach to negotiations that it is "*confident that this approach, and the inputs to it, are consistent with the Pricing Principles that have been established by the Australian Government and developed by the PC over three successive public inquiries dating back to 2002.*"[114]

Therefore, the mandating of the APPs ought to be uncontroversial. It would seem, however, that the statements of support and the practical application of the APPs are two very different things.

Support for APPs does not always match reality

The 2019 PC Inquiry into the Economic Regulation of Airports identified that the APPs were not always being applied in commercial negotiations with airlines.[115] This was reinforced by the ruling of the Supreme Court of Western Australia, which found that in 2018, Perth Airport had acted inconsistently with the APPs in

establishing its prices; and that it possesses, and has likely exercised, substantial market power in negotiating aeronautical charges with airlines.[116] Then in 2022, the ACCC noted that the APPs were not being applied by airports in such a way as to protect Australian businesses and consumers from excessive prices or declining service quality. Further, that when negotiations break down, with disputes over prices or services, there is no mechanism to enforce the clause in the APPs for referring disputes to independent commercial mediation or arbitration.[117]

Practically, this means that the clause referring disputes to independent commercial mediation or arbitration can be – and is – simply ignored, leaving the disputes to become protracted and expensive. Again, Australia's airports are an outlier when compared to other industries, but the ultimate consequences for disregarding the APPs are largely felt not by the airports themselves, but by the users of the airport, from airlines through to consumers. Individual airline submissions document some of the monopolistic behaviour of airports that is at odds with the APPs.

The objectives of the APPs are clearly not being served by this situation and, without intervention, the public will continue to experience the negative impact of these inefficient outcomes.

Mandating the Aeronautical Pricing Principles

The Green Paper asks, *Are the Aeronautical Pricing Principles fit-for-purpose? How could they be improved?* In response, A4ANZ believes that the principles themselves appear to be largely fit-for-purpose – indeed, they are supported by airports, airlines, regulators and Governments alike, as outlined above. More than just providing a framework for airports and airlines in the conduct on negotiations, however, the APPs have also become a fundamental element of the regulatory regime applied to Australia's monopoly airports – utilised by both the PC and the ACCC in their periodic reviews of the regime's effectiveness.

The part that is not fit-for-purpose is that there is nothing holding parties to account if they simply choose to ignore the APPs, which airports frequently do, particularly in the situation where disputes arise. Addressing this lack of enforceability is how the APPs could be improved. In the following sections, we outline some pathways for consideration by the Government.

Insertion into the Airport Regulations

There is an inconsistency in the current *Airport Regulations 1997*; while a definition of *aeronautical services and facilities* is included in a Schedule within the Regulations, no reference whatsoever is made to the *Aeronautical Pricing Principles*. This is evidently a gap, particularly given the prominent role that they are expected to play in the regulatory regime, as outlined above.

It is our understanding that simply inserting the APPs into the Regulations would not make them instantly enforceable, without the inclusion of specific provisions to this effect. Translating principles into legislation would require them to be clarified, and inconsistencies addressed. For example, to align with the stated expectation that the APPs should apply to all airports, whether price-monitored or not.

Regardless, this should not limit consideration of this option for enabling the APPs to be more effective, as the ACCC has urged. There is good reason to give the APPs – which have been so central to Government policy statements in the decades since airport privatisation – an appropriate regulatory home. Their placement in the Regulations would ensure alignment between the regulations and Government policy.[118]

Inclusion within a Code of Conduct

A Voluntary Code of Conduct offers a mechanism through which to embed the APPs and bind parties to them. From Treasury: "*Codes can play a valuable role in bringing industry participants together…to find ways to address problems in commercial dealings between them…fostering long term changes to business culture that can drive competitiveness, sustainability and productivity in the sector.*"[119]

Voluntary codes of conduct offer a number of benefits through inclusions (non-exhaustive) which:

- improve transparency and certainty in contracts;
- set minimum standards of conduct; and
- provide for dispute resolution procedures.[120]

According to both Treasury and ACCC guidance, the first step in this process is for the industry itself to develop a voluntary, self-regulated Code (as shown in Fig 2.1, below).

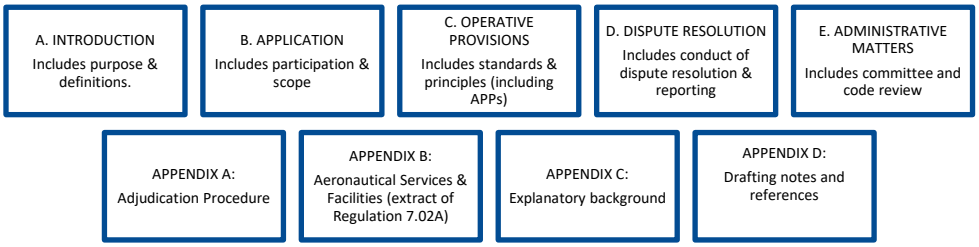
Figure 2.1 – Industry Codes of Conduct Categories[121]

The implementation of a voluntary code which includes the APPs is both light-handed, and consistent with the former Government's response to the 2019 PC Inquiry, which encouraged "*all parties to continue to work together to strengthen their commercial relationships under the current regulatory framework. It welcomes interest by some airlines and airports in working together to establish principles that could be of assistance in guiding negotiations and achieving mutually satisfactory service contract outcomes*."[122]

Responding to this call for collaboration on principles, a *Voluntary Aviation Industry Code of Conduct* was drafted by A4ANZ, initially in discussion with AAA, as means of enshrining the APPs in a document and to

provide a process to which all parties could adhere. Key inclusions of the draft Code can be seen in Fig. 2.2 (below), with the full draft Code at Appendix A.

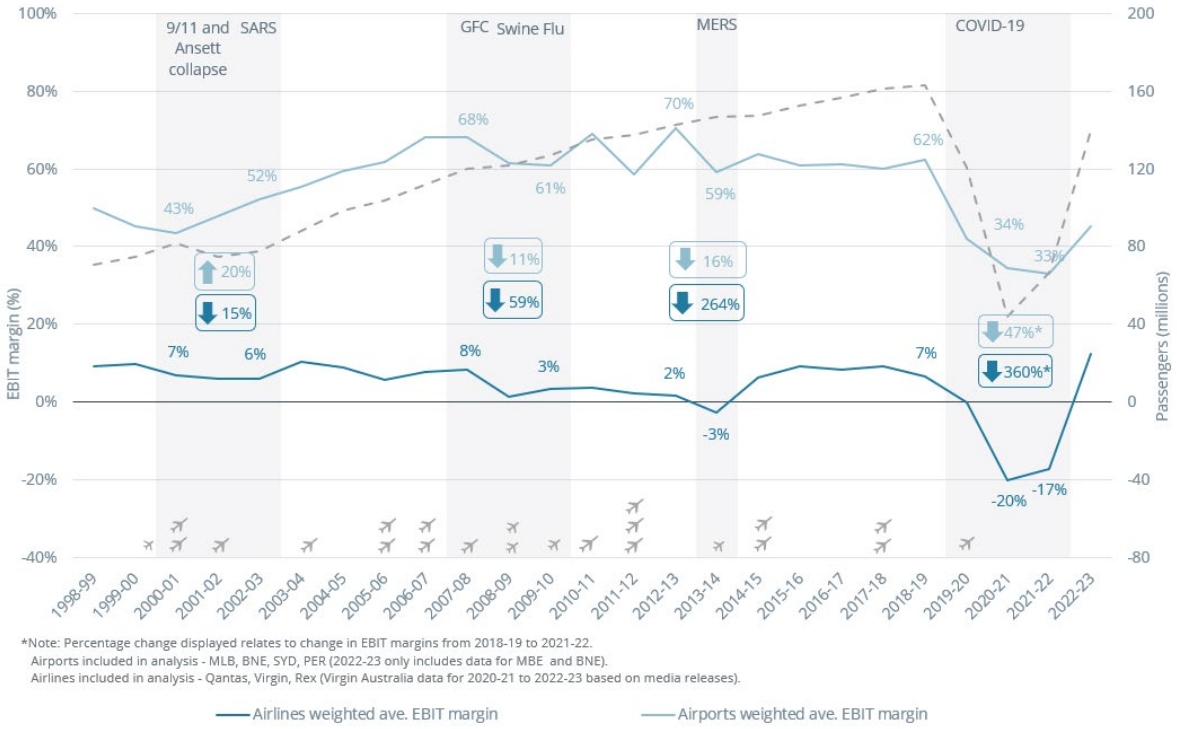
Figure 2.2 Key sections of the draft Voluntary Aviation Industry Code of Conduct



This voluntary, industry-led code of conduct was envisioned by A4ANZ and initially received positively by the AAA through early-mid 2022. As the industry progressed in its recovery, however, further attempts to work together towards self-regulation through an entirely voluntary Code, were – regrettably – rejected by the AAA and its airport members.

This unwillingness may be reflective of the fact that, historically, the financial impact of global events has been greater on airlines than on airports, with airlines typically operating on very thin margins (see Fig 2.3. below). By contrast, the major Australian airports went into the pandemic as some of the most profitable businesses in the country and the world, enjoying margins more than twice the international average.[123] Furthermore, at an international level, airports made clear their expectation that the recovery of their pandemic losses should be in the form of higher charges to airlines.[124]

Figure 2.3 - Volatility of airline and airport profitability with demand shocks



Source: Frontier Economics analysis of airline and airport annual reports, financial data reported to the ACCC's airport monitoring report, and BITRE airport traffic data. Weighted averages for airports include Sydney Airport, Melbourne Airport, Brisbane Airport and Perth Airport, whereas for airlines it includes Qantas, Virgin Australia (exc. FY2021) and Rex.

In the following section, therefore, we set out the case for what will now clearly need to be a prescribed voluntary aviation industry code of conduct; addressing each of the threshold criteria set out in Treasury's *Industry Codes of Conduct Policy Framework* (Fig 2.4, below).[125]

The framework notes that governments will generally not consider bringing forward a prescribed industry code unless evidence exists to indicate that self-regulation has been attempted within the industry and failed to address the problem adequately – a threshold that has now been met by the good faith attempts of A4ANZ to work with AAA on a self-regulated Code.

Figure 2.4 – Threshold questions to move to a prescribed voluntary code of conduct

1. Is there an identifiable problem in the industry?
2. Can the problem be addressed using existing laws and regulations?
3. Has industry self-regulation been attempted?
4. Is an industry code the most suitable mechanism for resolving the problem?
5. Is there likely to be a net public benefit?

Source: Treasury's *Industry Codes of Conduct Policy Framework 2017*[126]

The possibility of the Government playing a more active role in enforcing the APPs was something the Productivity Commission had identified in 2019, noting that while "*Both airlines and airports have suggested a need for a set of agreed negotiating and contracting principles, including standard contract clauses and performance incentives for airports. Parties could voluntarily pursue these principles through industry-led measures, or request that the Australian Government facilitate this process*."[127]

This statement also reflected the sentiments of the Australian Airports Association (AAA), who said at the time that *"If the government was to endorse principles for negotiating and contracting, this would guide the behaviour of both airports and airlines and lead to a substantial improvement in outcomes through more timely and less expensive negotiating processes."*[128]

A prescribed voluntary code would enable this to become a reality.

The case for a Prescribed Voluntary Code of Conduct

In this section, we address each of the criteria to move from a self-regulated, voluntary code of conduct, to one that is prescribed by government. [129] Prescribed industry codes are designed to achieve minimum standards of conduct in an industry where there is an identifiable problem to address, and they cover the relationship between industry participants and with their customers. The first option is a voluntary code, only applying to those who sign up, while others are made mandatory, and the industry must follow them; both are regulated by the ACCC.

There is an identifiable problem in the industry

That problem is that the Aeronautical Pricing Principles are not being consistently applied by airports; and this is – as the ACCC has noted – to the detriment of airlines, consumers, and the broader economy, left unprotected from airports' market power.

As summarised earlier, successive governments have expected the APPs to act as a guide for the conduct of all airports, whether price monitored or not, in negotiations with their customers. This began with their introduction in 2007, with the then-Treasurer saying, "*The Government expects the price monitored airports and their customers to operate in a commercial manner consistent with the Aeronautical Pricing Principles. This includes utilising commercial processes, such as independent commercial mediation/binding arbitration, for resolving disputes*."[130]

However, as outlined above, both the PC and the ACCC have reported that the APPs are not always being applied by airports, and therefore are not working to protect Australian businesses and consumers from excessive prices or declining service quality. [131] Further, when negotiations break down, with disputes over prices or services, there is no mechanism to enforce the clause in the APPs for referring disputes to independent commercial mediation or arbitration.[132]

The problem has not been resolved, despite existing laws and regulations

As outlined earlier, Australia's airports are subject only to annual price monitoring by the ACCC, a very light-handed approach which sees airports as an outlier in terms of monopoly infrastructure regulation. More importantly, by the ACCC's own assessment, the regime does not work to constrain airports' market power in negotiations with airlines, and consumers ultimately lose out when disputes cannot be resolved in a satisfactory – and timely – manner.

This regime lacks an efficient, effective, and enforceable dispute resolution mechanism between airports and airlines. In the Future of Aviation Reference Panel's final report, they noted that "*unlike other specialist and*

niche industries, there is currently no mechanism for efficient, and cost-effective approaches to the resolution of disputes between Tier 1 airports, airlines, and airport aviation users" and further, that *"the disputes process is funnelled into the existing legal system, which in some cases have taken years to progress. There is also a negative impact on consumer outcomes while commercial relationships remain fractured."*[133]

In the monopoly gas pipeline sector, for example, the introduction of an independent arbitration regime[134] not only resulted in fewer disputes (only two have required arbitration since the scheme commenced) but also enabled faster resolution than the court system, with the arbitration process completed within three months.[135]

For users of airports, however, the PC Inquiry showed that one of the only options for resolving disputes under the current regulatory regime is through the courts; where a decision is made by a judge, rather than a commercial arbitrator with specific expertise in complex economic matters such as airport pricing. With dissatisfied parties then able to access appeals, there is ample evidence to show that litigation is an expensive and protracted process; the Perth Airport - Qantas dispute (now running for more than five years and costing many millions of dollars) is a salient example. There is clearly a gap.

Industry self-regulation has been attempted

In 2022, A4ANZ drafted a code, intended to be voluntary and self-regulated by the airlines and airports. Pursuing an industry code of conduct offered a means of enshrining the APPs in a document to which all parties could adhere, and this was the objective of our efforts. A4ANZ also undertook this work on the basis that industry codes typically contain a set of requirements to improve transparency and certainty in contracts, set minimum standards of conduct; and – importantly – provide for dispute resolution procedures.

The introduction of a voluntary code was also seen as consistent with the PC's advice following its 2019 Inquiry, as well as that of the independent Future of Aviation Reference Panel, and the stated expectation from Government – at both Ministerial and Departmental level – that the industry seek to find their own solutions to commercial disputes.

The Voluntary Aviation Code of Conduct (at Appendix A) was drafted by A4ANZ with the support of airlines and initial interest from the AAA, and drew on guidance from both ACCC's *Guidelines for developing effective voluntary industry codes of conduct*[136] and Treasury's *Industry Codes of Conduct Policy Framework*.[137]

We anticipated the active engagement of airports, given their previous support for involving the APPs in negotiations and for Government to take a more active role in this. If airports are not seeking to exercise their monopoly power, they ought to have had no reason to reject a voluntary, self-regulated code; and yet they did. Despite an initial series of meetings with AAA on the principles underpinning the code, and an agreement

to consider a draft, A4ANZ was ultimately advised that the AAA members had made a decision that they would not engage in further discussions on a code.

An industry code provides a suitable mechanism for resolving the problem

An industry code provides a framework for not only embedding the APPs, but also creates a set of shared expectations around how negotiations between airports and airlines will occur, and – most importantly – how disputes will be dealt with.

The implementation of a voluntary code of conduct does not impose heavy regulation on parties and represents a sensible way to embed the dispute resolution processes already envisaged for the sector through the APPs.

When looking at how other monopoly infrastructure sectors have addressed similar challenges (e.g. the Part 23 Framework for gas pipelines), a number of experts have pointed directly to the need for an independent, commercial dispute resolution mechanism that does not risk investment and in fact incentivises parties to reach agreement. According to the ACCC, *"Providing airlines with access to arbitration would provide a constraint on the monopolist airports' market power without jeopardising investment. It is likely that having recourse to arbitration will be enough of an incentive to come to an agreement in negotiations, meaning that in practice few parties will seek to initiate arbitration."*[138]

There is likely to be a net public benefit

More efficient and effective negotiations and resolution of disputes when they occur, delivers benefits to the aviation sector, consumers, and the economy.

Reflecting on the February 2022 findings of the Supreme Court of Western Australia in the dispute between Perth Airport and Qantas, the ACCC stated that this case indicated that the light-handed regulatory regime is not working, noting that "*the court case lasted for over 3 years and resulted in substantial litigation expenses to both parties*."[139] The court had found that Perth Airport possessed, and had likely exercised, substantial market power in negotiating aeronautical charges with Qantas, in a dispute relating to a five-month period in 2018. It also found that Perth Airport acted inconsistently with the APPs in establishing its prices. As the airlines note in their submissions, this is far from an isolated case.

A code will contribute to ensuring that the regulatory regime for airports is fit-for-purpose; that the APPs are adhered to – delivering more efficient, competitive, and cost-effective outcomes.

According to Frontier Economics, "*There is a clear opportunity for improved airport economic regulation to lead to lower, more efficient airport charges and as a result, significant economic benefits for Australia,"* as a

result of a regime which includes an effective dispute resolution mechanism – providing *"a credible threat of regulatory intervention, such as through a right to arbitration in the event that airports cannot justify their prices*."[140]

Modelling undertaken by Frontier Economics in 2019 identified that if the lack of bargaining power that airlines have with monopoly airports could be addressed, it would result in reduced airport charges, delivering substantial improvements to Australia's domestic and international air connectivity and fares. Benefits to the economy would follow, including consumer welfare gains of up to $5.9 billion and additional GDP of $10.9 billion. Frontier estimated that every dollar spent implementing and administering a reformed airport regulatory regime would deliver fourteen dollars' worth of value.[141]

Airports have previously claimed that any reduction of their charges would simply transfer revenue from airports to airlines, but this ignores the reality of airline market in Australia and the long-term trend of reducing airfares, particularly in line with any decreasing costs (see Chapter 1). Former ACCC Chair Rod Sims AO dismissed this argument, saying that, "*It is wrong to suggest that we should not be concerned about high monopoly pricing of infrastructure because the result is only a pure transfer of economic rent.*"[142]

Retaining a light-handed approach

As we outlined in Chapter 1 (Competition in Aviation), Australia's airports are subject to some of the most light-handed regulation of any monopoly infrastructure in the country[143], and are among the least regulated airports around the world.[144]

A voluntary code – even one that is prescribed by Government – would not shift airports from the light-handed end of the scale. They would still be subject to less regulatory oversight than what the PC has recently recommended for container ports, for example, which are also privatised monopoly infrastructure.[145] The PC's Maritime Logistics Inquiry found that transport operators have no choice about which terminal they use when picking up or dropping off a container, so must pay whatever price a terminal operator sets – a scenario that equates with that of airlines and other airport users in their dealings with airports. In the ports' case, however, the PC recommended that voluntary protocols to address terminal operators' exercise of market power needed to be strengthened, suggesting a mandatory industry code.[146]

A4ANZ would encourage the Government to proceed quickly with the next steps required for bringing forward an aviation industry code for prescription, as part of the Aviation White Paper. We look forward to working with both the Competition Taskforce and the Government more broadly to contribute to further discussions in this regard.

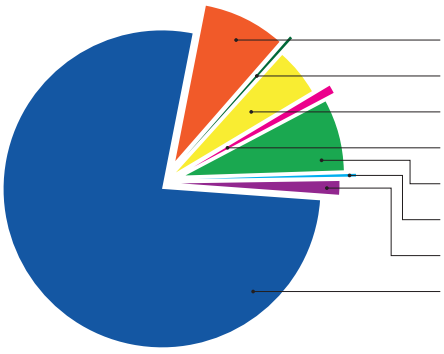
Consumer Protections in Australia

All stakeholders in the aviation ecosystem share a common goal to deliver for consumers:

- Improved on-time-performance – reducing delays and cancellations;
- A better customer experience, on the occasions when things do go wrong; and
- Airfares that are affordable and preferably, declining.

A RANGE OF ISSUES HAVE CAUSED INCREASED DELAYS AND CANCELLATIONS AROUND THE WORLD, NOT JUST AUSTRALIA

An example breakdown of causes[#]



- Late arriving aircraft delay: 8.31%
- Security delay: 0.08%
- Air traffic control delays: 4.86%
- Extreme weather delay: 0.80%
- Air carrier delay: 7.24%
- Diverted: 0.28%
- Cancelled: 1.52%
- On-time: 76.90%

PERFORMANCE IS IMPROVING... BUT NOT THROUGH PENALISING AIRLINES

On-time departures are up by 3.9% — AU to 71.6% of all flights

On-time arrivals are up by 3.8% — AU to 72.1%

On-time performance has improved, when compared with the same period last year[~]

This is better than in the EU, where it has been claimed that the passenger compensation scheme incentivises better performance. For the same comparison period:

On-time departures are up by 2.9% — EU to 63.9%

On-time arrivals are up by 3.5% — EU to 70%

MORE CAN BE DONE FOR CONSUMERS, THROUGH SHARED ACCOUNTABILITY

"It makes little sense that airlines are singled out to pay compensation for delays and cancellations that have a broad range of root causes... it has little benefit for passengers because it does not encourage all parts of the aviation system to maximize customer service. We urgently need to move to a model of 'shared accountability' where all actors in the value chain face the same incentives to drive on-time performance."

Willie Walsh, IATA Director General, June 2023[^]

[#] https://www.transportation.gov/sites/dot.gov/files/2023-10/October%202023%20ATCR_0.pdf
[~] https://www.bitre.gov.au/publications/ongoing/airline_on_time_monthly
[*] https://www.eurocontrol.int/publication/network-operations-report-september-2023
[^] https://www.iata.org/en/pressroom/2023-releases/2023-06-05-06/

AIRLINES FOR AUSTRALIA & NEW ZEALAND

3. CONSUMER PROTECTIONS

Key points in this chapter

- All stakeholders in the aviation ecosystem, but especially travellers, share a goal to:
  - Improve on-time-performance – reducing delays and cancellations;
  - Improve the customer experience on the occasions when things do go wrong; and
  - Keep airfares affordable and preferably, declining.
- Recent reports show that both on-time arrivals and on-time departures have improved, but there are regrettably some persistent issues still causing disruptions for travellers around the world. As the majority of these are caused by factors outside airlines' control, the consumer protection focus needs to expand beyond airlines to encompass all players within the aviation ecosystem, to enable shared accountability.
- In the EU, customer complaints have in fact in fact *increased* since the introduction of EU261, and on-time-performance is no better than in Australia, with the compensation scheme placing upward pressure on airfares.
- Navigating the complaints process is challenging for Australian consumers and requires improvement, starting with more accessible information on consumer rights in relation to air travel.
- It is clear that the Airline Customer Advocate (ACA), while established with the right intent and purpose, is not functioning optimally. Accordingly, improvements to the ACA are underway to ensure that it meets the standards expected in the Treasury guidance on *Benchmarks for Industry-based Customer Dispute Resolution*.

