

Sydney Airport Corporation Limited
ACN 082 578 809

The Nigel Love Building, 10 Arrivals Court, Locked Bag 5000
Sydney International Airport, NSW 2020 Australia

T +61 2 9667 9111

SYD

16 October 2024

Belinda Sachse
Assistant Secretary
Sydney Airport Slots and Consumer Aviation Reform
Department of Infrastructure, Transport, Regional Development, Communications and the Arts
GPO Box 594
CANBERRA ACT 2601

Via email: [REDACTED]

Belinda,

Re: SYD submission to the Aviation Industry Ombuds Scheme – Consultation paper

Sydney Airport (**SYD**) welcomes the opportunity to provide a submission to the Aviation Industry Ombuds Scheme consultation paper. SYD appreciates the opportunity to work with government to improve outcomes for the travelling public and supports the establishment of a new Australian Aviation Industry Ombuds Scheme (**Scheme**).

SYD notes the government will consult on (amongst other matters) the Scheme's funding arrangements and the plans to transition the functions of the existing Aircraft Noise Ombudsman (**ANO**) into the Scheme through separate processes. SYD looks forward to making further submissions in due course.

SYD's submission to the consultation can be found at Attachment A. Please contact Joe Dennis (Head of Public Affairs) if you require any further information at [REDACTED]

Yours sincerely,

[REDACTED]
Scott Charlton
Chief Executive Officer

(a) Introduction

SYD supports the establishment of an Aviation Industry Ombuds Scheme and the Government's focus on improving passenger outcomes. SYD's current approach to resolving issues raised by passengers is set out in this submission as are SYD's insights into how the scheme would be best designed.

In addition to the proposed scheme, and as recognised by the Government, it is also essential to address the root causes of cancellations, where possible. To this end, the modernisation of outdated rules for slot and demand management at Sydney Airport (**Demand Management Framework**)¹ is vitally important. SYD welcomes the Government's introduction of the *Sydney Airport Demand Management Amendment Bill 2004* (the **Bill**), on October 9.² The Bill is currently under review by the Senate Rural and Regional Affairs and Transport Legislation Committee, due to hand down their report by 14 November 2024. It is critical for passengers that the Bill is passed, and that reforms are implemented in a timely manner, particularly given the extent to which cancellations and delays at Sydney Airport impact the entire national aviation network.

Aviation is vitally important to the Australian economy. Sydney Airport is Australia's largest international gateway and our nation's busiest airport – located only 8km from Sydney's CBD, it is one of Australia's most important infrastructure assets. In 2023, more than 38 million passengers passed through Sydney Airport and there were nearly 310,000 flights to and from the airport – an average of close to 850 movements per day. Sydney Airport directly and indirectly supports 314,600 jobs and generates more than \$40 billion in economic activity annually.

Sydney Airport will continue to make a significant contribution to Sydney, New South Wales and the national economy, with economic value supported by Sydney Airport projected to increase to an estimated \$54.7 billion in 2030 and \$65 billion in 2045.³ Sydney Airport is predicted to achieve these numbers despite operating with one of the strictest regulatory regimes in the world.

(b) SYD's customer care record

SYD supports the Government's objective to improve passengers' interactions with