This chapter has been drafted in response to the Government's stated interest in stakeholder views on options to improve the effectiveness of the Airline Customer Advocate and on consumer protection policies that exist in other jurisdictions.[147] A4ANZ recognises and supports the Government's objectives to improve complaint handling processes and strengthen consumer protections in the airline sector.

In our view there is a need for more work to be undertaken to better understand and work through some of the more technical elements canvassed in this section in the Green Paper. Consequently, our submission does not address the question posed in relation to the passenger liability and insurance framework under the Civil Aviation (Carriers' Liability) Act 1959. Our focus is instead on the first question posed, which seems to reflect the central policy challenge: *Should the Australian Government look to revise current consumer protection arrangements and, if so, through existing or new mechanisms?*

As we have acknowledged elsewhere in this submission, airlines are part of a broader aviation ecosystem, and consumers are the key stakeholder. Accordingly, in drafting this chapter, we have listened to the valuable contributions from consumer and legal representatives at the Departmental Roundtables that have occurred as part of the Green Paper consultation process; to better understand the expected outcomes from proposed reforms, and importantly, to identify key areas of agreement and where there may be potential for "quick wins."

Beyond the White Paper, A4ANZ remains committed to continuing to work together with all stakeholders to deliver an improved passenger experience.

The context for increased consumer complaints

Delays and cancellations continue to be a global challenge

Both the ACCC Airline Monitoring Reports and the Green Paper have documented the operational challenges the aviation industry continues to experience, which have regrettably resulted in higher rates of cancellation and delays for passengers since COVID-19 restrictions were lifted.[148]

While the challenges of staff shortages at airlines, and among security and ground handling providers contributed to the initial chaotic restart,[149] they have now largely been resolved, except for the ongoing challenge of pilot and engineer workforce shortages, which we discuss further in Chapter 5. The persistent issues affecting on-time-performance are more complex, however, and require a whole-of-sector and Government commitment to resolve. Weather remains the biggest contributor to disruptions, but in recent times, up to 26 per cent of the delays at Australia's four major airports (responsible for the majority of passenger flights) have been attributable to Airservices Australia.[150,151] These are issues that are not within airlines' control – a source of frustration for airlines and passengers alike.

While some suggestions have been made, including by the ACCC, that it is the concentrated structure of Australia's domestic aviation market and a lack of competition that is responsible for causing these ongoing issues (as mentioned in Chapter 1), the available data do not appear to support this contention. Firstly, the latest monthly report from BITRE shows that issues with on-time performance are still being experienced by all the airlines. Furthermore, the route which reported the highest rate of on-time arrivals and departures for September 2023, Townsville-Cairns, is a route dominated by one carrier, with very limited competition. Similarly, Australia's busiest and one of the most competitive routes, Melbourne-Sydney, experienced the highest rates of cancellations.[152]

It is also not the case that Australia is alone in experiencing what appear to be systemic issues. In the US, July 2023 data showed that 25 per cent of flights were delayed on departure compared to 19 per cent pre-

pandemic. [153] Cancellations had also increased, with 2.4 per cent of departing flights cancelled in July compared to 1.9 per cent in 2019.[154] Just as in Australia, one of the key drivers for the increased disruptions was reportedly weather events, including thunderstorms, tornadoes, and wildfires and their traveling smoke.[155]

Data from the Oct 2023 Air Travel Consumer report (published by the US Department of Transportation) show that, of the 23 per cent of flights that do not arrive on time, less than a third (31 per cent) were due to circumstances within the airline's control.[156] The remaining cancellations or delays were caused by factors such as:

- Extreme Weather: Significant meteorological conditions (actual or forecasted) that, in the judgment of the carrier, delays or prevents the operation of a flight. ·
- National Aviation System: Delays and cancellations attributable to the national aviation system refer to a broad set of conditions -- non-extreme weather conditions, airport operations, heavy traffic volume, air traffic control, etc. ·
- Security: Delays caused by evacuation of terminal or concourse, re-boarding of aircraft because of security breach, inoperative screening equipment and long lines more than 29 minutes at screening areas. ·
- Late Arriving Aircraft: Previous flight with same aircraft arrived late which caused the present flight to depart late.[157]

A4ANZ appreciates that the degree of inconvenience experienced by an individual passenger is unrelated to the cause of the delay or cancellation, and that, regardless of whether it is within an airline's control, what matters is how they respond when these situations inevitably occur. Airlines around the world (and including here in Australia) have admitted to falling short in this regard, with customer complaints dominating social media sites and headlines as travel restarted in the early phases of pandemic recovery; and remaining elevated in 2023.[158] Pleasingly, however, recent aviation network performance reports show that both on-time arrivals and on-time departures have improved by 4% when compared to the same period last year.[159] As outlined in their individual submissions, airlines have made significant adjustments to their processes in order to contribute to this improvement, but we recognise across the industry that more is required to return to pre-pandemic levels.

Airlines were one of the most complained about sectors even before the pandemic

While it is clearly not a positive point to be making, it is relevant to note that even before COVID-19, airlines were one of the most complained about sectors. It is also important to acknowledge that airlines held this

unenviable position at the same time as their overall consumer satisfaction ratings remained high – particularly so when compared to other sectors.[160,161]

A recent survey undertaken by IATA/Motif of 4,700 travellers across 11 markets, asking how passengers felt they were treated in the case of delays and cancellations, made the following findings:[162]

- 96% of travellers surveyed were 'very' or 'somewhat' satisfied with their overall flight experience;
- 73% were confident they would be treated fairly in the event of operational disruptions;
- 72% said that in general airlines do a good job of handling delays and cancellations; and
- 91% agreed with the statement "*All parties involved in the delay or cancellation (airlines, airports, air traffic control) should play a role in helping the affected passengers.*"

Much has been written about why this phenomenon (high complaints while still reporting positive levels of satisfaction) exists, with suggestions including the fact that airlines, unlike other service providers, have multiple opportunities for service failures to occur across the consumer experience,[163] not all of which are attributable to the airline, but nonetheless amount to a failure in the eyes of the consumer.

It would certainly seem that volume also has a role to play, and this too is important context.[164] An ACCC report covering the years 2016-2017 recorded 1400 complaints about airlines. [165] In that two-year period, there were over 118 million passenger journeys on the domestic network,[166] which means that the vast majority of those were completed either without issue, or with issues that were able to be resolved without the need to escalate a complaint to the ACCC. In its March 2023 Airline Monitoring report, the ACCC reported that in the 2021-22 year they had received increased "contacts" about airlines, with the focus of these unsurprisingly being about "*issues around remedies for flights cancelled due to COVID-19 travel restrictions and the high levels of cancelled or delayed flights in mid-2022 that occurred during the post-pandemic surge in demand."*[167] The report provided the caveat that the figure of 2643 total contacts about airlines were drawn from raw data only, and that not all contacts had been determined to equal complaints about airlines.[168] For reference, complaints made up just over a third (36%) of all contacts to the Telecommunications Ombudsman last year.[169] While the ACCC's June 2023 Airline Monitoring Report did not provide an updated analysis of this raw data, even if all 2643 contacts did ultimately turn out to be complaints about airlines, this would represent a complaint rate of just 0.009% of the more than 30 million passenger journeys which occurred in that period.[170]

To be clear, none of this context is provided with any intention to minimise the significance of those individual complaints, nor the fact that interventions to improve consumer issues can and must be considered, but it is important when weighing the impact of certain interventions that the actual scale of the issue is not overstated. It is also important that the consumer experience in Australia is not perceived as unique, with

other countries and regions – including the EU – experiencing similar issues for air travellers, with increased complaints over the post-pandemic restart period and beyond.[171, 172, 173]

Understanding key consumer issues

Navigating the complaints process is challenging and requires improvement

We do not propose in this submission to repeat the information contained in the Green Paper which notes that while Australia has no aviation-specific consumer protection laws, airline terms and conditions are governed by the provisions of the Australian Consumer Law (ACL). Its generic nature – applying across all sectors of the economy – has been called out as one of the ACL's key strengths, and it has also been said that the ACL represents best practice.[174]

Our focus is instead on what we understand to be one of the key challenges for consumers – that the process for making complaints about their experience with air travel when things do go wrong is not always straightforward.

Although no reference was made to it in the Green Paper – and it is clearly not well-publicised – Australia *does* have a central site for consumers with complaints about airlines, at: www.aviationcomplaints.gov.au

The site is hosted by CASA and has separate pages for complaints about topics including noise, drones, security, airport curfews, safety, and airline customer service.[175] For complaints relating to the main domestic RPT airlines in Australia – Qantas, Virgin, Jetstar, and Rex – the site provides direct links to the relevant airline's complaints processes and Customer Charters. It also provides an explanation of the role of Airline Customer Advocate (ACA), instructions about the conditions under which the Advocate can be used (i.e. only if an attempt has been made to resolve the complaint directly with the airline, and the airline has been allowed time to resolve the issue), and a direct link to the ACA's page.

The ACCC website also contains information, advice and weblinks advising consumers on their rights in relation to travel delays and cancellations, and how they can take matters further.[176] However, this information is also not necessarily easy to find.

This observation is underscored by advocacy from CHOICE and Consumers Federation Australia. In a joint submission to the White Paper Terms of Reference, they noted that consumers are often unaware of protections already available to them and find it difficult to obtain information on their rights.[177] This is a situation that needs to be addressed.

In Australia, there is certainly a strong case to be made for a collective effort from industry and Government to raise the level of awareness of what is available to passengers when things go wrong, and what their rights are.

Many suggestions have been made about what will work best to improve not only awareness, but also outcomes for consumers. When considering these, and their potential application to the Australian aviation sector, it is important to firstly reflect on the nature of the problems that are to be addressed and secondly, to assess the evidence for the effectiveness of proposed solutions.

Assessing proposals for improvement

What has been recommended

In submissions to the White Paper Terms of Reference[178] and subsequent contributions to the Green Paper consultation roundtables, consumer groups including the Australian Lawyers Alliance, CHOICE & Consumers Federation of Australia, made clear the outcomes they are seeking and the mechanisms by which they suggest these might be achieved, which include (our summary):

- mandatory minimum information standards - improving awareness for consumers of protections already available to them and accessible information on their rights;
- minimum consumer protections to make it easier for consumers to get a refund;
- mandatory minimum requirements for credit and travel vouchers;
- a mandatory code of practice for the travel industry;
- creating a new travel & tourism ombudsman; and
- an Australian flight delay compensation scheme

For its part, the ACCC has recommended:[179]

- greater incentives for the airlines to invest in systems, processes and people to dramatically improve their customer dispute resolution; and
- that the current Airline Customer Advocate (ACA) service should be replaced with an effective external dispute resolution scheme, such as one modelled on the Telecommunications Industry Ombudsman.

Consequently, the Green Paper asked stakeholders for their views on a potential Customer Rights Charter and an ombudsman model. A4ANZ's understanding is that, ultimately all stakeholders in the aviation ecosystem – and especially travellers themselves – share a common goal for:

- Improving on-time-performance – reducing delays and cancellations;
- Improving the customer experience on the occasions when things do go wrong; and
- Keeping airfares affordable and preferably, declining.

We believe more work is required to determine the best approaches to enable the aviation sector to successfully deliver on all three of these objectives.

Assessing the evidence for proposed solutions

When assessing the various policy proposals, Government will need to carefully consider whether schemes implemented in other jurisdictions have actually delivered the above outcomes. While A4ANZ does not purport to have the answers, neither, it seems, do the advocates for such significant policy changes to be made in Australia. Therefore, before transporting schemes from other regions and other sectors, it is important that a full assessment is undertaken of whether the desired outcomes could instead be achieved through more modest reform – involving less red tape and cost.

Policy approaches pursued in other jurisdictions

The Green Paper asks: *Would policies pursued in other jurisdictions deliver benefits in Australia's aviation sector?* We take a look at the evidence for their effectiveness, with specific focus on whether they are delivering on the outcomes outlined above.

Raising awareness of passenger rights

As highlighted earlier, consumers do not always find it easy to access information about their rights when travelling. This situation is not unique to Australia and exists even though the International Civil Aviation Organization (ICAO) has set Core Principles on Consumer Protection, which advise all member states as follows: [180]

Efforts should be made to increase awareness of passengers to help them make informed choices. Air passengers should benefit from:

- *Accessible information on their rights;*
- *Clear guidance on legal or other protection applicable in their specific situation, including assistance expected, for example, in case of service disruption;*
- *Consumer education about passengers consumer rights and the available avenues for recourse in cases of disputes.*

The US Department of Transportation has an Office of Aviation Consumer Protection website, with an Airline Customer Service Dashboard focused on assisting consumers in this regard.[181] While it appears to contain useful, up-to-date information and uses simple navigation, we are not aware of consumer perspectives on this, and whether it is considered to be readily-accessible.

As part of its *Flightpath to the Future* plan[182], the UK Government collaborated with industry and consumer groups to develop an Aviation Passenger Charter. The charter's purpose was "*to provide a helpful*

communication tool, which can be used as a clear, single information point for consumers, on what they should know when travelling by air. It will include information on their rights and responsibilities, and what they can reasonably expect from the aviation industry." The Charter, recently updated as the Air Passenger Travel Guide, details what people can expect from airlines, travel agents, tour operators and airports; and what to do if things don't go to plan, including guidance on how to complain.[183]

The coverage of this Charter – including a range of operators within the aviation ecosystem – is notable. As outlined earlier, there are many parts of the passenger experience over which airlines do not have control, but which nonetheless contribute to the challenges consumers can face when travelling. Accordingly, A4ANZ believes that the Australian Government must similarly expand its consumer protection focus beyond airlines to encompass all players within the aviation ecosystem.

Consumer compensation schemes

The European Commission's 2020 review of EU261 found that while the scheme has improved passengers' awareness of their rights, it is difficult to navigate due to the complexity of the regulations.[184]

Furthermore, contrary to expectation, the scheme hasn't led to a reduction in the amount of disruption. As IATA noted in June, the Commission's own data show that disruptions have *increased* since the existing EU 261 Regulation was introduced.[185] This increase in delays and cancellations has been, in large part, due to events outside airlines' control i.e. weather, and air traffic control issues. In the UK, for example, recent IT failures impacted air navigation services, creating havoc for millions of passengers following the cancellation of 2000 flights in August 2023.[186]

Unsurprisingly, all of this has led to a commensurate increase in consumer complaints, rather than a decrease, as has been suggested by some advocates for the EU scheme to be used as a template in Australia. It also exposes a flaw in some of the arguments that consumer protections need to be focused around "penalising airlines" when things go wrong.[187]

The European Commission's 2020 Review found that, as a result of poorly-defined right to redress, airlines have not been able to recover costs incurred in providing assistance and compensation to passengers for disruptions generated by third parties (such as air navigation service providers, groundhandlers, airports, and other parties), which, as we saw above, can be responsible for the large majority of disruptions. Airports also generally don't incur costs associated with the scheme, and when they do, they are usually able to pass these costs through to airlines.

Airlines UK highlighted the disproportionate burden that is therefore increasingly being borne by airlines, arguing that "*Airlines cannot be the insurer of a last resort. We can't have a situation whereby airlines carry the*

can every time we see disruption of this magnitude."[188] IATA has also said recently that that EU261 was never intended to actually address operational disruption and therefore does not apply equally to all actors in the aviation chain, recommending that any future discussions should address the proportionality of compensation and the lack of specific responsibilities for key stakeholders, such as airports or air navigation service providers.[189]

Ultimately, however, this means the biggest negative impact has been on the consumer. The Review recognised that the scheme generally leads to the cost being passed through to consumers in the form of higher ticket prices, but that where this is not possible – generally due to competitive reasons – regulation costs are internalised by airlines, impacting profitability, and potentially leading to flow-on effects such as decreased connectivity or a reduction in routes operated. None of these outcomes are desirable from a traveller perspective.

Despite this experience in the EU, the US Government announced in May 2023 that the Department of Transportation (DoT) would mandate financial compensation for controllable flight delays and cancellations.[190] Under US Federal Law, consumers are currently entitled to a full cash refund if the airline cancels a flight, regardless of the reason, and the consumer chooses not to travel, a policy that stemmed from what is a common practice in the US of over-booking flights. Refunds are also available if an airline "*makes a significant schedule change and/or significantly delays a flight and the consumer chooses not to travel*,"[191] but a key criticism of the regime is that there is no agreed definition of what constitutes a "significant delay." A further challenge to the compensation proposal is the number of delays and cancellations that would fit the category of being “controllable” by the airlines. Just as in other jurisdictions, the vast majority of flight cancellations in the US in 2023 have been weather-related or due to air traffic control outages, and therefore outside of airlines’ control.[192]

Also following the lead of the EU, in 2019 the Canadian Government introduced Air Passenger Protection Regulations (APPR), which included provisions for compensation and, in some cases, full refunds for disruptions both within and outside of airlines’ control.[193] Following COVID disruptions, amendments were proposed that moved the burden of proof to airlines to demonstrate why compensation shouldn’t be awarded, despite the fact that delays and cancellations are also attributable to airports, air navigation service providers, and ground handling companies.[194] As airlines have pointed out, this would require them to access to third party information (airport, security, customs, and navigational services).[195]

In what appears to be a recognition of this, the Canadian Government in June 2023 introduced a proposed new Air Transportation Accountability Act, which places service standards and reporting requirements on other participants, including airport operators, and other entities providing flight and flight-related services at

an airport, to be defined in regulation.[196] It was based on a recommendation from the Standing Committee on Transport, Infrastructure and Communities on *Strengthening Air Passenger Rights in Canada,* which recommended that "*the Government of Canada, in consultation with airlines, airport authorities, federal entities, and labour representatives, develop a clear and transparent service standards framework for all members of the aviation ecosystem, and that performance metrics be made easily available to the public*."[197]

In June 2023, the UK Government completed a significant consultation on consumer protections for air travel, as part of its *Flightpath to the Future* plan. It reasoned that, while there may be some benefits to improving compensation for cancellations and delays for domestic flights, there are also "significant complexities" with compensation schemes.[198] As IATA noted, EU261 – which has been held up by many advocates as a template – has been subject to more than 70 interpretations by the European Court of Justice, each of which sought to take the regulation further than originally envisaged by the authorities.[199] The UK Government has determined that further work is needed to consider the merits and limitations of any changes in this area.[200]

As part of a series of insights on the Green Paper published in September 2023, HWL Ebsworth Lawyers noted that, "*The introduction of a passenger compensation framework would constitute a highly significant change to the regulation of public air transport in Australia that would likely increase costs, require a major overhaul of airline terms and policies and mandate a renegotiation of arrangements with third parties who impact on-time performance.*"[201]

What the above examples demonstrate is that, while a number of jurisdictions have implemented consumer compensation schemes (or are in the process of doing so), none have delivered on the promise of improved performance and lower fares. This serves to further highlight the case for the Government here in Australia to fully understand the systemic issues and contributors to reduce efficiency and performance across the whole aviation ecosystem, before seeking to impose significant regulatory measures on airlines.

Complaints handling

Proposal for an airline ombudsman

The ACCC's proposal – backed by consumer organisations – for an airline ombudsman, does not appear to have undergone any kind of rigorous assessment, such as would be required for a regulatory impact analysis. It is notable that, when the ACCC made a similar recommendation for a digital platforms ombudsman,[202] this formed part of an extensive – and ongoing - inquiry, which included detailed consideration of ombudsman schemes.[203] It had also come about following a 2019 commitment from the former Government to develop a pilot external dispute resolution scheme, the outcomes of which were to be used to inform whether to establish a Digital Platforms Ombudsman to resolve complaints and disputes between digital platforms and

individual consumers and small businesses using their services.[204] In other words, a decision about whether an ombudsman was the best approach would only occur once a pilot scheme had been evaluated, not simply on the basis that it may bring better outcomes.

Furthermore, the ACCC suggestion that the Telecommunications Industry Ombudsman (TIO) model could be applied to airlines[205] neglects to consider the vast differences between the sectors. Firstly, the TIO scheme operates at a cost of approximately $30 million and has 1577 telecommunications companies participating,[206] not what would likely be just four airlines. Secondly, the scheme does not just focus on one part of the industry, but covers phone and internet providers, and the services they provide to both consumers and other businesses. Applying an equivalent approach to an aviation ombudsman would capture travel agents, airports and other providers of services to both consumers and other participants within the whole aviation ecosystem; yet all that has been proposed is an airline ombudsman.

The UK's Alternative Dispute Resolution (ADR) framework does capture airports within its scope, for example. It was established following calls for an air ombudsman, and questions over whether aviation-specific regulations should be introduced.[207] Before the framework was introduced, however, the Civil Aviation Authority firstly commissioned research into aviation consumers' perceptions of and requirements for ADR,[208] and also undertook consultations with airline industry.[209]

All of this is to say that – while airlines are not digital platforms, nor telecommunications providers – there is clearly more work required before simply proceeding to implement an industry ombudsman here in Australia, particularly one that only applies to airlines. It is our view that there needs to be a full understanding of the legal complexities of such, not to mention the question of net benefit. This is one of the key impact analysis questions in the *Australian Government Guide to Policy Impact Analysis*, which came into effect in March 2023 and is to be applied to, "*Any policy proposal or action of government, with an expectation of compliance, that would result in a more than minor change in behaviour or impact for people, businesses, or community organisations."*[210] A4ANZ urges the Government to undertake this analysis before making significant change.

This will not prevent the work that industry is undertaking in the meantime, to improve the effectiveness of the existing mechanisms for resolving consumer complaints, both at an individual airline level and through the ACA, outlined below.

Improving the effectiveness of the Airline Customer Advocate

When the previous Aviation White Paper was drafted in 2009, the sector was also experiencing a period of increasing complaints – reportedly caused by the emergence of low-cost carriers at that time. In response, Government recommended that industry should develop mechanisms to better handle complaints,[211] as listed

in Table 3.1, below. The then-Government noted that it was reluctant to burden industry with further regulations, citing its confidence in the fact that airlines are committed to constantly improving the services they offer to the Australian public. Indeed, the airlines did implement the 2009 White Paper's recommendations, as Table 3.1 shows.

Table 3.1 – 2009 Aviation White Paper Government Recommendations for industry on complaints handling

Recommendation	Industry actions
Airlines to develop corporate charters, to set benchmark standards for the handling of complaints.	Corporate charters were implemented by each airline. See: Jetstar www.jetstar.com/au/en/customer-guarantee Qantas www.qantas.com/au/en/about-us/our-company/customer-charter.html Rex www.rex.com.au/AboutRex/OurCompany/CustomerCharter.aspx Virgin www.virginaustralia.com/au/en/about-us/policies/legal/customer-service-plan/ Tigerair www.fedcourt.gov.au/__data/assets/pdf_file/0006/76272/Tab-8-Tigerair-Guest-Charter.PDF
Establish a mechanism for consumers to have unresolved complaints examined by a third party, such as an industry ombudsman.	The Airline Customer Advocate (ACA) was established and became operational in 2012, to "*facilitate the efficient resolution of complaints about airline services that have not been resolved by direct communication between a Customer and a Participating Airline as provided in the Participating Airline's Customer Charter*." See: www.airlinecustomeradvocate.com.au/General/Default.aspx

There is a shared goal across all A4ANZ member airlines to reduce the number of customer complaints that reach the Airline Customer Advocate (ACA), by having them efficiently and effectively resolved via their internal processes instead. And as can be seen from the individual airline submissions, in which they outline the changes made to improve the customer experience, airlines in 2023 are no less committed to the objective of continuous improvement than they were in 2009, when they mobilised to establish the ACA.

We do accept, however, that the uniquely difficult circumstances over recent times have – understandably – challenged the community's faith in this commitment. What is also clear is that the ACA, while established with the right intent and purpose, is not functioning optimally.

The Green Paper asks, *Would an expanded remit for the Airline Customer Advocate to educate customers on their legal entitlements be useful?* We believe it would, and while A4ANZ is not itself a member of the ACA, the founding airlines (who are among our members) are committed to – and have already commenced the process of – updating and modernising the service to make it more efficient and effective for consumers, through the following measures:

1. Additional airline investment in resourcing the ACA to improve case management and the overall customer experience;

2. Including on all airline websites some information about the ACA and how to access it (with links), so that customers are more aware of their options;
3. Refreshing the ACA's website to enhance its functionality and simplicity, and to include additional upfront information for consumers;
4. Reviewing and streamlining ACA complaint management processes;
5. A renewed commitment to improving response timeframes; and
6. Periodic review of performance, to boost efficiency.

It is important to note that these improvements to the ACA are being undertaken to ensure that it meets the standards expected in the Treasury guidance on *Benchmarks for Industry-based Customer Dispute Resolution,*[212] which, as the ACCC notes, is what guides the Telecommunication Ombudsman.[213] The key principles are shown in Figure 3.2, below.

Figure 3.2 – Underlying principles for industry-based customer dispute resolution[214]

1. Accessibility: The office makes itself readily available to customers by promoting knowledge of its services, being easy to use and having no cost barriers.

2. Independence: The decision -making process and administration of the office are independent from participating organisations.

3. Fairness: The procedures and decision making of the office are fair and seen to be fair.

4. Accountability: The office publicly accounts for its operations by publishing its final determinations and information about complaints and reporting any systemic problems to its participating organisations, policy agencies and regulators.

5. Efficiency: The office operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum, and regularly reviewing its performance.

6. Effectiveness: The office is effective by having an appropriate and comprehensive jurisdiction and periodic independent reviews of its performance.

Beyond these updates by existing airline members, there is also a strong case for the ACA's remit to be expanded to include all airlines offering RPT services in Australia – including international airlines – to enable their customers to also access the ACA's services if required.

Will greater regulation deliver the desired outcomes for consumers?

Policy responses must be proportionate and based on evidence

The ICAO Core Principles on Consumer Protection state that national customer protection regimes should *reflect the principle of proportionality.*[215] As outlined earlier, with the number of complaints being escalated representing less than 0.01 per cent of all passenger journeys, it is critical that proposals for significant regulatory intervention are also properly weighed against more modest reforms such as:

- a centralised, accessible place for information on air travel, including how to pursue complaints; and
- an improved ACA which meets appropriate benchmarks for dispute resolution

At the same time, there also needs to be a recognition of the role played by all parts of the aviation ecosystem in delivering a positive or negative experience of air travel. Some of these are directly experienced by consumers, which they have cited in the course of the Green Paper consultations, including challenges with travel agents (responsible for as much as 70% of all Australian travel bookings[216]), airlines, ground transport providers, security screening, costs and accessibility at airports. While other issues – such as air navigation provider staff shortages – are not visible to travellers – they can still have a significant impact on their experience.

We note the Government's intention in the Green Paper that "*An appropriate consumer framework needs to reflect the operational realities of air travel while providing adequate minimum baseline protections for travellers*."[217] In order to reflect this operational reality, further consideration by Government for compensation schemes and an aviation ombudsman would need to encompass all the stakeholders in these journey stages, not just airlines.

It is equally important that policy responses are guided by evidence. While the Green paper cites the increasing contacts to the Airline Customer Advocate as "*giving further weight to longstanding advocacy by Australian consumer groups for aviation specific rules similar to European arrangements*,"[218] this statement cannot go without challenge. As others have documented, complaints have in fact *increased* in the EU since the introduction of EU261.

The complexity of this challenge and the risk of unintended consequences is also reflected in the implementation challenges experienced since the introduction of the Canadian *Air Passenger Protection Regulations (APPR)* in 2019, which is still undergoing consultations on revisions some four years on.[219] Proposed changes have caused safety concerns, which arise if delays due to malfunctions or mechanical issues are not exempted. The Australian Government must therefore consider the evidence for change carefully. If the arrangements that the EU and Canada have in place are not yet resulting in the outcome consumer groups are seeking, and come with considerable downsides, including upward pressure on airfares, what would be the rationale for implementing them in Australia?

We note from the Green Paper that Federal, state and territory Consumer Affairs Ministers are expected to undertake a national survey which will capture the experiences of consumers and businesses, including travel businesses, in relation to the ACL.[220] A4ANZ's view is that the outcomes of this survey ought to be used to inform further discussions in relation to consumer protections within aviation policy. We look forward to contributing where appropriate.

Ensuring Accessible Air Travel in Australia

A4ANZ member airlines are committed to improving travel experiences for passengers with disability. This is reflected in the actions they are undertaking, including:

ACTIONS ALREADY UNDERWAY:

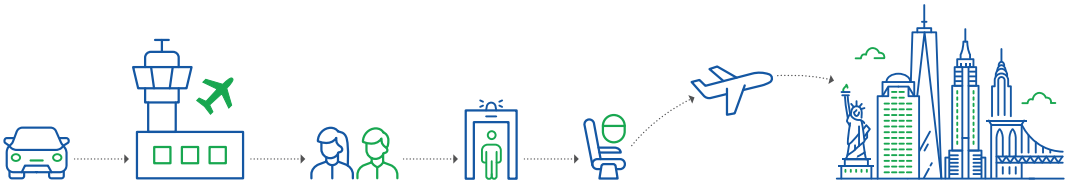
Consulting with disability advocates and organisations representing passengers with a disability when developing accessibility policies, including Disability Access Facilitation Plans.

Participating in the Aviation Access Forum to work with consumers to provide advice to the Australian Government on disability access policy.

Continuous improvement of staff training and communication to reflect customer feedback and contemporary standards

A4ANZ member airlines are committed to continuing to work with the disability community, airports, safety regulators and Government to explore safe and feasible solutions that reduce barriers to air travel.

COMMITMENT TO IMPROVING THE WHOLE PASSENGER JOURNEY:



A4ANZ proposes convening a roundtable with representatives from organisations representing passengers with disability, airlines, airports, aviation security screening providers, ground transport operators, government agencies and others, to develop a passenger journey framework covering responsibilities at each stage of the journey – from kerbside to destination.

AIRLINES FOR AUSTRALIA & NEW ZEALAND

4. ACCESSIBLE AIR TRAVEL

Key points in this chapter

- A4ANZ member airlines are committed to working with the disability community, airports, and safety regulators to explore safe and feasible solutions that reduce barriers to air travel.
- Industry acknowledges the concerns raised by advocates and the disability community – including those noted during the Disability Royal Commission.
- Throughout the consultation process, airlines have noted suggestions from consumer and disability advocates for airlines and airports to consult, and co-design policies with passengers who have lived experience.
- A4ANZ's members fully support the rights of passengers with disability to safe and accessible air travel and are committed to continuous improvement through a range of initiatives.

While all A4ANZ member airlines that operate in Australia have comprehensive Disability Access Facilitation Plans which aim to outline the availability and accessibility of services for passengers with a disability,[221] we recognise that passengers with a disability continue to face barriers to accessing air travel, and public transport more broadly.

In this chapter, while we have not addressed each of the specific questions from the Green Paper in detail, we offer some feedback in response to the broader issue of how accessibility in the aviation sector can be improved.

Ensuring accessible air travel in Australia

A4ANZ member airlines are committed to working with the disability community, airports, and safety regulators to explore safe and feasible solutions that reduce barriers to air travel, and have introduced initiatives to improve travel experiences for people with a disability. These initiatives are detailed in A4ANZ members' individual submissions.

However, A4ANZ members and the aviation industry more broadly, are committed to both continuously improving the passenger experience, and ensuring that air travel in Australia is accessible for the whole community.

Accessibility issues within the aviation sector have come into particular focus through concerns raised during the Disability Royal Commission[222] (which we explore below), reporting in the media, and through submissions to the consultation on the Aviation White Paper's Terms of Reference.[223]

Furthermore, during the Green Paper roundtable consultation sessions, we have heard the suggestions from consumer and disability advocates for airlines and airports to co-design their Disability Access Facilitation Plans with passengers who have lived experience. We believe this could be considered as a step to improving how the plans are both designed and – more importantly – implemented.

Concerns raised at the Disability Royal Commission's Air Travel Workshops

In November 2022, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability held two workshops that focused on people with disability's experiences with air travel. Participants shared their experiences of air travel in Australia, and reported that they had encountered inaccessible facilities and services at airports and unhelpful practices and systems adopted by airlines. [224]

A4ANZ member airlines noted the concerns raised by participants at these workshops as outlined by the Hon Ronald Sackville AO KC, Chair of the Royal Commission, in February 2023[225] – and while we note that air travel is not expressly called out in the Royal Commission's Final Report, the industry acknowledges that action must be taken to provide a more inclusive experience for all air travellers.

It is likely that this action will be taken through a range of measures, both Government- and industry-led. These include:

- the reforms resulting from the process to modernise the Disability Standards for Accessible Public Transport 2002;
- the current review process of these same standards;
- a reinvigoration of the Aviation Access Forum;
- a time-limited, industry-led roundtable – with lived-experience input – focused on improving the whole passenger journey from kerbside to destination (discussed later).

We also note, and welcome, the Ministerial roundtable which is being convened through the Green Paper consultation process, to hear from disability advocacy organisations and individuals.

Reform of the Disability Standards for Accessible Public Transport 2002 (Transport Standards)

As noted in the Green Paper, a reform process to modernise the Transport Standards commenced in 2021. A4ANZ was proud to be a member of the National Accessible Transport Taskforce, working under the National

Accessible Transport Steering Committee, to provide advice, where appropriate and practicable, into the consultation process.

Seventy-six areas of reform were covered by Stage 1 and 2 of the modernisation process. Sixteen areas for reform were included in Stage 1, and these were confirmed by Infrastructure and Transport Ministers on 11 February 2022.[226] This tranche of reforms included regulating requirements for staff training and communication, to improve the quality and consistency of staff training – reducing a barrier for people with disability to use air transport, and public transport more broadly.[227]

A4ANZ is aware that member airlines have begun or have completed the process of refreshing their staff training based on customer feedback and a desire for continuous improvement.

The first tranche of the reforms also covers assistance animal toileting facilities, accessibility requirements relating to airport infrastructure, and the provision of information in multiple formats.[228] These reforms, together with the 60 areas (in Stage 2) currently proceeding through Government approval processes will likely go some way to improving the current passenger experience for people with disability.

Australian airlines' commitments to improving the whole passenger journey

A4ANZ welcomes the Government's decision to convene a Ministerial roundtable to hear disability advocacy organisations and individuals. Industry remains committed to participating in consultations on this issue as appropriate.

Australian airlines' commitments on passenger accessibility

A4ANZ's Australian airline members are jointly committed to continuing to improve accessibility and services for passengers with disability.

A4ANZ's members fully support the rights of passengers with disability to safe and accessible air travel – especially the right to be treated with dignity and respect. We recognise the need for specific actions and commitments to remove barriers to safe, accessible air travel.

To achieve our accessibility objectives, airlines are committed to:

- Working constructively with industry, government, and the disability community – both within the existing structures of the Aviation Access Forum, and on new initiatives such as an industry roundtable on improving the whole passenger journey – to continuously improve industry policies and operations;

- Undertaking enhanced consultation with disability organisations and advocates on accessibility policies including Disability Access Facilitation Plans;
- Improving passenger transfers and the handling of personal mobility aids; and
- Continuing to review and enhance accessibility services training for frontline workers and education of employees about passengers with disability.

The Australian aviation industry has long been engaged in a variety of initiatives to increase air travel accessibility. These commitments are a step forward in continuing to strengthen our dedication to enhancing the travel experience for all passengers.

Industry roundtable on improving the whole passenger journey (from kerbside to destination)

The whole aviation industry recognises that a key issue experienced by passengers with a disability is movement through the passenger journey from kerbside to destination – and notes the commentary in the Green Paper on this issue.

To address this issue, A4ANZ proposes convening either an industry-led or Government-led roundtable with representatives from airlines, airports, organisations representing passengers with disability, aviation security screening providers, and ground transport operators.

We propose that this roundtable is time-limited and issue-specific – focusing on the development of a passenger journey framework covering industry responsibilities at each stage of the journey from kerbside to destination – so as to avoid duplicating the work or efforts of the Aviation Access Forum.

Industry has previously collaborated on the development of passenger journey protocols during the COVID-19 pandemic,[229] and for the management of offensive or disorderly passenger behaviour[230] – developing and agreeing to consistent standards and requirements which can then be implemented and coordinated at an individual airport and airline level, in a manner that is locally-appropriate.

A4ANZ proposes that this roundtable works in a similar way, to develop a common and consistent approach to assisting passengers with disability through their travel journey – complementing and enhancing existing industry efforts and standards to ensure a safe and accessible travel experience. As has been the case with other industry protocols, we propose that this be developed alongside a passenger-facing communications campaign.

We look forward to further opportunities to listen, and to work collaboratively with all stakeholders to improve the accessibility of air travel.

Maintaining a Strong, Viable, and Sustainable Regional Aviation Sector

Aviation is Vital for Australia's Regional and Remote Communities

Aviation supports our regions through tourism, small business, access to medical care, and critical freight including food and medicines.

Prior to COVID-19, there were almost 25 million annual passenger movements through regional airports, representing approximately 16 per cent of the Australian total[i], supporting 15,00 jobs and contributing $2.3 billion to regional economies annually.[ii]

Ensuring Regional Aviation Remains Viable

To safeguard the viability and sustainability of essential air services to Australia's regional and remote communities, Government will need to work with industry to ensure;

- ✔ Fit-for-purpose Regulation of Regional Airports
- ✔ Targeted Funding for Security Screening Costs at Regional Airports
- ✔ Principles for Efficient & Transparent Security Charges

Opportunities for Regional Australia in Decarbonising the Aviation Sector

Sustainable Aviation Fuels will be the single biggest facilitator of the Australian aviation sector reaching net zero by 2050, and a domestic SAF industry has the potential to provide major benefits to the Australian economy and community more broadly.

In 2019, Australian aviation fuel use was approximately 9.4B litres.[iii] By 2050 it is expected to be over 14B litres[iv], and a recent study by the CSIRO projects that by 2050 we could produce more than 90% of local jet fuel demand through using Australian feedstocks.[v]

What is Australia's potential?

With industry and Government working together to create a supportive investment and policy environment, an Australian SAF industry could:

Create more than **7,400 jobs by 2030,** and up to **15,600 jobs by 2050** – most in regional areas[1]

Secure Australia's domestic fuel security – removing reliance on imported liquid aviation fuel[2]

Contribute an additional **$2.8B in GDP per year by 2030,** and up to **$7.6B per year in 2050**[3]

i. Frontier Economics. 2019. Airlines: Helping Australia's Economy Soar. At: https://www.a4anz.com/documents/A4ANZ_Report-Airlines_Helping_Australias_Economy_Soar.pdf
ii. Ibid. iii. Fuel analysis undertaken by Frontier Economics for A4ANZ. iv. Ibid
v. CSIRO. 2023. Sustainable Aviation Fuel Roadmap. At: https://www.csiro.au/-/media/Energy/Sustainable-Aviation-Fuel/Sustainable-Aviation-Fuel-Roadmap.pdf
1. International Air Transport Association. 2021. Sustainable Aviation Fuels: Fact Sheet 5. 2. Frontier Economics analysis on SAF – Prepared for A4ANZ.
3. ARENA. 2021. Australia's Bioenergy Roadmap Report.

AIRLINES FOR AUSTRALIA & NEW ZEALAND

5. REGIONAL AND REMOTE AVIATION

Key points in this chapter

- Aviation is vital for Australia's regional and remote communities – supporting our regions through tourism, small business, access to medical care, and critical freight including food and medicines.
- Regional airport charges and charges for security screening have a major impact on the viability of regional air services.
- To safeguard the viability and sustainability of essential air services to Australia's regional and remote communities, Government must work with industry to ensure fit-for-purpose regulation of regional airports, and efficient, sustainable, and transparent aviation security charging practices.

Maintaining a viable and sustainable regional aviation sector

A4ANZ welcomes the Government's focus on regional and remote aviation, and the acknowledgement of the crucial role that airlines play in supporting regional economies and communities.

The Green Paper notes that air services are a critical enabler of economic growth. The benefits of air connectivity are likely to be particularly significant for regional and rural areas compared to major cities, as air transport services are less substitutable for road transport, given the distances involved and instances where road transport is not viable due to seasonal factors.

The linkage between regional air connectivity and economic growth in Australia has been well documented.[231] While analysis of this relationship has found that, as expected, regional economic growth leads to an increase in air services – it has also noted evidence of improvements in regional air connectivity independently creating benefits for local economies.

Prior to COVID-19, there were almost 25 million annual passenger movements through regional airports, representing approximately 16 per cent of the Australian total.[232]

Aviation supports our regions through tourism, small business, access to medical care, and critical freight including food and medicines. Aviation's economic contribution to rural and regional communities has been estimated to be approximately $2.3 billion annually, with support for 15,000 jobs.[233]

Additionally, Australia's airlines recognise the importance of ensuring the vitality and prosperity of regional communities and have continuously demonstrated this through delivering discounted airfares for regional

Australia, providing millions of dollars in drought and flood relief, community-based grants, and through their investment in pilot academies in regional towns.

However, it is important to note that the distribution of benefits to regional communities is contingent on the extent to which airlines can remain commercially viable on regional routes. There is a critical role to be played by all levels of government in supporting regional air services.

The Green Paper asks where the Australian Government should focus its engagement in regional and remote aviation.

As the Department would appreciate – through the experience of administering the Regional Airline Network Support (RANS) program during the COVID-19 pandemic – there are significant challenges associated with operating regional routes in a viable and sustainable way. As such, A4ANZ recommends that the Government focus on the inputs to the operation of regional and remote aviation services, including the exercise of monopoly power by regional airports in setting both landing and security charges, and the cost of decarbonising regional routes. Another area which requires a long-term focus and strategy is workforce planning, to ensure that Australia has a sustainable pipeline of pilots; as shortages disproportionately affect the reliability and viability of regional routes. For example, with a smaller pool of pilots, regional airlines are more likely to be forced to delay or cancel services when there are unplanned absences due to sickness.

The Green Paper notes that the Government is considering directing the Productivity Commission to undertake a standalone, public inquiry into the determinants of domestic airfares on routes to and between regional centres in Australia. Much has already been written on this topic, with significant challenges identified. In the past five years alone, there have been a number of parliamentary inquiries and Government consultations which specifically considered regional aviation, to which A4ANZ and its members have contributed.

A4ANZ would be keen to see that the Terms of Reference for any proposed PC Inquiry ensure that the findings from previous inquiries and Government consultations are considered, along with any new insights from the period in which the Government administered the COVID-19 programs to support regional connectivity. We would also encourage an inquiry to consider the direct and indirect impacts of various Government policy measures on the affordability of airfares to and from the regions, and the viability of network, which are discussed in Chapter 7 – *Fit-for-purpose governance, agencies and regulations.*

Fit-for-purpose regulation of regional airports

Many of Australia's regional airports are operated by local councils. However, there is also a growing trend for local councils to grant long-term lease arrangements and management rights of regional airports to third-party

operators. In some cases, this has led to over-investment in infrastructure, with costs then passed on to airlines.

Examples of such practices have been outlined in multiple submissions to the Productivity Commission's Inquiry into the Economic Regulation of Airports[234], and the Rural and Regional Affairs and Transport References Committee inquiry into the operation, regulation and funding of air route service delivery to rural, regional and remote communities.[235]

Indeed, one of biggest roadblocks to airlines' ability to introduce new routes and maintain or grow existing routes is high airport charges – with the majority of the most expensive airports in Australia located in northern regional Australia. In some ports, the costs are more than five times those of the major airports in southern states.[iii]

In a survey by the AAA, fewer than half of regional airports (~ 45%) reported that they consult with airlines prior to "major capital works entailing increased airport charges."[236] While these data are now five years old, this behaviour remains an unfortunate fixture of negotiations with regional airports in Australia. The lack of transparency even when they do consult, on the source of both capital and operational expenses that are then passed on to airlines, is a persistent challenge for airlines negotiating with council-run airports.

To this end, it is worth noting the flawed assumption contained in the Green Paper, which states that: *"Competitive dynamics in the aviation sector vary across Australia. The countervailing power airports have when negotiating with airlines can be expected to differ in the east coast capital cities versus central, regional and remote Australia."*[237]

While A4ANZ notes that there may well be differences between the experience of the parties negotiating, mature and savvy negotiating from airlines should not be mistaken for countervailing power, as the airline is still negotiating with a monopoly provider of essential infrastructure, regardless of where it is located. Furthermore, if airports are not providing sufficient information to enable airlines to interrogate financial proposals, it creates a situation in which the bargaining power of the two parties is weighted heavily in favour of the airport, regardless of its size or scale.

A4ANZ does not dispute that investment and upgrades at regional airports are necessary, given the changing dynamics of the domestic market, government-mandated enhanced security measures, and efforts to decarbonise. However, for an essential piece of community infrastructure such as an airport, it is critical that investment is fit for purpose; that is, aligned with the needs of passengers using the facilities and demand for

[iii] These figures are based on cost/passenger, including security charges. Data source: QF and VA submissions. http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Northern_Australia/TourismIndustry/Submissions

air services. The best way to determine requirements and ensure this fit is through constructive consultation and collaboration with the users of the airport.

The Green Paper notes data from the AAA, which indicates that "*40% of airports operate at a loss and are exposed to ongoing, increasing operational, regulatory, and maintenance costs*".

Given the financial challenges facing many regional airports there is an extremely strong argument for improvements in the level of consultation with these airports' customers, to assist in ensuring efficient, targeted investment and reducing unnecessary expenditure.

As has been suggested elsewhere in this submission (Chapter 2), the implementation of a Voluntary Aviation Industry Code of Conduct to guide negotiations and support adherence to the Aeronautical Pricing Principles, would be valuable for ensuring beneficial outcomes for consumers - including in rural and regional Australia.

Given council-operated regional airports are often recipients of Government grants, it must be a condition of funding that the airport undertakes transparent and genuine consultation with airlines on relevant infrastructure investment and other capital expenditure proposals. This is discussed further below, in relation to security upgrades.

Viable and sustainable aviation security screening

A4ANZ recognises that the aviation security environment is constantly evolving, and as such requires continual development and refinement of proportionate, practical, and timely security measures. All A4ANZ's member airlines are supportive of measures to enhance security at Australia's airports. They have, and will continue to work cooperatively and collaboratively with Government, airports, and the travelling public, to ensure that what is put in place is informed by evidence and has the best chance of success.

However, even prior to the pandemic, there was a growing awareness of the significant costs of enhanced security measures, with the Department publishing a series of case studies recognising the financial impacts.[238] One of the issues that this analysis identified was the challenge of airports managing both screened and unscreened passengers, because of rules based on aircraft size. The report acknowledged that airports taking unilateral decisions about how they will manage this causes significant variation in the cost implications for different airlines, but did not propose a solution. [239] The reality is that this has led to a reduction in services and a lessening of competition at some regional airports.[240]

Along with other industry stakeholders, A4ANZ has consistently raised the issue of the costs of these enhanced measures, and the impact of this on the viability of regional air services in particular – noting the potential for unintended negative consequences arising from the increased costs of the enhanced regional security screening measures. Such consequences may include, but are not limited to:

- increased costs to airlines as a result of airports passing on the costs of – and adding margins to – new screening measures;
- increased costs to consumers through levies and/or increased ticket prices where costs cannot be absorbed by the airline;
- reduction in services or complete cessation of services on regional routes due to them becoming unviable; and
- productivity and employment losses due to route closures or reductions in regional Australia.

A4ANZ members, and the aviation sector more broadly, welcomed the COVID-19 support programs, including the RANS program, the Domestic Airports Security Costs Support (DASCS) Program and the Regional Airports Screening Infrastructure (RASI) program to cover the costs of security services during COVID-19 and the implementation of enhanced security screening requirements at regional airports, respectively.[241]

However, now that both the DASCS and RASI programs have ended, regional airport operators – and therefore, airlines operating to these airports – have been left with increased operating costs as a result of the Government-mandated enhanced security measures.

Historical evidence and behaviours indicate that airports pass the cost of these operating expenses through to airlines in full or, in some cases, with the addition of a commercial profit margin, and often without consultation or documentation. On regional routes where services are already marginal due to the poor economies of scale, there is no ability for airlines to pass on such costs to passengers without fares becoming unaffordable, and the result is that services are often reduced or ceased.

To ensure that essential air services to regional communities are not adversely impacted by the increased costs associated with the Government's mandated security measures, A4ANZ has proposed several solutions – detailed in previous submissions to the 2020-21 Federal Budget[242] and the Department of Home Affairs' Industry Discussion Paper *Sustainable Security Screening at Regional Airports*. We have summarised the recommendations below.

Targeted Funding for Security Screening Costs at Regional Airports

There are multiple mechanisms by which the Government could provide financial support to minimise the impact of the operational costs of enhanced security screening at regional airports. In the immediate future, the simplest of these would be for the Government to continue to provide Australian airlines with rebates for security screening costs incurred at all regional airports, as has been the case under the DASCS program. This

option has a number of benefits, including the fact that there is an established process, agreed principles on what constitutes "reasonable" charges", and a requirement for transparency.[iv]

Grant funding is also a viable option, however, the eligibility and associated requirements for airports to access the funding would require careful consideration by Government to ensure that Australian taxpayers are receiving value for money.

Regardless of the funding mechanism, it is vitally important – as highlighted earlier – that a condition of any Government funding for regional airports is that the airport undertakes transparent and genuine consultation with airlines on relevant infrastructure investment and other capital expenditure proposals, and adheres to principles for the pass-through of costs (explored below). As well as improving transparency, this would reduce the risk of overcapitalisation, such as creating capability for international flights in regional areas where there is little current or even predicted demand.

Industry Principles for Efficient & Transparent Security Charges

Under previous aviation security funding programs, the Government has highlighted the need for accountability and transparency.

Given the importance of ensuring the security arrangements at Australia's airports are implemented in the most cost-effective manner, and supported by a viable aviation industry, A4ANZ believes that – even in the absence of Government funding – it is critical for the Government to work with industry to determine what security-related costs can be passed through from airports to airlines, and ultimately, passengers.

Indeed, when Commonwealth Airports were first privatised, the then-Treasurer Peter Costello issued Direction 13 (pursuant to Section 20 of the Prices Surveillance Act) which allowed airport operators to "*pass through to users 100% of costs related to Government Mandated Security Requirements*" without those increased costs affecting compliance with price caps.[243]

Significantly, Direction 13 also limited the recovery from the Australian Protective Service (APS) charge – which generally included passenger screening, baggage screening, and counter-terrorism security –to *no more than 100 per cent of the costs* associated with its provision.

Guidance on what constituted government-mandated security requirements was provided in the ACCC's Annual Report 1999 – 2000 which stated that only 'direct costs' should be passed through and favoured the 'avoidable cost' model.[244]

[iv] Participants in this program (airlines and airports), agreed to a set of principles and indicative examples of what constitutes "reasonable" security costs. These documents guided the administration of the program by the Department of Infrastructure, Transport, Regional Development and Communications.

A4ANZ believes that a key starting point for the development of contemporary principles to guide security charges would be those applied in the DASCS program, and the associated examples of "reasonable" costs agreed by industry.

However, anecdotal reports point to the need for more than just a definition of scope as guidance, as there are still disputes occurring where there is insufficient information provided to clearly justify invoiced charges, for example. And – as highlighted earlier – there is no mechanism for resolving these disputes.

Hence, in addition to reviewing the DASCS principles developed by industry and the Department, A4ANZ would also encourage the Department to consider the International Civil Aviation Organization (ICAO)'s Policies on Charges for Airports and Air Navigation Services [245] – see Appendix B.

Learning from the experience of the DASCS and RASI programs, and international best practice, A4ANZ urges the Department to work with industry to develop and agree security charging principles, which ideally would detail the following:

a) appropriate boundaries on what constitutes a recoverable security charge;
b) requirements for transparency in how costs are calculated;
c) a mechanism for airlines to have input into the security services obtained and how they are procured; and
d) an acceptable dispute resolution procedure where the parties cannot reach agreement on how government mandated security charges are to be calculated and passed through.

The adoption of security charging principles that improve transparency, enhance consultation with airlines, and prohibit airports from profiting from Government-mandated security upgrades at the expense of airlines and the travelling public, will be key to the continuing viability of essential regional air services.

Regional Australia's role in decarbonising the Australian aviation sector

As noted in the *Australian Roadmap for Sustainable Flying*, developed by A4ANZ on behalf of the industry, it is likely that some regional air services and general aviation – as they are generally shorter flights – will able to be decarbonised through the deployment of new aircraft technology, including electric and hydrogen propulsion. Further commentary on the development and use of zero emission aircraft is made in Chapter 6 of this submission, *Maximising Aviation's Contribution to Net Zero*.

While zero emission – also known as next generation – aircraft won't use conventional liquid fuel or indeed SAF, for longer regional flights and the sector more broadly, SAF will be a critical part of Australia's aviation transition to net zero.

As such, A4ANZ welcomes the Government focus on SAF feedstocks both within the Green Paper, and more broadly through the deliberations of the Australian Jet Zero Council – as the availability and sustainability of feedstocks for SAF underpins the entire policy framework required to develop a robust and viable domestic industry.

Opportunities for regional Australia

Even with technological advancements, operational efficiencies, and the deployment of zero emission aircraft, the volume of SAF required to satisfy the demand for liquid fuel in Australian aviation will be immense – SAF is expected to account for up to 80% of emissions reductions from residual aviation fuel use by 2050.[246]

In 2019, Australian aviation fuel use was approximately 9,400 ML.[247] While it dropped to around 3,200 ML in 2022 due to the COVID-19 pandemic, it is expected to return to 2019 levels by 2024 and to increase to over 14,000 ML by 2050.[v]

The recently released CSIRO-Boeing Sustainable Aviation Fuel Roadmap projects that in 2025, Australia will have enough feedstocks to produce 60% of local jet fuel demand using biogenic feedstocks, growing to more than 90% of demand by 2050 as biogenic sources continue to grow, and hydrogen production, for power-to-liquid fuels, ramps up.[248]

It is important to note that while SAF is the single biggest facilitator of the Australian aviation sector reaching net zero by 2050, a local SAF industry also has the potential to provide major benefits to the Australian economy and community more broadly.

The economic potential of SAF is significant to both GDP and jobs growth. Preliminary analysis and benchmarking from Frontier Economics estimates that an Australian SAF industry could – across the total supply chain – create more than 7,400 jobs and contribute an additional $2.8B annually in GDP by 2030.[249] By 2050, Frontier estimate that a local SAF industry could contribute more than 15,600 local jobs and an additional $7.6B annually in GDP.[250]

For example, the CSIRO-Boeing SAF Roadmap notes that the opportunity for Queensland to produce SAF from sugar and bagasse is significant, given that 95% of Australia's sugarcane is grown along the Queensland coast.[251] As a long-established industry, with an existing supply chain in place for the collection and aggregation of sugarcane, there is potential for this to be leveraged for SAF production, leading to significant local benefits.

[v] Based on Frontier Economics' analysis of fuel projects and the assumption of a robust post-COVID-19 recovery.

Indeed, preliminary modelling from Frontier Economics indicates that if Queensland captured 30% of the domestic SAF market, it could create almost 7000 (direct and indirect) jobs by 2050, with the majority in regional Queensland.[252]

However, it is broadly agreed that one of the primary challenges to establishing a SAF industry in Australia is securing sufficient quantities of appropriate feedstocks that can be integrated from a supply chain perspective with a biorefinery.[253]

Global and sectoral competition for feedstocks

There is significant competition in both domestic and international markets for agricultural commodities and biomass feedstocks (and, likely, in the medium- to long-term for green hydrogen), impacting the availability of feedstocks for a local SAF industry.[254]

In Australia the transport sector is the third largest source of emissions – with the majority of these emissions attributable to road transport.[255] It is therefore unsurprising that, currently, road transport uses the majority of available renewable fuels, as part of its efforts to reduce emissions.

At the same time, international markets are attractive for feedstock producers due to the high demand (and high returns) associated with developed markets and supportive policy environments in the US and EU.

Hence, while demand for sustainable liquid fuels from both the road transport and aviation sectors should stimulate the development of a domestic sustainable fuels industry, there is the potential that as the industry moves to scale, demand from competing sectors and markets may constrain the availability of feedstocks for SAF production.

These factors, coupled with the higher production costs associated with SAF output and limited demand thus far (due to the lack of a supportive policy framework) may act as a disincentive for producers to direct feedstocks to SAF production.[256]

Prioritising feedstocks for Australian SAF

Given the significant competition for feedstocks for domestic SAF production, the Government should consider policies that prioritise and incentivise the use of current and future feedstocks for the production of Australian-made SAF.

International experience and guidance notes that feedstocks for renewable liquid fuels should be prioritised or allocated based on the carbon-intensity of the sector and the cost and availability of alternative decarbonisation pathways and technologies.[257] While sectors like light road transport will be able to

decarbonise via electrification, hard-to-abate sectors, like aviation, should be given special consideration, as the sector's reliance on liquid fuel is expected to go well beyond 2050.

For example, Government could support the development of non-biofuel decarbonisation options in other sectors, ie. electrification in road transport, and gradually phase out existing subsidies for non-aviation renewable fuels to prioritise and facilitate the redirection of these feedstocks for SAF production.[258]

Indeed, making SAF production financially attractive for producers through subsidies and/or incentives will be necessary to ensure that producers direct feedstocks to SAF production.

Further commentary on the policy framework required for a robust and viable domestic SAF industry can be found in Chapter 6 of this submission, *Maximising Aviation's Contribution to Net Zero*.

Maximising the Australian Aviation Sector's Contribution to Net Zero

Australians love to fly – but we also need to fly; our connectivity, our regions and so much of our economic activity depends on it.

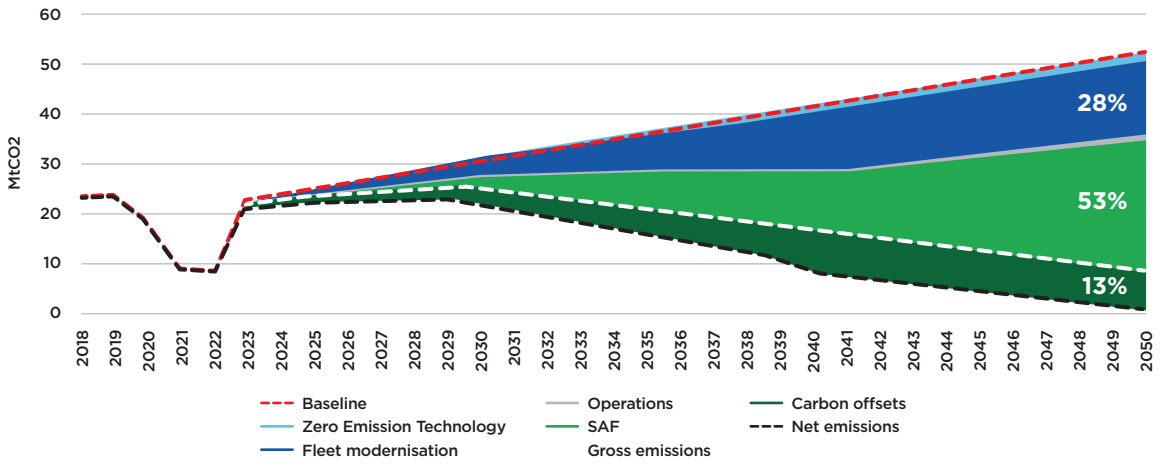
As Australia's aviation sector has grown, so too have its emissions.

While aviation is recognised as one of the most difficult sectors to decarbonise, Australia's airlines are committed to reaching net zero emissions by 2050.

Australian airlines have been leaders in not only making early commitments to reaching net zero emissions by 2050 but by utilising Sustainable Aviation Fuels (SAF) in early trial flights and now on an ongoing-basis, and in pursuing other technologies such as zero-emissions aircraft.

Given the profile of flying in Australia, the majority of emissions reductions in both the Australian and global aviation sectors flying will need to come from the use of SAF.

Australia's Pathway to Net Zero Flying



The extent to which airlines are able to use SAF will be directly influenced by Government policies and investment.

To realise the full potential of SAF in Australia, Government will need to implement a nationally consistent suite of policy measures to;

- ✔ Unlock industry investment
- ✔ Stimulate supply and demand
- ✔ Bridge the price differential between SAF and fossil jet fuel
- ✔ Ensure adequate and sustainable feedstocks

Failure to achieve this will result in slower emissions reductions and slow Australia's progress to net zero by 2050 – necessitating a faster and higher cost of transition in the future.

AIRLINES FOR AUSTRALIA & NEW ZEALAND

6. MAXIMISING AVIATION'S CONTRIBUTION TO NET ZERO

Key points in this chapter

- The Australian airline industry is firmly committed to achieving net zero emissions by 2050.
- Due to the characteristics of flying in Australia, Sustainable Aviation Fuel (SAF) will be the single largest facilitator of the Australian aviation sector reaching net zero.
- Industry has been leading efforts to decarbonise, and it is now time for Government to work constructively with industry – including through the Australian Jet Zero Council – to design and implement supportive policies and investment for the development of a domestic SAF industry.
- A balanced policy approach will be critical to encourage SAF production and supply, and to stimulate demand – noting that no individual policy will drive SAF growth on its own.
- Mandates alone are not enough to drive SAF uptake and must be coupled with incentives to help bridge the significant cost gap between SAF and conventional jet fuel.

Maximising aviation's contribution to net zero

A4ANZ congratulates the Government on the strong focus on SAF and sustainability more broadly, both within the Green Paper and through establishing the Australian Jet Zero Council.

As noted in the Green Paper, the Australian airline industry is firmly committed to achieving net zero emissions by 2050 – backing in the global airline industry's 2021 net zero resolution,[259] advocating for the adoption of ICAO's collective Long Term Aspirational Goal[260], and, closer to home, supporting broader commitments by the Federal Government for Australia to reach net zero by 2050.[261]

Indeed, airlines based in Australia – and across the Tasman in New Zealand – have been leaders in not only making early commitments to reaching net zero emissions by 2050[262,263] but by utilising SAF in early trial flights[264] and now on an ongoing-basis,[265] and in pursuing other technologies such as next-generation aircraft.[266]

To understand how airlines in Australia might reach net zero by 2050, A4ANZ led a significant piece of work in this space, publishing an *Australian Roadmap for Sustainable Flying – Net Zero by 2050* (the Roadmap), informed by stakeholders from across the aviation sector. The Roadmap outlines a number of industry commitments and recommendations for government action.

As supportive government policy will be critical in enabling these commitments by industry to become the reality, and for the aviation industry to transition to low and zero-emissions technologies, A4ANZ welcomes the Government's recognition that the challenge in decarbonising the Australian aviation sector can only be overcome through collaboration – both with industry, and across Government portfolios and agencies.

Working together to ensure a strong and sustainable Australian aviation sector

The Green Paper asks how Government can work with industry to ensure a strong and sustainable aviation sector that reduces emissions and grows jobs and innovation.

As noted earlier, A4ANZ has welcomed the Government's focus on decarbonising the aviation industry and has supported the formation of the Australian Jet Zero Council as an important step to ensuring that industry and government are able to work collaboratively to design and implement a coordinated national strategy and policy framework to support the decarbonisation of aviation in Australia.

Concerningly though, the Green Paper states that "the Council will work across the sector and with government *to promote, mobilise, and galvanise the industry's own decarbonisation efforts* [emphasis added]". Industry has been leading efforts to decarbonise – developing potential pathways to net zero aviation, conducting analysis on the availability of suitable feedstocks in Australia and the broader Asia Pacific region, investing in SAF domestically, purchasing SAF in available international ports, exploring corporate and consumer purchasing programs, and investing in new technologies.

There is consensus across industry that it has led the charge in this space, and that it is now time for Government to come to the table to work constructively with industry to design and implement supportive investment and policies to stimulate the development of a domestic SAF industry – so to simply say that the purpose of the Australia Jet Zero Council is to support industry's own efforts to decarbonise seems to misrepresent why such a body was established in the first place.

Similarly, the Green Paper notes that "*Australia has in a place a comprehensive framework of measures to drive decarbonisation across our economy.*" While this may be true at a macro or economy-wide level – there is still significant work that needs to be done to develop and implement a policy framework that will support Australia's aviation sector through transition to net zero.

So far – and understandably so – much of the focus of the Federal Government's decarbonisation plans has fallen to supporting renewable electricity[267], the electrification of light passenger vehicles[268], and the development of a domestic green hydrogen industry.[269] Indeed, with the exception of the Queensland Government's focus on renewable liquid fuels, most State and Territory governments have also focused on

electrification and the development of local green hydrogen industries – overlooking the role, and opportunity presented by, renewable liquid fuels from biogenic feedstocks.

While green hydrogen will be important in decarbonising the aviation industry in the longer-term, either as an input to SAF or as a standalone fuel in novel hydrogen-powered aircraft – it is expected that in the near- to medium-term the competition for, and price of, green hydrogen molecules will make it less attractive for use in the production of SAF in Australia.

The lack of a coordinated national policy framework and an absence of State and Territory strategies and policies to prioritise and develop local SAF industries means that even with the formation of the Australian Jet Zero Council, Australia is still at risk of lagging behind in the global race for SAF – this cannot be allowed to happen, as it is critical to ensure that Australia's aviation sector remains strong, viable, and environmentally sustainable well into the future – safeguarding air travel for generations to come.

Aviation plays a critical role in Australia's connectivity – linking our cities across vast distances, and connecting us to the rest of the world, enabling trade and tourism of significant value to the Australian economy.

Indeed, prior to the COVID-19 pandemic, the air transport sector contributed $104 billion to the Australian economy, and directly and indirectly supported 716,000 jobs.[270] The airline industry is a significant source of economic activity on its own; pre-pandemic, it contributed $9.4 billion to the economy and supported 50,000 jobs.[271]

Australia's unique geography also means that there are remote communities that are only accessible by air or that are long distances from major population centres, making travel by road time consuming and expensive.[272] Aviation therefore plays an important role servicing the needs of these communities by providing access to key services, including transport and freight, medical services, social services and law enforcement, and travel for business and tourism.

To ensure that aviation continues to be a strong employer and contributor to the Australian economy – and to safeguard future generation's access to air travel – Government must act now with appropriate investment and supportive policies to build on industry's own efforts in decarbonising the sector.

Sustainable Aviation Fuel – A key facilitator of net zero by 2050

Government notes that there are a number of measures that could be pursued to achieve net zero by 2050 in Australian aviation, and has asked for respondents to the Green Paper to nominate specific measures for the Government to support and progress.

As noted both within the Green Paper, and the Australian Roadmap for Sustainable Flying, there are four key levers for the aviation sector to reach net zero emissions by 2050; improvements in aircraft and engine technologies, the use of SAF, economic measures and improvements to air traffic management (ATM) and aircraft operations.

While technological advancements like electric- and hydrogen-powered (next generation) aircraft will be important for the decarbonisation of shorter regional flights and general aviation in the coming decades, the majority of emissions reductions in both the Australian and global aviation sectors flying will need to come from SAF.

This is because the significant majority of airline emissions – approximately 71% of total aviation emissions in Australia – come from international flights, which will continue to rely on liquid fuels past 2050.[273]

Of the remaining 29% of emissions attributable to domestic flying, 87% of these come from flights with seating for more than 150 people, with flight times exceeding 60 minutes; a combination of characteristics which place them out of scope for next-generation aircraft in the foreseeable future.[274]

Indeed, A4ANZ's Roadmap for Sustainable Flying estimates that by 2050, more than 80% of emissions reductions from residual fuel use could come from the use of SAF.[275] This accords with global analyses which note that SAF will be the single largest facilitator of the aviation sector reaching net zero.[276,277]

SAF must be prominent in the aviation sector's transition to net zero – however, it also has the potential to be prominent in Australia's economic story.

As noted earlier, a local SAF industry also has the potential to provide major benefits to the Australian economy and community more broadly, with preliminary analysis suggesting that an Australian SAF industry could – across the total supply chain – create more than 7,400 jobs and contribute an additional $2.8 billion annually in GDP by 2030, and over 15,600 local jobs and an additional $7.6 billion annually in GDP by 2050.[278]

A domestic SAF industry would also have benefits for other sectors of the economy. For example, during the production of SAF – depending on the pathway used – co-products such as naptha and renewable diesel are also produced. Renewable diesel is a drop-in fuel which can be used at up to a 100% blend – playing a critical role in the decarbonisation of other hard-to-abate sectors such as construction, shipping, trucking, and heavy haulage.

Additionally, as noted in the Green Paper, a domestic SAF industry would also have a significant positive impact on Australia's domestic fuel security – safeguarding Australia's long-term sovereign refining capability and reducing Australia's reliance on imported fossil jet fuel – protecting against geopolitical risks, price shocks, and supply chain issues.

Similarly, by utilising Australian-made SAF, and reducing reliance on imported fossil jet fuel, the Australia Defence Force – specifically, the Royal Australian Air Force as the largest consumer of fuel in the ADF – would increase its operational independence and resilience, translating to an increase in military capability.[279] Indeed, both the US and UK militaries have trialled and adopted SAF for their aircraft fleets – leading to a global precedent for the widespread adoption of SAF within military aviation.[280]

As such, while noting that each of the four levers for reaching net zero flying will require cooperation and support from government, A4ANZ recommends that SAF is prioritised for immediate government action.

Decarbonising the aviation sector through the development and uptake of SAF requires a coordinated and nationally-consistent set of policy interventions to rapidly strengthen the business case for private investment, set clear, long-term demand signals, and help bridge the price differential between SAF and conventional jet fuel.

Failure to achieve this will result in slower emissions reductions and slow Australia's progress to net zero by 2050 – necessitating a faster and higher cost of transition in the future, leaving Australia at risk of failing to meet its decarbonisation targets.

Policy considerations for the development and deployment of SAF in Australia

In addition to asking for suggestions on which specific measures should be prioritised to reach net zero aviation by 2050, the Green Paper also questions what is needed to; ensure confidence in the quality standards and sustainability certification of SAF, and support the development and deployment of SAF.

A4ANZ supports the potential policies and priorities for the establishment of a domestic SAF industry as outlined in the Green Paper, including; building industry literacy and social licence, establishing robust SAF certification arrangements, and a national framework for voluntary consumer purchasing. A4ANZ urges Government to progress these options, with input and advice from the Australian Jet Zero Council.

However, in addition to progressing the options outlined above, the Government must also start to progress the design and implementation of policies to support the supply and demand of SAF. For example, the Government's recent announcement of the expansion of the existing Capacity Investment Scheme (CIS), with investment to supercharge the delivery of reliable and renewable electricity[281], is a bold and necessary step to provide certainty for investors and clean, affordable energy to Australians. A similarly ambitious and holistic approach to creating a policy framework to support the development of a domestic SAF industry is required.

As noted earlier, industry – both internationally and in Australia – has done a significant amount of work on the practical considerations and potential policy options required to develop a robust and viable domestic SAF industry and facilitate the uptake of SAF. In 2019 (and again in 2021), the Air Transport Action Group released

Waypoint 2050, a comprehensive roadmap outlining potential pathways for the global aviation sector to achieve its climate goals and reach net zero by 2050.[282]

Similarly, in early 2021 Europe's aviation sector released *Destination 2050*, a roadmap to net zero emissions from all flights within and departing the European Union, United Kingdom, and European Free Trade Area.[283] Airlines for America – which represents airlines in the United States – committed to net-zero carbon emissions by 2050, and has stated that their 2030 goal of 3 billion gallons of SAF is dependent on the implementation of supportive policies such as the fuel blenders tax credit.[284]

Additionally, the World Economic Forum, in collaboration with the Clean Skies for Tomorrow Coalition, have undertaken extensive work to develop guidance on the implementation of effective SAF policy frameworks – including publishing a *Sustainable Aviation Fuel Policy Toolkit*[285] and *Guidelines for a Sustainable Aviation Fuel Blending Mandate in Europe*.[286]

Closer to home, A4ANZ released the Australian Roadmap for Sustainable Flying in 2022, plotting potential pathways to net zero flying by 2050, Bioenergy Australia published reports into SAF and renewable liquid fuels more broadly, and the CSIRO-Boeing Roadmap outlines the extensive work undertaken by CSIRO to map and analyse the potential of feedstocks both within Australia and the Asia Pacific region.

Taken together, this body of work provides an extensive list of options and policy levers for Government to explore, in order to determine – in conjunction with the Australian Jet Zero Council – what policy approach would work best for the Australian market and environment. As such, A4ANZ's commentary below has been limited to addressing key topics and issues which have been raised in the Green Paper and subsequent roundtable consultations.

Cost Differential

The Green Paper – and indeed almost every piece of literature, analysis, and media covering SAF – notes that the price of SAF is significantly more expensive than conventional fossil-derived jet fuel, with the current price of SAF being between three to six times more expensive than conventional jet fuel, depending on the production pathway.[287]

This difference in price presents a significant challenge for airlines, as fuel is often the largest operating cost for an airline. In a post-pandemic environment, and in the absence of supportive policies to bridge the price gap, airlines are ill-equipped to absorb this increased cost.

Government investment, incentives, and supportive policies will be critical in establishing a sustainable, commercial, and viable domestic SAF industry in Australia, and ensuring that airlines operating in Australia are able to deploy SAF effectively.

Infrastructure

Local analysis notes that one of the primary non-economic barriers to SAF uptake in Australia is the interaction between SAF supply chains and existing fuel infrastructure and supply chains.[288] Indeed, the Green Paper notes that at present, Australia's lack of refining capacity limits opportunities to leverage our natural feedstock advantage.

A number of stakeholders have also advised that they see the distribution of SAF within an airport as a particularly significant barrier to overcome.[289]

The Green Paper states that all emitters in the aviation industry will need to contribute to the industry's net zero commitments – not just airlines. While airports are undertaking their own decarbonisation journeys on the pathway to net zero – and should be applauded for this – airports also have a key role to play in supporting the use of SAF, through collaborating with airlines and government on policy options to support the development of a domestic SAF industry.

A growing number of airports globally are leading several initiatives to support the SAF economy – supporting research and development, regional studies, and providing financial incentives.[290]

It has therefore been disappointing to witness the lack of interest from representatives from the airport sector on working collaboratively on the issue of SAF and net zero more broadly – instead, seeking to perpetuate myths about the need for the duplication of fuel infrastructure and overstating the challenges associated with integrating SAF into an airport. It is this sort of commentary that distracts from constructive conversations on SAF policy and prevents genuine collaboration and progress. It is also not accurate, when we know that the key challenge in developing domestic SAF industries is the industry infrastructure (which in Australia is a lack of refining infrastructure), rather than the infrastructure at the airport, as confirmed by the Roundtable on Sustainable Biomaterials (RSB) – global experts in energy transition.[291]

It is also important to reiterate that SAF is chemically identical to conventional jet fuel[292] and when blended with fossil jet fuel to a level of up to 50%, fully compatible with existing jet engine technology and existing fuel distribution infrastructure.[293]

Given that SAF requires blending with conventional jet fuel – in the short- and medium-term at least – it will be critically important to explore how existing refineries and fuel producers can work with industry to provide into-wing solutions for airlines to facilitate the utilisation of SAF.

It is broadly agreed that blending should take place either at the refinery level, or at the fuel terminal. As noted by the Airports Council International's guidance on integrating SAF into the air transport system, blending at an airport is the least desirable option, and there is no suggestion that blending on-airport would be considered in the Australian context.

Feedstock Availability

The Green Paper specifically asks about challenges associated with growing, refining, and consuming feedstocks for SAF.

As noted earlier, the recently released CSIRO-Boeing Sustainable Aviation Fuel Roadmap provides a comprehensive analysis of SAF feedstock availability and production potential in the APAC region, with a primary focus on Australia and New Zealand.[294] This SAF Roadmap also outlines key challenges in the short-, medium-, and long-term, as well as recommendations and potential solutions. A4ANZ would therefore encourage the Government to consult the CSIRO-Boeing SAF Roadmap in the first instance to understand the challenges associated with specific feedstocks in Australia.

Additionally, further commentary on Australian feedstocks, in the context of regional opportunities, and global and sectoral competition can be found in Chapter 5 of this submission: *Maintaining a Viable and Sustainable Regional Aviation Sector*.

Sustainability Certification

The lack of transparent frameworks – at both a domestic and global level – to provide certainty and credibility regarding lifecycle emissions reductions, and feedstock integrity, has a direct impact on SAF demand.[295]

Learning from international experience with developing sustainability criteria and certification will be key to progressing a framework for certification for SAF in Australia. Furthermore, it is important that Australian standards are aligned with international standards to prevent market distortion and facilitate international trade.

A4ANZ has welcomed the announcement that the Australian Jet Zero Council is exploring the development of preferred arrangements for SAF certification to provide assurance of the environmental credentials and provenance of SAF.

Demand Signal Options

Accelerating the development and uptake of SAF over the next decade is key to enabling the transition towards a carbon-neutral economy and meeting the sector's climate objectives and Australia's commitments more broadly. However, a balanced policy approach will be critical to encourage SAF production and supply, and to stimulate demand – noting that no individual policy will drive SAF growth on its own.

<u>Mandates</u>

As A4ANZ and industry more broadly have advised several times, mandates alone are not enough to drive SAF uptake, and must be coupled with incentives to help bridge the significant cost gap between SAF and conventional jet fuel.

This is echoed by the World Economic Forum's guidance on the introduction of a SAF blending mandate in Europe, which notes that the introduction of a mandate is insufficient to unlock investments in the SAF supply chain, and that reaching the desired levels of SAF production will require public financial support.[296]

For example, since the beginning of 2022, French regulations have required an average of 1% SAF on flights departing from France (from 2025 this will be adapted to the broader EU mandate under the ReFuel initiative). Due to poorly designed policy, the cost of SAF is extraordinarily high – up to six times the cost of conventional jet fuel – and not all aircraft operators have been able to access SAF, causing a non-level playing field.[297] Additionally, it is unlikely that the mandate will be sufficient to produce the volumes it requires.[298]

To manage the resulting costs from the mandate, Air France is including a levy for SAF in the price of all tickets. In 2023, the airline says that the amount will vary between €1 and €8 in economy and between €1.50 and €24 in business, depending on the distance.[299]

In comparison, the United States has taken an holistic approach with the US Grand Challenge and supporting measures in the Inflation Reduction Act (IRA).[300]

The U.S. Sustainable Aviation Fuel Credit provides for a $1.25 baseline credit for each gallon of SAF used in aviation. To qualify as a SAF, the production process must result in a lifecycle emissions reduction of at least 50 percent compared with conventional fuels. An additional tax credit of 1 cent applies to every percentage point of emissions savings above 50%, with an upper tax credit limit of $1.75 per gallon. This effectively rewards producers of fuels with greater emissions savings, while providing regulatory flexibility as production capacity develops.[301]

From 2025, the Sustainable Aviation Fuel Credit will transition to the Clean Fuel Production Credit worth $0.35 per gallon, multiplied by the carbon dioxide emissions factor, resulting in bonuses of up to $1.75/gallon.[302]

In addition to these incentives, the US Government has also provided grant funding in the form of the FAST-SAF grants, which offers $244 million in funding for SAF projects related to production, transportation, blending, or storage, and FAST-Tech grants which offers $46 million in funding for SAF R&D activities.[303]

Hence, while the Government may wish to explore a progressive SAF blending mandate, similar to that being implemented as part of the *ReFuelEU Aviation Initiative* under European Union's *Fit for 55* package, government – at both a Federal and State level – will also need to design and implement appropriate supportive policies, including financial support and incentives like those in the IRA, to bridge the cost differential between SAF and conventional jet fuel to protect the viability of the sector, ensure a level playing field, and mitigate the risks of competitive distortion.[304]

Low Carbon Fuel Standards

A4ANZ supports calls for the introduction of a well-designed Low Carbon Fuels Standard (LCFS) – however as noted in the Green Paper, Australia's reliance on various liquid fuels across a variety of sectors and industries necessitates that an LCFS be considered outside of the Aviation White Paper process.

Recognising the Importance of SAF Accounting Frameworks

As noted earlier, SAF is a drop-in fuel, which, when blended with conventional jet fuel, can be used in existing fuelling systems, aircraft, and infrastructure. However, once SAF enters the existing jet fuel supply chain – mixing with conventional jet fuel – it can no longer be traced.

To ensure that the sustainability attributes of SAF are appropriately accounted for, traced, transmitted, and communicated, a tracking mechanism is required to allow for airlines to claim the environmental benefits of their SAF purchases against their various decarbonisation obligations and commitments.[305]

Such a mechanism or framework will need to be implemented and recognised in Australia – including recognition under the National Greenhouse and Energy Reporting (NGER) Scheme.

There is broad agreement that a SAF accounting framework, based on trusted chain-of-custody approaches is necessary to support the scale-up of SAF globally. IATA has outlined the key common principles and necessary attributes of a robust SAF accounting approach in a recent policy paper.[306]

Current International Considerations

Closer collaboration with New Zealand is explored later in this submission in Chapter 7: *Fit-For-Purpose Agencies and Governance in the Australian Aviation Sector.* However, it is worth noting that both industry and government in New Zealand are interested in working with Australia to explore a regional SAF solution. Hence, A4ANZ would suggest that the Australian Government consider how a Trans-Tasman partnership on this might established – and the role for both the Australian Jet Zero Council, and its NZ counterpart, *Sustainable Aviation Aotearoa* within this.

With Australia and New Zealand both having significant connectivity to the Pacific, there is also an opportunity for Australia and New Zealand to become sustainable aviation hubs – facilitating sustainable flying throughout the Pacific region.

Additionally, as noted by Airlines for Europe in the lead up ICAO's Third Conference on Alternative Aviation Fuels (CAAF/3) in November, the international race for SAF leadership has started and European investors and industrial partners are waiting for a strong policy signal from legislators to unleash their investments.[307]

To this end, it will be important for the Government to consider the outcomes from CAAF/3 – including the agreement on a goal of 5% carbon intensity reduction by 2030 through the use of SAF, and the development of

a Global Framework for Cleaner Energies[308] – as a potential inputs to the Aviation White Paper, and ensure that Government action commences at the pace necessary to ensure that Australia does not fall further behind in the global development and deployment of SAF.

The role of next generation technology in Australia's aviation sector reaching net zero by 2050

As noted in the Green Paper, next generation aircraft powered by alternative energy sources – such as electricity or hydrogen – are promising options to replace conventional aircraft powered by jet fuel, albeit in limited settings until later in the century.

Both all-electric and hydrogen-powered aircraft may have the potential to reduce tailpipe carbon emissions from flights by up to 100%, depending on the how the hydrogen and electricity used are produced.[309] However, these next generation aircraft are still in the early stages of development for use in commercial fleets, and there is uncertainty around the extent to which the technology can be developed and commercialised. As such, the timeframe for the implementation of these technologies for commercial use is up for debate, with industry opinions differing on the extent to which the technology can be rolled out. [310]

For electric aircraft, planes with up to 9 seats are already undertaking test flights[311], while aircraft with up to 19 seats are planned for the later 2020.[312] For hydrogen-powered aircraft, expectations are that commercial activity will begin after 2030.[313] For example, Airbus has revealed three concepts for hydrogen-powered zero emission commercial aircraft which it aims to bring to market by 2035.[314]

Both Regional Express and Air New Zealand are exploring the potential of novel propulsion technologies. Regional Express has partnered with Dovetail Electric Aviation to pioneer the conversion of turbine powered aircraft to electric, emission-free propulsion.[315] Similarly, Air New Zealand announced that it is working with several parties on next generation aircraft, and is currently seeking airport partners for cargo-only trials from 2026.[316]

However, as noted above, the timelines flights using novel propulsion are uncertain, dependent on the continual progression of battery, fuel cell and liquid hydrogen propulsion technologies, as well as suitable supporting infrastructure, scaled green energy, and fit-for-purpose regulation.[317]

The cost of these technologies, their ability to be used over varying distances with varying seat utilisation, safety requirements, passenger demand, airport infrastructure, supply chains, and fuel costs, will all be important determinants of potential entry into the commercial aviation industry.[318]

Modelling the Impact of next generation aircraft on emissions in Australia

The rate at which next generation aircraft are expected to be commercially viable depends – as has been outlined above – on flight characteristics, including the number of passengers and the distance to be flown.

Table 6.1 illustrates the likely implementation timeframe for next generation aircraft in the global market, the potential flight range of these aircraft, and an indication of the percentage of total global aviation emissions attributable to different types of flying.

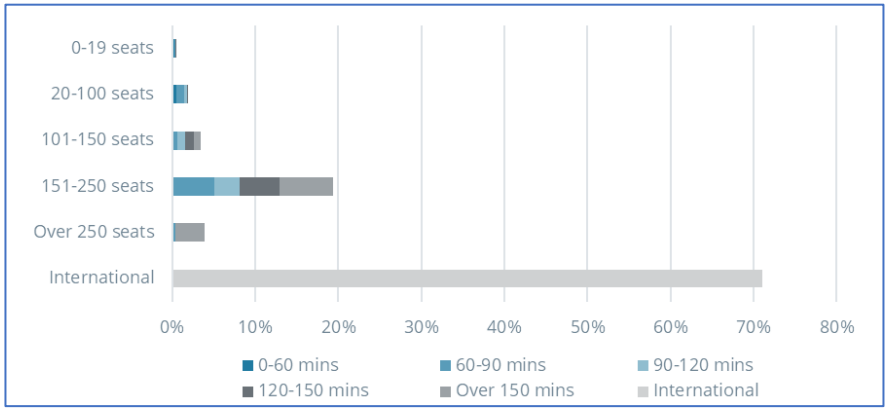
Table 6.1: Implementation of next generation aircraft into the global aviation market[319]

	2020	2025	2030	2035	2040	2045	2050	
Commuter » 9-50 seats » <60 minute flights » <1% of industry CO_2	SAF	Electric and/or SAF	Electric and/or SAF	Electric and/or SAF	Electric and/or SAF	Electric and/or SAF	Electric and/or SAF	~27% of CO_2 emissions
Regional » 50-100 seats » 30-90 minute flights » ~3% of industry CO_2	SAF	SAF	Electric or hydrogen fuel cell and/or SAF	Electric or hydrogen fuel cell and/or SAF	Electric or hydrogen fuel cell and/or SAF	Electric or hydrogen fuel cell and/or SAF	Electric or hydrogen fuel cell and/or SAF	
Short-haul » 100-150 seats » 45-120 minute flights » ~24% of industry CO_2	SAF	SAF	SAF	SAF	Electric, hydrogen combustion and/or SAF	Electric, hydrogen combustion and/or SAF	Electric, hydrogen combustion and/or SAF	
Medium-haul » 100-250 seats » 60-150 minute flights » ~43% of industry CO_2	SAF	SAF	SAF	SAF	SAF	SAF	SAF potentially some Hydrogen	~73% of CO_2
Long-haul » 250+ seats » 150 minute + flights » ~30% of industry CO_2	SAF	SAF	SAF	SAF	SAF	SAF	SAF	

Source: Adapted from Air Transport Action Group

The potential emissions reduction from introducing these technologies in Australia is explored in further detail in Figure 6.1. Indeed, taken together, these figures illustrate that even if deployed widely on eligible routes, next generation technologies are likely to only have a limited impact in reducing emissions from flying in Australia by 2050.

Figure 6.1: Emissions by flight characteristics in Australia, 2019



Source: Frontier Economics analysis of Airservices Australia data (from 2019) on flights and emissions by aircraft and route within Australia. This data was merged with information on distances between Australian airports (converted here to travel time) and seats per aircraft to generate the above figure.

This is because, as noted earlier in this submission, the significant majority of airline emissions – approximately 71% of total aviation emissions in Australia – come from international flights.[320] Of the remaining 29% of emissions attributable to domestic flying, 87% of these come from flights with seating for more than 150 people, with flight times exceeding 60 minutes; a combination of characteristics which place them out of scope for next generation aircraft in the foreseeable future.[321]

Hence, as modelled in the Australian Roadmap for Sustainable Flying – Net Zero by 2050, next generation aircraft technology is projected to reduce emissions by approximately 3.7% by 2050.[322]

Considerations for the development and deployment of next generation aircraft

As the sector continues to explore the application of new propulsion technologies and next generation aircraft, it is important to acknowledge the practical considerations of the introduction of next generation aircraft in the Australian market, and what Government action is needed to ensure that these aircraft are able to be deployed as appropriate.

Certification

Safety is, and will always be, the number one priority for the aviation industry. Therefore, it is likely that certification and testing for novel airframe configurations or propulsion systems will be a rigorous and prolonged process.[323] Additionally, as these aircraft will be utilising novel technology, regulators will need to design and implement new certification procedures to ensure the safety level required for commercial aviation.[324] Wherever possible, equivalency certification with the European Union Aviation Safety Agency, and the US Federal Aviation Administration should be considered.

Infrastructure & Operations

The introduction of next generation aircraft will also require amendments and additions to on-airport infrastructure, maintenance equipment, and workforce training. This is because the recharging and refueling of electric and hydrogen powered aircraft will require markedly different supply chains and infrastructure than the traditional refueling systems found at airports today. For example, liquid hydrogen needs to be stored in specialised tanks at very low temperatures (-253°C) and has a greater volume-to energy-ratio than traditional jet fuel.[325]

It is also likely that recharging and refuelling times, at least initially, will be greater for electric and hydrogen powered aircraft.[326,327] This presents a significant challenge for airlines, as increased turnaround times can result in a loss of revenue if airline capacity is reduced.[328]

Given that recharging, refuelling and maintenance procedures for electric and hydrogen aircraft will be markedly different to conventional aircrafts that use traditional jet fuel or Sustainable Aviation Fuels, the

entire support workforce – from flight crews, to ground handlers, maintenance and refuelling staff will require additional training and upskilling.[329]

Cost

International analysis suggests that global costs for the aviation industry to develop and implement new technology – including next generation aircraft – are likely to be considerable in the early years.[330] Significant cost, coupled with the novel nature of hydrogen and electric aircraft, may result in airlines generally being wary of investing in next generation aircraft early.[331]

While both Regional Express and Air New Zealand are currently investing in exploring new propulsion technologies, cost is still likely to be a significant consideration when looking to scale fleet, and will likely be a major barrier for smaller regional operators – especially those in the general aviation space.

Public Perception

Electric- and hydrogen-powered aircraft will also need to go through a process of introduction to the public to create trust and the acceptance of their safety credentials — particularly those that look very different to aircraft currently flying today.

Industry and Government actions to support next generation aircraft

While electric- and hydrogen-powered aircraft are unlikely to have a significant impact on emissions in the Australian market before 2050, Australian airlines – and the industry more broadly – commits to working together to both introduce novel technologies, and ensure that the infrastructure required for these aircraft are fit-for-purpose.

Additionally, the industry commits to exploring partnerships to accelerate research and development of radical airframe designs, and electric and hydrogen propulsion.

In order to support the research and development of, and subsequent investment in, next generation aircraft the Federal Government should work with industry to design and implement the necessary supporting policies and infrastructure required for new aviation technologies to be deployed in the Australian aviation sector – this could be done by convening a dedicated electric- and hydrogen-powered aircraft subgroup of the Australian Zero Jet Council.

Additionally, the Federal Government must ensure that the regulator, the Civil Aviation Safety Authority, is adequately resourced and prepared to support the certification process of novel airframe configurations and propulsion systems.

A note on the relationship between noise & emissions

In discussing airport development and planning processes, the Green Paper canvasses the issue of noise, and notes the challenge of balancing community concerns about noise with the social and economic benefits of aviation growth[332] – however, another complicating factor, which has not been explored in detail is the inverse relationship between noise and emissions.

As noted earlier, improvements and efficiencies in aircraft operations are generally perceived as the "low-hanging fruit" the sector can target to reduce emissions. However, there are a number of external factors which can introduce inefficiencies compared with ideal flight paths and conditions, for example:[333] safety considerations, capacity constraints, adverse weather conditions, and critically, noise abatement procedures.[vi]

As the Green Paper notes, airlines can take off and land at airports according to noise abatement procedures and regulations to reduce noise for certain suburbs – however, it is important to understand that this may cause the aircraft to fly an approach or departure that is a less efficient route or accept suboptimal altitudes, which may result in the aircraft burning significantly more jet fuel than alternative approaches.

Airlines in Australia have been working proactively to address both the issue of noise and emissions through fleet modernisation – with newer aircraft being 15 to 25% more fuel efficient, and up to 50-60% quieter than previous aircraft.[334,335]

A4ANZ welcomes the Government's statement, within the Green Paper, that it is not considering imposing additional constraints on airports such as curfews or movement caps. However, A4ANZ would also encourage the Government to work with airlines, and aviation sector stakeholders more broadly, to ensure that the environmental impact of noise abatement procedures is considered appropriately during discussions on the management of aircraft noise.

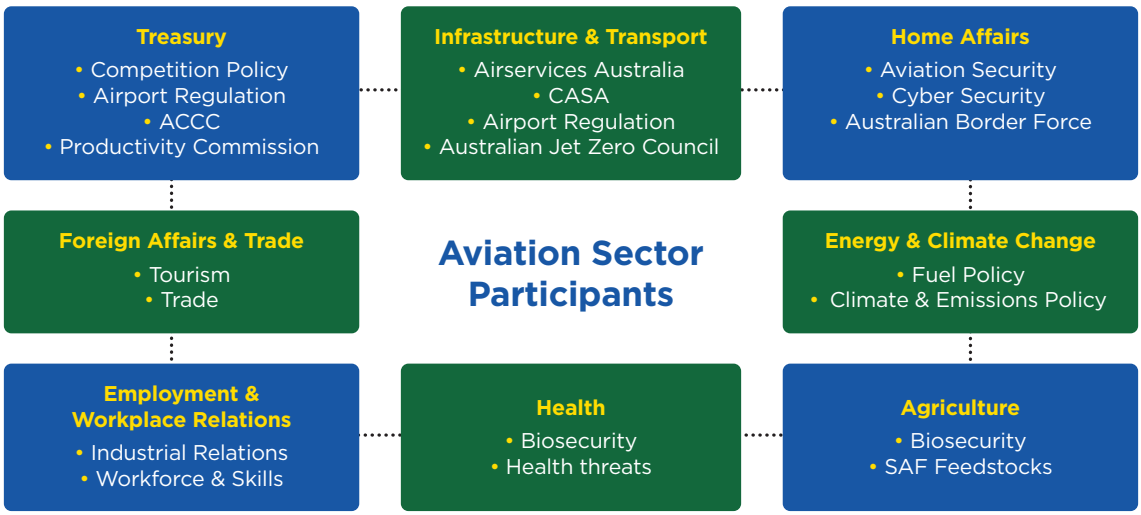
The Green Paper also notes that for aviation to continue to grow; airports, airlines, and Airservices Australia must actively foster social license for airport and aviation activity. A4ANZ agrees with this assertion but questions the practicality of this given the issues plaguing Airservices Australia, including the lack of confidence that industry – and indeed the community, as evidenced in submissions to the White Paper Terms of Reference – has in Airservices Australia and their operations. This issue is explored further in this submission in Chapter 7 – *Fit-For-Purpose Agencies and Governance.*

[vi] To reduce noise impact on the ground, aircraft operations around airports are subject to noise abatement procedures and regulations (Air Navigation [Aircraft Noise] Regulations 2018) that may reduce noise for a certain suburb but may cause the aircraft to fly an approach or departure that is a less efficient route or accept suboptimal altitudes.

Fit-For-Purpose Government Agencies and Governance in the Australian Aviation Sector

There is room for improvement with how Government engages with industry – at present the sector interfaces with multiple Federal Government Departments and numerous agencies, which often act completely independently of each other.

The various interfaces between Government Departments and Industry



Streamlining or consolidating the multiple interfaces between Government and industry would ensure greater policy alignment, and more efficient communication and resolution of issues. It would also allow Government to have a better understanding of the collective impact on the aviation sector of unilateral increases to various Government-levied fees and charges.

It is important to understand how these charges, in the context of the broader economic environment and industry cost pressures, might impact the efficiency and viability of the sector, including the affordability of airfares and the continued operation of marginal regional air services.

Ensuring an efficient, viable, and sustainable aviation policy framework:

- ✔ Facilitating an effective interface between Government and industry
- ✔ Ensuring efficient, responsive, and high-quality airspace regulation & management
- ✔ Improving the alignment of aviation security policy and implementation – including through enhanced Government engagement with industry
- ✔ Setting appropriate aviation security charges through principles for efficient & transparent security charges

AIRLINES FOR AUSTRALIA & NEW ZEALAND

7. FIT-FOR-PURPOSE GOVERNANCE, AGENCIES & REGULATIONS

Key points in this chapter

- There is room for improvement with how Government engages with industry – particularly in aviation security and air space regulation.
- Government should consider both how its aviation agencies set charges and levies for the industry, and the cumulative impact of the multiple increases across the variety of agencies and Departments that interact with industry.
- Government should consider introducing more rigorous regulatory oversight of Airservices Australia – including appropriate performance metrics – to ensure effective governance of the agency, and efficient operations and pricing.
- The Government's approach to aviation security policy design and implementation needs to be outcomes-focused, harmonised, and streamlined.
- A4ANZ is aware that there are a variety of options that have been proposed to address issues in this space. This should be a clear indication to Government that current governance and policy frameworks are not fit-for-purpose – specifically, and particularly, with regard to aviation security policy.

Fit-for-purpose Government agencies and governance in the Australian aviation sector

The Green Paper correctly notes that aviation is a complex global industry that requires significant collaboration and cooperation between industry and governments. Indeed, in A4ANZ's submission in response to the Aviation White Paper's Terms of Reference, we noted the many ways that industry interfaces with multiple Government Departments and agencies.

While the Green Paper states that "the current structures appear largely fit for purpose", A4ANZ believes that there is room for improvement with how Government engages with industry – particularly in aviation security and air space regulation.

A4ANZ also believes that Government may wish to consider streamlining or consolidating the multiple interfaces between Government and industry, to ensure more efficient communication and resolution of issues, and so that Government may have a better understanding of the impacts of various policies on the sector – particularly the impact of unilateral increases across multiple Government-levied charges.

We understand this to be a view shared by other aviation stakeholders, and one that was recognised in the 2021 report of the Future of Aviation Reference (FAR) Panel. As outlined later in this chapter, the FAR Panel noted that aviation matters are often complex to resolve, as they often involve more than one Department or agency.[336]

Improving the alignment of aviation security policy and implementation

While many structures within the aviation industry might be fit-for-purpose, sector participants have consistently argued that this is not the case with aviation security governance arrangements.

The Green Paper notes that the most significant change since the 2009 Aviation White Paper has been the transfer of responsibility for aviation security policy and regulation to the Department of Home Affairs. Subsequently, the Hartland Review – an independent review into Australia's aviation and maritime transport security settings – noted that the profile of the aviation security regulator has diminished during the staged transition from the Office of Transport Security to being housed within the Cyber and Infrastructure Security Centre (CISC).[337]

A4ANZ understands that the Department of Home Affairs has since restructured how aviation security policy and compliance are handled, in response to critical industry concerns – designating CISC as the regulator responsible for compliance, and moving responsibility for aviation security policy to the Industry Partnerships and Infrastructure Policy branch. However, A4ANZ airline members and the industry more broadly, remain unconvinced that this structure is fit-for-purpose.

In aviation operations, safety and security exist as two sides of the same coin. To many within the industry, it appears incongruous for the aviation security regulator to sit within the Department of Home Affairs, while the aviation safety regulator – the Civil Aviation Safety Authority (CASA) – is a portfolio entity within the Department of Infrastructure, Transport, Regional Development, Communications, and the Arts.

From a practical perspective, this contributes to an approach to the development and implementation of aviation security policies which is frequently disjointed, often lacks insight into commercial implications, and has ultimately added unnecessary costs to both the sector and to consumers – particularly those in regional and remote Australia (see Chapter 5 – *Regional & Remote Aviation*).

This is not a new issue, however. A4ANZ provided similar commentary in our response to the Aviation White Paper Terms of Reference, and it has also been highlighted by others within the sector, including the Australian Airports Association (AAA), the Regional Aviation Association of Australia (RAAA).

We note that, in 2022, the Australian Federal Police (AFP), Australian Criminal Intelligence Commission (ACIC) and Australian Transaction and Analysis Centre (AUSTRAC) were de-merged from the Department of Home

Affairs and moved to the Attorney General's Department – so it is not without precedent for a function or branch to be moved back to its original Department, if this enables it to function optimally.

Our preference, therefore, is for the aviation security policy and regulatory functions to be moved back within the broader Infrastructure and Transport portfolio, alongside aviation safety, to ensure a more harmonised and streamlined approach to aviation security policy development and implementation.

A4ANZ is aware that there are a variety of options that have been proposed by A4ANZ members to address issues in this space. This should be a clear indication to Government that current governance and policy frameworks are not fit-for-purpose – specifically, and particularly, with regard to aviation security policy.

Ensuring efficient, responsive, and high-quality airspace regulation & management

As outlined in Chapter 3 - *Consumer Protections*, the past year has seen airports, airlines, and their customers experience an increase in flight delays, cancellations, and disrupted operations, due in part to workforce shortages at Airservices Australia affecting Air Traffic Control (ATC).

For the month of February 2023, for example, Airservices Australia dramatically reduced the number of arrivals at Sydney Airport due to staff shortages (moving from 50 arrivals per hour to less than 36 arrivals per hour, for 63% of all operational hours) on 21 of 28 days, resulting in dozens of cancellations and hundreds of delays across all airlines.[338]

In some cases, the cancellations due to ATC issues in February 2023 were greater than those from October 2019 to March 2020, with delays at Sydney Airport having significant flow on impacts across the entire domestic aviation network.[339]

Issues have persisted, with Airservices' operational resilience continuing to be a challenge for ensuring on-time performance of airlines. For example, a four-day period in late June/early July saw hundreds of flight cancellations and hours of delay, impacting more than 50,000 passengers.

While issues with Air Navigation Service Providers and ATC are not unique to Australia – indeed, there have been issues across the world in Canada[340], the UK[341], the US[342], and Europe[343] – neither the response received, nor the performance since, has been sufficient.

While noting that Airservices Australia has attempted to improve engagement with industry through a variety of measures, A4ANZ is also aware of instances where airlines and airports continue to raise issues directly with Airservices without a satisfactory response. For example, we understand that airlines and airports have approached Airservices Australia to trial an increase in crosswind limits at Sydney Airport, moving from 20 knots to 25 knots. Industry has proposed this change to manage the significant increase in delays from single

runway operations at Sydney Airport and the resulting operational pressure across the entire aviation ecosystem – from flight crew, to ground operations staff, and air traffic controllers.

A safety assessment of the proposal concludes that the return to a crosswind limit of 25 knots at Sydney Airport poses no change in risk level to the current 20 knot crosswind limit and is therefore at an equivalent level of safety.[344] Additionally, evidence provided to the Standing Committee on Economics during the *Inquiry into Promoting Economic Dynamism, Competition and Business Formation* notes that raising the crosswind limit would result in up to 75% fewer cancellations due to wind.[345] However, no action has been progressed on this proposal to date, beyond a recent commitment to consider it at a future stakeholder meeting.

Part of the challenge that sector participants are experiencing is likely due to the fact that Airservices Australia is effectively a monopoly provider of air space management and services. They face no competition to act as an incentive to improve performance. In the absence of appropriate regulation, a monopoly operator (whether private or Government-owned) is able to avoid:[346]

- Genuine consultation with stakeholders;
- Acknowledging feedback from customers/users of their services;
- Providing reasonable justification for increases in charges;
- Ensuring standards of service quality are met; and
- Seeking more efficient ways to operate.

As such, it is imperative that the Government ensure effective governance and regulation of this monopoly service. Ensuring that the regulatory settings across the aviation sector are fit-for-purpose is critical to prevent Australia's aviation market from being stifled by potentially egregious monopoly behaviours including inefficient operations and charging practices.

Consistent with other sectors, and indeed other parts of the aviation ecosystem, periodic reviews of the efficiency and effectiveness of monopoly service providers are appropriate.

This is important in any sector, but given the importance our communities and economies place on affordable air travel in Australia, there is now an urgency to introducing sensible regulatory reform.

A4ANZ would urge the Government to consider introducing more rigorous regulatory oversight of Airservices Australia – including appropriate performance metrics – to ensure effective governance of the agency, and efficient operations and pricing.

Facilitating an effective interface between Government and industry

The need to improve the interface the sector has with Government, under a more coherent policy framework is not a new issue, nor is it necessarily unique to aviation. It was recognised in the 2009 White Paper, the Aviation Recovery Framework[347] and the FAR Panel Report in 2021.[348]

The Aviation Recovery Framework announced the formation of a new *Strategic Aviation Advisory Forum*, designed to advise Government on the sector's recovery via annual 'health checks' and bring the concerns and views of the sector to the Government through the recovery period. The forum was also tasked to inform targeted research on priority topics.[349]

The Strategic Aviation Advisory Forum was never established by the former Government, but its stated purpose provides clear evidence of the challenge that sector participants face when needing to deal with so many different departments on aviation policy issues, in the absence of a connected, comprehensive policy agenda or framework.

Similarly, the FAR Panel Report noted that as a result of the diversity of the aviation industry, there are a variety of day-to-day or shorter-term issues that arise and require resolution – but given that matters that need resolving frequently involve more than one Department or agency, resolution is complex.[350] To address this, the FAR Panel recommended the establishment of an Aviation Ombudsman – similar to that of the CASA Industry Complaints Commissioner, but independent and with a much broader remit, and available to all of industry – to deal with matter as they arise.

The FAR Panel did not propose that the Aviation Ombudsman should replace the role of the Administrative Appeals Tribunal but rather that it function to *"connect industry and aviation service providers with dispute resolution options as an alternative source for cost effective and speedy resolution."*

In addition to this recommendation, we can look to other jurisdictions for alternative arrangements to bridge or consolidate the many interfaces between government and industry.

In New Zealand, the former Minister for Transport designated responsibility for aviation to an Associate Minister for Transport – there is no word yet on whether the incoming New Zealand Government will also adopt this position.

In the United Kingdom, the Government convened an Aviation Council – chaired by the Parliamentary Under Secretary of State – to bring together industry and government to support the delivery and implementation of commitments set out in the Flightpath to the Future, and to ensure "*that the UK retains one of the strongest and most successful aviation sectors in the world*".[351]

The Terms of Reference for the Council also note that the purpose of the Council is to strengthen the industry-government relationship and enable Government and industry to voice their opinions and provide advice and recommendations on how to address challenges facing the sector, as well as how best to embrace opportunities.[352] The Council is also explicit in that it does not seek to duplicate the work of existing joint government and sector groups such as the UK Jet Zero Council.

If the Australian Government were to consider adopting a similar model, we would expect this to be the case for such a body here.

Regardless of the ultimate mechanism, it is vitally important that the policy framework in the Aviation White Paper rejects the notion that sector governance is currently fit-for-purpose, or will be for the future. What is needed instead is the recognition and development of a viable solution to address the complexities and challenges industry experiences in interfacing with multiple areas of Government. Such a solution would also provide Government with a more fulsome view of the aviation sector, and the impact that policy decisions from various Government Departments and agencies can have on the efficiency, viability, and sustainability of the sector, and ultimately on consumers.

Government approaches to cost-recovery

A4ANZ recognises that in the current economic environment, charges for services provided, and levies imposed, by Government Departments and agencies will increase. However, this year, industry has noted with concern, increases or proposed increases across; Airservices Australia, the Meteorological Services Charge (MSC) from the Bureau of Meteorology, the Passenger Movement Charge collected by the Department of Home Affairs, and background check fees from AusCheck.

Industry was particularly frustrated by the proposal from Airservices Australia to increase charges by 19% over a two-year period,[353] at the same time that industry is dealing with issues resulting from Airservices' poor performance which have caused significant operational disruption, uncertainty, and expense.

These charges are all levied by different departments and agencies, and we believe that the ineffective governance arrangements outlined earlier contribute to a lack of awareness by Government on their collective impact for sector participants and consumers.

For airlines, for example, these price increases are occurring in the context of higher security costs from Government-mandated measures, increasing airport charges, higher jet fuel prices, and the significant costs associated with decarbonising operations through investment in new aircraft and sustainable aviation fuels.

We would encourage Government to consider both how its aviation agencies set charges and levies for the industry, and the cumulative impact of the multiple increases across the variety of agencies and Departments

that interact with industry. Furthermore, it is important that Government give proper consideration to how these charges, in the context of the broader economic environment and industry cost pressures, might impact the efficiency and viability of the sector, including the affordability of airfares and the continued operation of marginal regional air services.

An efficient, viable, and sustainable aviation security framework

As highlighted earlier, and in A4ANZ's response to the consultation on the Aviation White Paper's Terms of Reference, one of the areas in which the lack of a comprehensive framework – and connection between policy areas – is felt most keenly is in aviation security.

A4ANZ's member airlines are supportive of measures to enhance security at Australia's airports; airlines have worked, and will continue to work, cooperatively and collaboratively with Government, airports, and the travelling public to ensure that what is put in place is informed by evidence and has the best chance of success.

Historically – and to the consternation of industry – both the Department of Infrastructure & Transport and the Department of Home Affairs have referred to the funding of Government-imposed aviation security arrangements as "commercial decisions between industry participants" – despite the importance of ensuring such security arrangements at Australia's airports are implemented in the most cost-effective manner and supported by a viable aviation industry.

Improving Government engagement with industry on aviation security policy

The Hartland Review acknowledged that industry participants have historically been dissatisfied with the Department of Home Affairs' approach to consultation on, and co-design of, aviation security policy.[354] This was borne out during a recent consultation on proposed reforms from Phase III of the Hartland Review. While industry welcomed the approach taken by the Minister for Home Affairs and her acknowledgement that that aviation security outcomes are a result of shared effort between Government and the aviation sector, there is still significant room for improvement for how the Government actually engages with industry.

An overarching recommendation from the Hartland Review is that the regulator "*rebuilds trusted partnerships through better communication and engagement strategies.*" In addition to the issues noted earlier, feedback from industry has also identified that, since the aviation security regulator has sat within the Department of Home Affairs, the focus of interactions between the regulator and industry have moved from collaboration to compliance, with a seemingly punitive, rather than outcomes-focused agenda.

Accordingly, the Hartland Review found that there is an "us vs them" mentality in the relationship between industry and the security regulator. As such, we would urge the Government to consider how best to rebuild

and, as necessary, re-design the framework for industry engagement on aviation security policy, as part of the White Paper.

Additionally, the Hartland Review identified that the Department of Home Affairs clearly values the principle and strategy of co-design but has yet to effectively implement it during consultations with the aviation sector. While the Review explored myriad options for the Department of Home Affairs to improve their communication with industry, feedback from A4ANZ members suggests that broad distribution of clear and high-quality guidance and advisory materials that include case studies and examples of acceptable compliance would be welcomed. We would urge Home Affairs to consult with industry on how such guidance and advisory materials could be developed and deployed.

Finally, in engaging with the sector, we would encourage the both the Department of Home Affairs and the Department of Infrastructure & Transport to work constructively with industry to understand, in detail, the practical challenges and financial implications of proposals for reform – so that the Government may have due consideration for the impact of such proposals on airline operations and network viability.

A4ANZ is hopeful that one of the outputs of this White Paper is a more streamlined and outcomes-focused approach to aviation security policy, through a comprehensive and coherent framework.

Ensuring efficient & appropriate aviation security charges

With the aviation industry's viability in sharper focus since the COVID-19 pandemic – the issue of who should ultimately pay for the costs associated with the Government's enhanced security screening measures is one in which all sector participants have an interest.

In a 2020-21 Pre-Budget Submission, A4ANZ made recommendations in the context of the Government's existing policy agenda on security and with a view to facilitating sound policy implementation and sustainability, to ensure that airlines, and by extension, passengers, would not disproportionately bear the costs associated with the enhanced security measures which were mandated by the Government.[355]

This objective is now even more important, if the aviation industry is to continue its positive trajectory and economic recovery from COVID-19 and sustain the essential services on which Australians rely.

During COVID-19, A4ANZ welcomed both the Domestic Airports Security Costs Support (DASCS) program and Regional Airports Screening Infrastructure (RASI) program, and acknowledged the critical support that these programs provided to airlines and airports struggling with the increased operational and capital expenditure associated with the Government's enhanced security screening measures.

However, we believe that there is more work to be done – both with ongoing support for security upgrades, and with developing a framework for accountability and transparency in security charging practices across the aviation industry.

Industry Principles for Efficient & Transparent Security Charges

Under previous aviation security funding programs such as the DASCS and RASI programs, the Government has highlighted the need for accountability and transparency.

A4ANZ has explored options for the development of industry principles for efficient and transparent security charges in Chapter 5 – *Regional and Remote Aviation*, referencing the International Civil Aviation Organisation (ICAO)'s Policies on Charges for Airports and Air Navigation Services detailed in Appendix B.

There are a number of opportunities for improvement – of which aviation security is just one example – in governance arrangements, industry consultation processes, and industry support, which should form part of the policy framework in the Aviation White Paper.

Facilitating a seamless passenger experience

The Green Paper correctly notes that a seamless passenger experience will require significant coordination and asks whether there are any specific initiatives that should be supported to improve international passenger facilitation. A4ANZ suggests that in the first instance, Government explores improvements in technology – including IATA's OneID[356] – and regulations to streamline the passenger experience of Trans-Tasman travel.

Streamlining Trans-Tasman travel

Prior to the COVID-19 pandemic, New Zealand was the most popular outbound travel destination for Australians, with 1.5 million visitors arriving from across the Tasman in 2019, accounting for 40 per cent of all foreign visitors to New Zealand.[357] Similarly, Australia was the most popular destination for New Zealand travellers, with 1.4 million visitors from New Zealand in 2019 – approximately 15 per cent of total visitors to Australia.[358]

As A4ANZ noted in our response to consultation on the White Paper's Terms of Reference, this year represents the 40th anniversary of the Australia–New Zealand Closer Economic Relations Trade Agreement (CER), one of the most comprehensive, bilateral free trade agreements in existence; facilitating the free movement of people, goods, and services across the Tasman.[359]

Hence, just as Australia and New Zealand have reaffirmed their committed to creating a seamless Trans-Tasman economic environment, it follows that they should also explore the creation of a seamless Trans-Tasman travel experience.

Prior to the pandemic, the two governments committed to creating a more streamlined, efficient, and secure Trans-Tasman travel experience, a proposal that already has broad industry support.

Indeed, this commitment was reiterated by both Prime Minister Albanese and former-Prime Minister Hipkins during the Annual Leaders' Meeting in Wellington in July this year – announcing the revitalisation of a joint Australia-New Zealand working group to scope initiatives to move closer towards seamless travel across the Tasman, to report back by end of June 2024.[360]

A4ANZ has welcomed this announcement and has offered to support the working group and governments as appropriate. Indeed, during a recent trip to New Zealand, A4ANZ met with representatives from the Ministry of Foreign Affairs and Trade who noted that the New Zealand Government has been working internally on this issue, and exploring how new scanning technology and biosecurity algorithms can be utilised to their full potential through appropriate regulatory settings.

We would encourage the joint working group to make use of this work that has already been undertaken, to ensure that the appropriate regulatory settings exist on both sides of the Tasman – in order to support the deployment of the technology and communication solutions necessary for streamlining Trans-Tasman travel in the coming years.

Optimising Partnerships Between Industry & Government

The Green Paper also asks how Government can optimise partnerships with industry in this space.

A4ANZ would encourage the Government to take a greater role in collaborating with industry on how to streamline the Trans-Tasman passenger experience, rather than simply leaving these deliberations to industry participants or groups. To this end, we would encourage representatives from across Government departments and agencies to participate fully in the OneID workshop being facilitated by IATA in early 2024, and to further work with industry and the New Zealand Government to make progress on this important initiative.

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APPENDIX A

Draft Voluntary Aviation Code of Conduct

{INSERT LOGOS}

VOLUNTARY CODE OF CONDUCT

FOR THE NEGOTIATION AND OPERATION OF AERONAUTICAL SERVICES AGREEMENTS BETWEEN AIRPORT-OPERATOR COMPANIES AND AIRLINES IN AUSTRALIA

August 2022

PART A: INTRODUCTION

The Code

1. This is the voluntary code of conduct for the negotiation and operation of Aeronautical Services Agreements between Airport-Operator Companies and Airlines in Australia.

Purpose of the Code

2. The purpose of the Code is:

   a) to provide acceptable standards of business conduct for commercial relationships between Airport-Operator Companies and Airlines;

   b) to build and sustain trust and cooperation between Airport-Operator Companies and Airlines;

   c) to increase transparency in the negotiation of Aeronautical Services Agreements;

   d) to minimise disputes in respect of the terms being negotiated between Airport-Operator Companies and Airlines;

   e) to provide an effective, fair and equitable dispute resolution process for raising, investigating and resolving complaints and disputes in dealings between Airport-Operator Companies and Airlines; and

   f) to promote and support good faith in commercial dealings between Airport-Operator Companies and Airlines in the negotiation and operation of Aeronautical Services Agreements.

Definitions

3. The following definitions are applicable under the Code:

   a) **AAA** means the Australian Airports Association.

   b) **A4ANZ** means Airlines for Australia & New Zealand.

   c) **ACCC** means the Australian Competition and Consumer Commission.

   d) **Adjudicator** means any person appointed as the Adjudicator under the dispute resolution process as set out in Appendix A, and to whom the dispute has been referred to for determination.

   e) **Aeronautical Pricing Principles (APP)** means the Principles as published in the Federal Government's response to the 2007 Productivity Commission Report - *Review of Price Regulation of Airport Services,* as detailed in clause 24, as the

same may be replaced or modified by the Federal Government from time to time.

f) **Aeronautical Services Agreement (ASA)** means any contract, agreement or understanding entered into between an Airport-Operator Company and an Airline which governs the Airline's use of the Aeronautical Services and Facilities (or any part of them) and which governs the relationship between the Parties with respect to the conditions of use of the Services and Facilities.

g) **Aeronautical Services and Facilities** means aircraft-related and passenger-related services and facilities at an Airport that are necessary for the operation and maintenance of civil aviation at the airport, as defined in Part 7.02A, *Airports Regulations 1997*, and provided in Appendix B.

h) **Agreement** means any agreement, whether formal or informal and whether express or implied.

i) **Airline** means a person who carries on a commercial air transport enterprise that involves offering or operating scheduled or chartered air services involving the use of aeronautical services and facilities at an airport.

j) **Airport** means an airport in Australia.

k) **Airport-Operator Company** means an airport-lessee company or an airport-management company, and is inclusive of local governments where they are the airport-operator.

l) **Building Block Model (BBM)** means a well-established price model that generates a return on and of required capital and on reasonable operating expenditure, consistent with the APPs.

m) **Business Day** means a day that is not a Saturday, a Sunday or a public holiday.

n) **Code** means this voluntary code of conduct for the negotiation and operation of Aeronautical Services Agreements between Airport-Operator Companies and Airlines at Australian Airports.

o) **Commencement Date** means [insert date once agreed].

p) **Committee** means the committee of representatives appointed by each of AAA and A4ANZ, for the purposes of the Code.

q) **Party** means an Airport-Operator Company or an Airline, as the case may be.

r) **Parties** means both an Airport-Operator Company and an Airline**.**

PART B: APPLICATION OF THE CODE

Commencement of the Code

4. The Code will commence on the Commencement Date.

Signing up to the Code

5. The Code will only apply to an Airport-Operator Company or an Airline that has provided written notice to the Committee of its intention to comply with the Code.

6. Where an Airport-Operator Company or an Airline has provided written notice to the Committee of its intention to comply with the Code:

   a) the Party will not be required to comply with the Code until 21 Business Days after the date on which the written notice was provided by the Party to the Committee; and

   b) the Committee will, within 3 Business Days of receiving the written notice from the Party, arrange for the name of the Airport-Operator Company or Airline intending to comply with the Code and the date on which compliance with the Code for that Party becomes effective to be published on pages of the websites of AAA and A4ANZ that are dedicated to the Code.

7. An Airport-Operator Company or an Airline may voluntarily sign up at any time to the Code.

Withdrawing from the Code

8. An Airport-Operator Company or an Airline may withdraw from the Code if the Party has provided written notice to the Committee of its intention to withdraw from the Code.

9. Where an Airport-Operator Company or an Airline has provided written notice to the Committee of its intention to withdraw from the Code:

   a) the Party will not be required to comply with the Code from 21 Business Days after the date on which the written notice was provided to the Committee; and

   b) the Committee will, within 3 Business Days of receiving the written notice from the Party, arrange for the removal of the name of the Airport-Operator Company or Airline from the pages of the websites of AAA and A4ANZ that are dedicated to the Code on the date that the Party is no longer required to comply with the Code.

10. To avoid doubt, a withdrawal from the Code by an Airport-Operator Company or an Airline under clause 8 does not remove any obligation imposed on the Party by this Code prior to that withdrawal.

Scope of the Code

11. The Code will apply to:

    a) the conduct of Airport Operator-Companies and Airlines in negotiating and operating Aeronautical Services Agreements after the Commencement Date; and

    b) all Aeronautical Services Agreements that are entered into after the Commencement Date (but only for the purposes of clause 18).

12. The Code will not apply to:

    a) the conduct of Airport Operator-Companies and Airlines in negotiating Aeronautical Services Agreements before the Commencement Date; and

    b) any Aeronautical Services Agreement entered into before the Commencement Date. This includes amendments or variations to an Aeronautical Services Agreement entered into prior to the Commencement Date that take effect after the Commencement Date.

Transitional Arrangements

13. Where an Aeronautical Services Agreement is entered into before the Commencement Date and a Party proposes or agrees to amend or vary a provision of the Aeronautical Services Agreement relating to a matter in clause 18 after the Commencement Date, the Airport-Operator Company must, unless otherwise agreed by mutual written agreement with the Airline, offer to enter into an Aeronautical Services Agreement with the Airline that is in compliance with clause 18 within 60 days after the date of the amendment or variation.

14. For the avoidance of doubt, an Airport-Operator Company will not be required to comply with clause 18 where an Aeronautical Services Agreement is entered into before the Commencement Date and is amended or varied after the Commencement Date if the amendment or variation is made to a provision that does not relate to a matter in clause 18 or if the amendment or variation is not proposed or agreed by the Airport-Operator Company.

PART C: OPERATIVE PROVISIONS

Obligation to deal lawfully and in good faith

15. In negotiating an Aeronautical Services Agreement, an Airport-Operator Company and an Airline must deal with each other lawfully and in good faith.

16. In determining whether an Airport-Operator Company or an Airline has acted in good faith in dealing with the other Party, the following may be taken into account:

    a) whether the Party has acted honestly;

    b) whether the Party has acted consistently with the objective of reaching agreement to an Aeronautical Services Agreement on reasonable terms;

    c) whether the Party has not acted arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives;

    d) whether the Party has not acted in a way that constitutes retribution against the other Party for current or past disputes or referrals under the Code;

    e) whether the Parties' trading relationship has been conducted without duress; and

    f) whether the Parties observed any confidentiality requirements relating to information disclosed or obtained in dealing with or resolving a dispute under the Code.

17. Clause 16 does not limit clause 15.

18. As a matter of principle, an Airport-Operator Company must not restrict access or approvals to an Airline in the normal course of carrying out their business, in the event that Parties are engaged in a dispute.

Acceptable Standards relating to Aeronautical Services Agreements

19. An Airport-Operator Company must share information in relation to the following during the conduct of negotiation of an Aeronautical Services Agreement[i]:

    a) the forecast number of passengers that will depart from and arrive at each terminal;

    b) the forecast capital expenditure, operating costs and revenues in relation to the provision and use of Aeronautical Services and Facilities for regional, domestic flights and international flights;

    c) any costs that are allocated to the provision of specific services, including international and domestic Aeronautical Services and Facilities; at-terminal and

at-distance parking; and landside access services;

d) the methodologies used to allocate costs and capital expenditure projects as aeronautical;

e) copies of the Airport masterplan;

f) opening written-down asset base (excluding any asset revaluations) – split between assets required for domestic and international operations (including forecast depreciation schedules);

g) details of Weighted Average Cost of Capital (WACC) adopted in the BBM (if applicable), including disclosure of all inputs used in the WACC calculation; and

h) audited financial statements for the previous 3 years prior to the proposed commencement date of the Aeronautical Services Agreement.

20. An Airline must share the forecast number of passengers that will depart from and arrive at each terminal during the conduct of negotiation of an Aeronautical Services Agreement.

21. An Aeronautical Services Agreement shall contain a dispute resolution clause which sets out a process for resolving disputes in an efficient and cost effective manner, including through the use of independent commercial mediation and arbitration, where appropriate.

22. Once an Aeronautical Services Agreement is entered into by the Parties, the terms and conditions of the Aeronautical Services Agreement and not the Code (including but not limited to the provisions under clauses 19-21) govern the obligations between the Parties.

Adherence to Aeronautical Pricing Principles

23. During commercial negotiations relating to Aeronautical Services and Facilities provided by Airport-Operator Companies, Parties shall adhere to the Aeronautical Pricing Principles.

24. The Aeronautical Pricing Principles are[ii]:

a) that prices should:

i) be set so as to generate expected revenue for a service or services that is at least sufficient to meet the efficient costs[iii] of providing the service or services; and

ii) include a return on investment in tangible (non-current) aeronautical assets, commensurate with the regulatory and commercial risks involved and in accordance with these Pricing Principles;

b) that pricing regimes should provide incentives to reduce costs or otherwise improve productivity;

c) that prices (including service level specifications and any associated terms and conditions of access to aeronautical services) should:

   i) be established through commercial negotiations undertaken in good faith, with open and transparent information exchange between the airports and their customers and utilising processes for resolving disputes in a commercial manner (for example, independent commercial mediation/binding arbitration); and

   ii) reflect a reasonable sharing of risks and returns, as agreed between airports and their customers (including risks and returns relating to changes in passenger traffic or productivity improvements resulting in over or under recovery of agreed allowable aeronautical revenue);

d) that price structures should:

   i) allow multi-part pricing and price discrimination when it aids efficiency (including the efficient development of aeronautical services); and

   ii) notwithstanding the cross-ownership restrictions in the Airports Act 1996, not allow a vertically integrated service provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to other operators is higher;

e) that service-level outcomes for aeronautical services provided by the airport operators should be consistent with users' reasonable expectations;

f) that aeronautical asset revaluations by airports should not generally provide a basis for higher aeronautical prices, unless customers agree; and

g) that at airports with significant capacity constraints, peak period pricing is allowed where necessary to efficiently manage demand and promote efficient investment in and use of airport infrastructure, consistent with all of the above Principles.

Adherence to Principles for Aviation Security Charges

25. During commercial negotiations relating to aviation security services provided by Airport-Operator Companies, Parties shall adhere to the Principles for Aviation Security Charges.

26. The Principles for Aviation Security Charges are[iv]:

a) that consultations should take place before any security costs are assumed by Airport-Operator Companies, Airlines or other entities;

b) that the Airport-Operator Company may recover the reasonable costs of the efficient provision of security measures at airports from Airline customers in a fair and equitable manner, subject to consultation;

c) that any charges for, or transfers of, security costs to Airlines should be directly

related to the costs of efficiently providing the security services concerned and should be designed to recover no more than the relevant costs involved on a direct pass-through basis;

d) that Airlines should not be charged for any costs that would be incurred for more general security functions performed by government agencies such as general policing, intelligence gathering and national security, nor for costs of security services relating to non-aeronautical operations at the Airport;

e) that the reasonable costs of security services must be allocated to all users of those services and the return rates on this infrastructure should reflect the relative risk-free nature of the recovery;

f) that when the costs of security at Airports are recovered through charges, the method used should be discretionary, but such charges should be based on either the number of passengers or aircraft weight, or a combination of both factors. Security costs allocable to Airport tenants may be recovered through rentals or other charges; and

g) that security charges may be levied either as additions to other existing charges or in the form of separate charges but should be subject to separate identification of costs and appropriate explanation.

Significant capital expenditure

27. The Airport-Operator Company must consult at all times with Airlines in respect of capital expenditure that could materially affect Aeronautical Services and Facilities, and the Aeronautical Services Agreement must require such consultation to occur.

28. As part of consultation, the Airport-Operator Company shall provide Airlines with relevant information as required to understand the efficiency of proposed capital expenditure, including the following:

a) the rationale for the expenditure;

b) the amount, timing and nature of the expenditure;

c) the anticipated outcomes and benefits of the expenditure in a quantifiable business case, demonstrating the benefits for the Airline or Airlines; and

d) the expected risks associated with the expenditure.

29. As a matter of principle:

a) payment by an Airline to an Airport-Operator Company for significant capital expenditure should not occur prior to the Airline being enabled to obtain the benefit of such capital expenditure, with the intent being that Aeronautical

Services Agreements should provide sufficient support for Airport-Operator Companies to undertake significant capital expenditure];

b) cost saving projects must deliver clear cost savings to Airlines, delivered through savings in operating expenditure;

c) capacity-related projects should address genuine capacity constraints and efficiently deliver capacity growth, having regard to reasonable, practical options. When considering project options, upfront capital expenditure and whole-of-life costs should be considered;

d) operational or safety projects must address a demonstrable issue that necessitates capital expenditure to achieve a resolution;

e) passenger forecasts used to justify capacity-related capital expenditure should be used in the calculation of pricing;

f) capital projects for which an Airport-Operator Company has received a government grant or other form of funding must be excluded from charges to Airlines; and

g) in the event of Parties being in dispute, an Airport-Operator Company must not exclude any Airline from the consultation process.

Operating Expenditure

30. As a matter of principle, aeronautical operating expenditure of an Airport-Operator Company as used for the purposes of price calculation should be incurred in a reasonable and efficient manner, consistent with the expected, long-term costs of the Airport-Operator.

Accepted levels of service

31. The accepted levels of service or quality of service metrics form part of Aeronautical Services Agreements agreed to by the Airport-Operator Company and an Airline.

PART D: DISPUTE RESOLUTION

Dealing with disputes during negotiations

32. A Party negotiating an Aeronautical Services Agreement may request, in writing, the other Party to resolve a dispute about any matter covered by Part C of this Code.

33. The request shall be made before the Aeronautical Services Agreement is executed.

34. Within 10 business days after receiving the request, senior representatives from each Party shall meet and use reasonable endeavours to resolve the dispute, including by reference to mediation.

35. If the dispute is not resolved within 30 business days of a request being made under clause 31, any one Party may refer the dispute to mediation, which must be conducted diligently and without unreasonable delay. If that mediation fails or is unreasonably delayed, either Party may refer the dispute to the resolution mechanism set out in Appendix A.

Confidentiality by Adjudicator

36. For the purposes of this Part D, the Adjudicator must observe and protect any commercially sensitive information provided by a Party that makes a claim of confidentiality over that information.

Conduct of dispute resolution

37. In accordance with clause 22, once an Aeronautical Services Agreement is entered into by the Parties, disputes will be governed by the terms and conditions of the Aeronautical Services Agreement and not the Code, PROVIDED THAT an Aeronautical Service Agreement must contain a dispute resolution process that in substance and to all intents and purposes replicates the dispute resolution process described in this Code.

38. When required, the Airport-Operator Company and Airline shall enter into a dispute resolution process that is consistent with the dispute resolution provisions of the Code and take part in the dispute resolution in good faith.

39. Despite clause 38, the Airline or Airport-Operator Company is not required to take part in the arbitration if the Adjudicator determines that the complaint or dispute is vexatious, trivial, misconceived or lacking substance.

40. Subject to a determination by the Adjudicator under clause 39, a failure or refusal by a Party to participate in mediation or arbitration shall constitute a breach of this Code.

41. In conducting the arbitration, there shall be a presumption that the Building Block Model shall be applied.

Records to be kept by Committee

42. The parties to a dispute are to provide the following information to the Committee: If a referral is made under the Code, the Committee must keep the following for at least 3 years from the time of the referral:

    a) a record of the referral;

    b) a record of the investigations undertaken to investigate the dispute;

    c) a copy of any notice that a referral is vexatious, trivial, misconceived or lacking in substance; and

    d) a copy of any determination in relation to a dispute.

    But shall not disclose information confidential to the Parties to each dispute, including information that would identify the Parties to the dispute.

Report by Committee

43. The Committee must prepare a written report for each 12-month period after the Commencement Date.

44. The report must set out the following:

    a) the number of dispute referrals received by the Adjudicator under the Code;

    b) the nature of each dispute;

    c) the time taken to arbitrate the dispute;

    d) the outcome of any determination made; and

    e) any other matters the Committee considers appropriate.

    But shall not disclose information confidential to the Parties to each dispute, including information that would identify the Parties to the dispute.

45. The Committee must give a copy of the report within 2 months after the expiry of each 12-month period to the ACCC.

46. The Committee will arrange for the report to be published on pages of the websites of AAA and A4ANZ within 7 Business Days after finalising it.

Costs of Dispute Resolution

47. The Parties are responsible for their own costs for the compliance with any dispute resolution process under this Part D, other than in relation to an arbitration, for which the costs will be determined by the Adjudicator in accordance with the process for dispute resolution set out in Appendix A, provided that if the Adjudicator has made a ruling that the referral of the dispute is vexatious, trivial, misconceived or lacking in substance, the costs for all Parties for compliance with the dispute resolution process shall be borne by the Party which made the referral.

PART E: ADMINISTRATIVE MATTERS

Committee

48. Prior to the Commencement Date, AAA and A4ANZ will:

    a) each appoint two representatives from each of their respective members to the Committee; and

    b) agree upon the appointment of one further representative to the Committee who is independent of AAA, A4ANZ, the Adjudicator, and the Parties.

49. The representatives of the Committee will be appointed for an initial term of 2 years.

50. Once the Committee has been established, it will discuss and agree within three months after the Commencement Date rules relating to:

    a) future appointments of representatives to the Committee, including the term of appointment which will be for not less than two years;

    b) meetings of the Committee;

    c) the functions of the Committee under the Code;

    d) the funding of the Committee;

    e) any other matters that it considers appropriate to ensure that the Committee can perform its obligations under the Code.

51. All decisions of the Committee will require unanimous support.

52. All representatives of the Committee must be subject to confidentiality agreements.

Variation of the Code

53. Subject to clause 54, the Committee may vary the provisions of the Code including the Commencement Date.

54. Any variation to the Code that is made under clause 53 will not have any effect unless all of the following conditions are satisfied:

    a) the Committee has sought feedback from the ACCC on the proposed variation; and

    b) the Committee has published an updated version of the Code incorporating any variation on its respective representatives' websites and has provided notice of the variation to Parties (including the date on which the variation is to take effect).

55. Any variations made to the Code under Part E will not become effective until 7 Business Days after the Committee has complied with the conditions in clause 54 or any other such time period as determined by the Committee.

Code Review

56. Within 6 months after the first anniversary of the Commencement Date and every 12 months thereafter, the Committee must complete a review of the effectiveness of the operation of the Code having regard to the purpose of the Code under clause 2, any information flowing from consultation with Adjudicators, and any other matter the Committee considers appropriate.

57. The Committee must establish processes relating to the following matters in relation to the review of the Code:

    a) The information/and or documents that the Committee can obtain from the Parties and the Adjudicators;

    b) the form in which the Committee must publish its findings and recommendations; and

    c) any other procedures or processes to ensure that the review of the effectiveness of the operation of the Code can be undertaken efficiently and effectively.

58. The report published by the Committee must be made publicly available, and a copy provided to the ACCC to consider in undertaking its monitoring function for both Airports and Airlines.

59. The Committee will discuss and implement in a timely manner any recommendations it determines appropriate that are made by the ACCC.

APPENDIX A: ADJUDICATION PROCEDURE

A1. Negotiation

Upon receipt of a Dispute Notice (and issues paper) in accordance with **clause 35**:

(a) the recipient must reply in writing within 5 Business Days;

(b) the parties must seek to resolve the dispute within 10 Business Days of receipt of the dispute Notice, including by submitting the dispute for consideration and negotiation between Airline and Airport Company; and

(c) the parties may agree in writing to extend the period of negotiation referred to in **clause A1(b)** by a further period or periods of 5 Business Days.

A2. Appointment of Adjudicator

(a) If the dispute is not resolved during the negotiation period referred to in **clause A1**, then either party ('**Referring Party**') may give the other party a notice:

(i) electing to refer the dispute to expert determination and nominating one or more proposed experts with experience and expertise relevant to the subject matter of the dispute; or

(ii) electing to refer the dispute to arbitration and nominating one or more candidates for Chairperson of a panel of 3 arbitrators who is a Senior Counsel or Queens Counsel of a State or Territory of Australia practising primarily in commercial matters.

(b) Within 5 Business Days of receipt of a notice under **clause A2(a)(i)**, the other party may give the Referring Party written notice:

(i) accepting one of the nominated experts;

(ii) proposing one or more alternative experts with experience and expertise relevant to the subject matter of the dispute; or

(iii) electing to refer the dispute to arbitration and nominating one or more candidates for Chairperson who is a Senior Counsel or Queens Counsel of a State or Territory of Australia practising primarily in commercial matters.

(c) Within 5 Business Days of receipt of a notice under **clause A2(a)(ii)**, the other party may give the Referring Party written notice:

(i) accepting one of the nominated Chairpersons; or

(ii) proposing one or more alternative Chairpersons who is a Senior Counsel or Queens Counsel of a State or Territory of Australia practising primarily in commercial matters.

(d) If no notice is provided in accordance with **clauses A2(b)** or **A2(c)** then the other party is deemed to have accepted the Referring Party's election and nomination (and the Referring Party is entitled to determine which nominee is appointed).

(e) The parties must seek to agree on:

*(i) an expert within 5 Business Days of a notice being given in accordance with **clause A2(b)(ii)**; or*

*(ii) a Chairperson within 5 Business Days of a notice being given in accordance with **clauses A2(b)(iii)** or **A2(c)(ii)**.*

(f) If the parties are unable to reach agreement or either party believes that no agreement is likely to be reached in accordance with:

*(i) **clause A2(e)(i)**, then either party may request the President of the Resolution Institute from time to time to nominate an expert satisfying the criteria set out in **clause A2(g)**; or*

*(ii) **clause A2(e)(ii)**, then either party may request the President of the Resolution Institute from time to time to nominate a Chairperson satisfying the criteria set out in **clause A2(h)**.*

(g) For the purposes of **clause A2(f)(i)**, the expert must:

(i) have experience and expertise relevant to the subject matter of the dispute; and

(ii) be independent of each of the Parties (not being an officer, employee, agent, consultant or adviser to either of the Parties either at the date of the Dispute Notice or at any time within the previous 2 years) unless otherwise agreed by the Parties.

(h) For the purposes of **clause A2(f)(ii)**, the Chairperson must:

(i) be a Senior Counsel or Queens Counsel of a State or Territory of Australia practising primarily in commercial matters; and

(ii) be independent of each of the Parties (not being an officer, employee, agent, consultant or adviser to either of the Parties either at the date of the Dispute Notice or at any time within the previous 2 years) unless otherwise agreed by the Parties.

(i) The parties must appoint the expert or Chairperson (as applicable):

(i) within 5 Business Days of:

(A) receipt of a notice in accordance with **clauses A2(b)(i)** or **A2(c)(i)**;

(B) the date upon which there is deemed acceptance in accordance with **clause A2(d)**; or

(C) the date upon which the Parties agree in accordance with **clause A2(e)**;

(ii) *as soon as reasonably practicable after the President of the Resolution Institute makes a nomination in accordance with **clause A2(f)**.*

A3. Panel of Arbitrators

(a) If the dispute is to be resolved by a panel of 3 arbitrators ('**panel**') in accordance with **clause A2**, the Chairperson must convene a preliminary conference of the parties within 5 Business Days of his or her appointment for the purpose of accepting his or her appointment and hearing submissions as to the nature of the dispute and appropriate nominees for the panel.

(b) Within 5 Business Days of the preliminary conference the Chairperson must notify the parties of two or more proposed nominees for appointment as arbitrators on the panel.

(c) Either party may provide written objections in respect of a nominee or nominees proposed by the Chairperson within 5 Business Days of receiving notification of the nominees under **clause A3(b)**.

(d) Taking into account any objections lodged under **clause A3(c)** and subject to **clause A3(e)**, the Chairperson shall appoint the other two members of the panel within 5 Business Days of the end of the period for objection under **clause A3(c)** and notify the parties in writing.

(e) A person shall not be appointed to the panel unless he or she appears to the Chairperson to be qualified for the appointment by virtue of his or her knowledge of, or experience in:

(i) *in the case of one panel member, industry, commerce or public administration; and*

(ii) *in the case of the other panel member, economics.*

(f) Within 5 Business Days of the appointment of the other two panel members, the Chairperson shall convene a second preliminary conference for the purpose of providing directions for the conduct of the arbitration.

A4. Decision-making by panel

The determination of any question arising in a dispute by arbitration shall be made, unless otherwise agreed in writing by the parties, by a majority of all of the members of the panel. If the arbitrators cannot agree on a majority opinion on any question, the decision of the Chairperson shall prevail. Questions of procedure will be decided by the Chairperson.

A5. Adjudicator's Powers

The Adjudicator must make a determination of the dispute that has been referred under clause 34 and will have the power to deal with any question that arises for determination including matters that were not the basis of the referral of the dispute. For the avoidance of doubt, in order to determine the dispute, the Adjudicator has the power to:

(a) require the Airport-Operator Company to provide access to all or part of the Aeronautical Services and Facilities to the Airline;

(b) require The Airline to accept, and pay for, access to all or part of the Aeronautical Services and Facilities;

(c) specify the terms and conditions on which the Airport-Operator Company will provide, and the Airline will acquire, all or part of the Aeronautical Services and Facilities; and

(d) require the Airport-Operator Company to extend Aeronautical Services and Facilities or undertake or allow building works at the Airport.

The parties undertake to and agree that that they will in all respects perform and carry into effect the Adjudicator's requirements and his or her determination and further agree to waive all of their rights to challenge the validity or efficacy of this Code of Conduct.

A6. Limit on Adjudicator's powers

The Adjudicator must not make a determination that would cause the Airport-Operator Company to breach any statutory obligation or any written agreement between the Airport-Operator Company and another person which was in force before the Dispute Notice unless the Airline agrees to pay damages to the other person.

A7. Basis of Decision

The Adjudicator must take into account in making a determination:

(a) each of the matters listed from time to time in section 44X(1) of the *Competition and Consumer Act 2010* as if the Aeronautical Services and Facilities were a service to which that section applied;

(b) the legitimate business interests of the Airline in relation to its operations at and investment in the Airport; and

(c) any other relevant matters which the Adjudicator believes should be taken into account.

A8. Role of Adjudicator

The Adjudicator will act as an expert or as an arbitrator depending upon the appointment of the parties in accordance with **clauses A2** and **A3**. If the Adjudicator is appointed as an:

(a) expert, he or she must proceed in accordance with this **Appendix A** and the then current Rules for the Expert Determination of Commercial Disputes published by the Resolution Institute, except where inconsistent with the provisions of this **Appendix A**. The expert's decision shall be final and binding; or

(b) arbitrator, the panel must proceed in accordance with this **Appendix A** and the then current Resolution Institute Arbitration Rules, except where inconsistent with the provisions of this **Appendix A**.

A9. Adjudicator Procedures

The Parties agree that the Adjudicator:

(a) will not be bound to observe the rules of evidence, unless agreed by the Parties;

(b) will take into consideration all submissions, documents, information and other material which the Parties provide;

(c) if appointed as an expert, will:

(i) act as speedily as a proper consideration of the Dispute allows, having regard to the need to carefully and quickly inquire into and investigate the Dispute and all matters affecting the merits, and fair settlement of the Dispute;

(ii) determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the Parties and require that the cases be presented within those periods, provided that those periods are no longer than those set out in the then current Resolution Institute Arbitration Rules(subject to substituting '10 days' for each reference to longer periods);

(iii) issue a draft determination within 10 Business Days after receipt of submissions, documents, information and other material which the Parties provide and give each Party 10 Business Days to make further written submissions prior to issuing a final determination; and

(iv) use best endeavours to issue a final determination in writing, which will be legally binding on the Parties, no later than 10 Business Days after the period for responding to the draft determination ends;

(d) if appointed as a panel of 3 arbitrators:

(i) may request and appoint a relevant expert to assist with technical, economic and/or legal issues (such expert to be agreed between the Parties or appointed by the Adjudicator if the Parties cannot agree

within 7 days of the request taking into account the parties previous objections);

(ii) will act as speedily as a proper consideration of the dispute allows, having regard to the need to carefully and quickly inquire into and investigate the Dispute and all matters affecting the merits, and fair settlement of the dispute;

(iii) will determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the Parties and require that the cases be presented within those periods, provided that those periods are no longer than those set out in the then current Resolution Institute Arbitration Rules(subject to substituting '10 days' for each reference to longer periods unless a Party objects in writing to the shortened timeframe in which case the Chairperson shall determine the appropriate timeframes);

(iv) will issue a draft award within 20 Business Days after receipt of submissions, documents, information and other material which the Parties provide and give each party 10 Business Days to make further written submissions prior to issuing a final award; and

(v) will use best endeavours to issue a final award in writing no later than 20 Business Days after the period for responding to the draft award ends; and

(e) will give written reasons for the determination.

A10. Confidentiality

(a) Subject to **clause A10(b)**, the Adjudicator and the Parties must:

(i) keep confidential all submissions, documents, information and other material disclosed during the determination of the dispute;

(ii) not disclose any submissions, documents, information and other material except:

(A) to the other Party;

(B) to its advisers;

(C) to its insurers; or

(D) if required by law; and

(iii) not use submissions, documents, information or other material obtained during the course of the dispute resolution process for a purpose other than the dispute resolution process.

(b) Either Party may require the Adjudicator to prepare a public non-confidential version of the Adjudicator's determination. The public version of the

Adjudicator's determination may refer to any submissions, documents, information or other material not subject to an express claim of confidentiality by a Party.

A11. Costs

The Adjudicator may make a determination with regard to the payment of his or her costs and the Parties' legal costs, and the parties must abide by that determination. In making that determination the Adjudicator must have regard to whether referral of the dispute was vexatious, the subject matter of the dispute and the conduct of the Parties. If the Adjudicator is appointed as an expert and does not make a determination in relation to its costs or the Parties' standard (party-party) and indemnity (solicitor-own client) costs:

(a) in respect of the Adjudicator's costs, the Parties must each pay one half; and

(b) in respect of the Parties' standard (party-party) and indemnity (solicitor-own client) costs, the Parties must each bear their own costs.

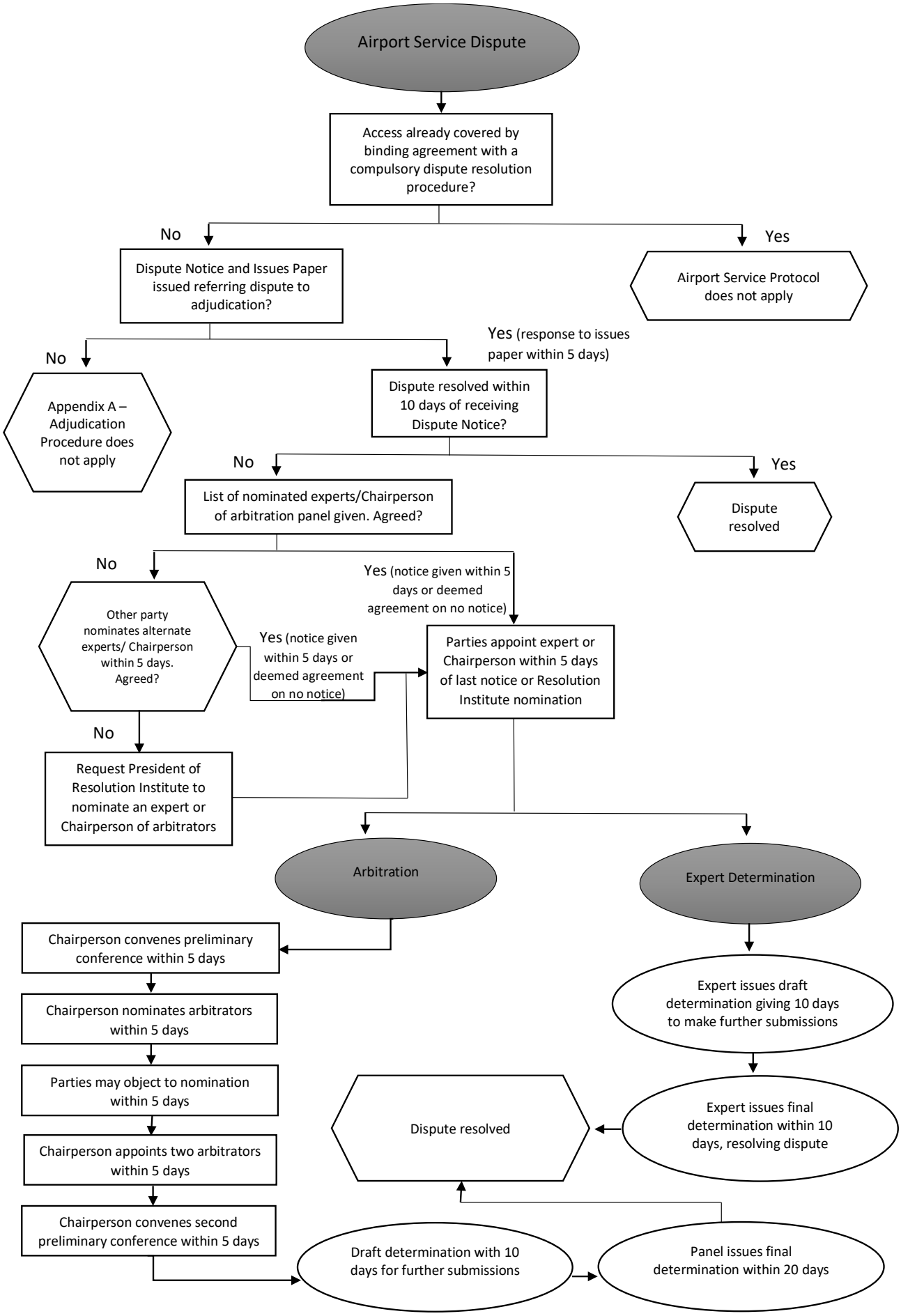
A12. Place of Adjudication

Unless otherwise agreed, arbitration or expert determination will take place in the city nearest to where the Airport is situated.

A13. Legal Representation

Each Party is entitled to legal representation during the Adjudication.

OUTLINE OF ADJUDICATION PROCEDURE
(FOR GUIDANCE ONLY)



APPENDIX B: AERONAUTICAL SERVICES AND FACILITIES

Regulation 7.02A

7.02A Meaning of *aeronautical services and facilities*

(1) For this Part, ***aeronautical services and facilities*** means those services and facilities at an airport that are necessary for the operation and maintenance of civil aviation at the airport, and includes each service or facility that is :

(a) mentioned in an item in Table 1 (aircraft-related); or

(b) mentioned in an item in Table 2 (passenger-related).

Table 1—Aircraft-related services and facilities

Item	Services and facilities
1	Runways, taxiways, aprons, airside roads and airside grounds
2	Airfield and airside lighting
3	Aircraft parking sites
4	Ground handling (including equipment storage and refuelling)
5	Aircraft refuelling (including a system of fixed storage tanks, pipelines and hydrant distribution equipment known as a Joint User Hydrant Installation or JUHI)
6	Airside freight handling and staging areas essential for aircraft loading and unloading
7	Navigation on an airfield (including nose-in guidance systems and other visual navigation aids)
8	Airside safety and security services and facilities (including rescue and fire-fighting services and perimeter fencing)
9	Environmental hazard control
10	Services and facilities to ensure compliance with environmental laws
11	Sites and buildings used for light or emergency aircraft maintenance

Table 2—Passenger-related services and facilities

Item	Services and facilities
1	Public areas in terminals, public amenities, lifts, escalators and moving walkways
2	Necessary departure and holding lounges, and related facilities
3	Aerobridges and buses used in airside areas
4	Flight information and public-address systems
5	Facilities to enable the processing of passengers through customs, immigration and quarantine
6	Check-in counters and related facilities (including any associated queuing areas)
7	Terminal access roads and facilities in landside areas (including lighting and covered walkways)
8	Security systems and services (including closed circuit surveillance systems)
9	Baggage make-up, handling and reclaiming facilities
10	Space and facilities, whether in landside or airside areas, that are necessary for the efficient handling of arriving and departing aircraft (eg airline crew-rooms and airline operations centres)

APPENDIX C: EXPLANATORY BACKGROUND

Founding Principles of the Code

1. In December 2021, the then Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, the Hon Barnaby Joyce MP, published an *Aviation Recovery Framework*, to support a strong and competitive Australian aviation sector as the country recovers from the impact of the COVID-19 pandemic.[v]

2. The Framework commits to "*reforming regulation to benefit all participants in the aviation ecosystem*, …*ensuring the sector has the right policy and regulatory settings for aviation to thrive again"*.[vi]

3. One of the challenging areas identified by the then Federal Government in its response to the 2019 Report of the Productivity Commission's *Inquiry into the Economic Regulation of Airports*, was the negotiation of Aeronautical Services Agreements between airports and airlines.[vii]

4. The Australian Airports Association said in its 2018 submission to the Productivity Commission Inquiry, that "*If the government was to endorse principles for negotiating and contracting, this would guide the behaviour of both airports and airlines and lead to a substantial improvement in outcomes through more timely and less expensive negotiating processes*."[viii]

5. The then Federal Government made clear that it "*considers the Aeronautical Pricing Principles set an important framework for establishing prices, service delivery and the conduct of commercial negotiations at airports"* and that it expects "*all airports and airport users to have regard to the Aeronautical Pricing Principles when negotiating future airport services*."[ix]

6. In its Report to Government, the Productivity Commission also made specific recommendations regarding the need for more detailed information on airport performance and improving quality of service monitoring (Recommendations 9.4 and 9.5, respectively).[x]

7. The December 2019 joint statement of then Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, the Hon Michael McCormack MP, and then Treasurer, the Hon Josh Frydenberg MP stated that "*The Australian Government encourages all parties to continue to work together to strengthen their commercial relationships under the current regulatory framework. It welcomes interest by some airlines and airports in working together to establish principles that could be of assistance in guiding negotiations and achieving mutually satisfactory service contract outcomes*."[xi]

8. Treasury's *Industry Codes of Conduct Policy Framework* identifies that "*Codes can play a valuable role in bringing industry participants together…to find ways to address problems in commercial dealings between them…fostering long term changes to business culture that can drive competitiveness, sustainability and productivity in the sector*."[xii]

9. The Framework notes that "*industry codes do have some common features and often contain a set*

of requirements to:

a) *improve transparency and certainty in contracts;*

b) *set minimum standards of conduct; and*

c) *provide for dispute resolution procedures.*[xiii]

10. The ACCC has opined on dispute resolution processes such as arbitration, as a means to avoid protracted and expensive court proceedings such as Qantas Airways vs Perth Airport[xiv], noting in its 2019 submission to the Productivity Commission Inquiry that, "*It is likely that having recourse to arbitration will be enough of an incentive to come to an agreement in negotiations, meaning that in practice few parties will seek to initiate arbitration*."[xv]

11. Where arbitration *is* required to resolve a dispute, readily-available guidance exists in the *Resolution Institute Rules for Arbitration 2020,* which are consistent with the Commercial Arbitration Act in each state and territory of Australia[xvi];

12. The ACCC's *Guidelines for developing effective voluntary industry codes of conduct* note that the ACCC's role with codes of conduct has developed over the years from providing guidance to industry associations to participating as an observer on code administration committees.[xvii]

13. While the ACCC does not have a role in either drafting or enforcing non-prescribed voluntary industry codes, it does have an existing role in monitoring both Airports and Airlines and is therefore well-placed to express a view on the Code's effectiveness.[xviii,xix]

14. The Code has been drafted in accordance with these founding principles.

APPENDIX D: DRAFTING NOTES AND REFERENCES

[i] DN 2: These dot points are a starting point, adapted from Recommendation 9.4 from the PC Final Report (accepted by Government) specifying more detailed information on airport performance being reported to the ACCC.

[ii] DN 3: This wording is taken verbatim from the Aeronautical Pricing Principles.

[iii] DN 4: Taken from footnote of the Aeronautical Pricing Principles themselves: "*For the purpose of determining aeronautical prices through commercial negotiations, these should be long-run costs unless another basis is acceptable to the airports and their customers.*"

[iv] DN 5: The security principles have been informed by the security charging principles outlined in *ICAO's Policies on Charges for Airports and Air Navigation Services*, as well as the guidance on appropriate security charges for both the *Regional Airports Screening Infrastructure Program* and the COVID-19 *Domestic Airports Security Costs Support (DASCS) Program*.

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[xviii] ACCC. Airports Monitoring Reports. At: https://www.accc.gov.au/publications/airport-monitoring-reports

[xix] ACCC. Airline Monitoring Reports. At: https://www.accc.gov.au/regulated-infrastructure/airports-aviation/airlines-monitoring

APPENDIX B

ICAO's Policies on Charges for Airports and Air Navigation Services

ICAO states that in relation to security charges;

States are responsible for ensuring the implementation of adequate security measures at airports pursuant to the provisions of Annex 17 — Security to the Convention on International Civil Aviation. They may delegate the task of providing individual security functions to such agencies as airport entities, aircraft operators and local police. It is up to States to determine in which circumstances and the extent to which the costs involved in providing security facilities and services should be borne by the State, the airport entities or other responsible agencies.

With reference to the recovery of security costs from the users, the following general principles should be applied [emphasis added by A4ANZ]:

i) **Consultations should take place before any security costs are assumed by airports, aircraft operators or other entities**.

ii) The entities concerned **may recover the costs of security measures at airports from the users in a fair and equitable manner,** subject to consultation.

iii) Any charges for, or transfers of, security costs to providers, aircraft operators and/or end-users should be directly related to the costs of providing the security services concerned and **should be designed to recover no more than the relevant costs involved.**

iv) **Civil aviation should not be charged for any costs that would be incurred for more general security functions performed by States such as general policing, intelligence gathering and national security**.

v) No discrimination should be exercised between the various categories of users when charging for the level of security provided. Additional costs incurred for extra levels of security provided regularly on request to certain users may also be charged to these users.

vi) When the costs of security at airports are recovered through charges, the method used should be discretionary, but such charges should be based on either the number of passengers or aircraft weight, or a combination of both factors. Security costs allocable to airport tenants may be recovered through rentals or other charges.

vii) Security charges may be levied either as additions to other existing charges or in the form of separate charges but should be subject to separate identification of costs and appropriate explanation.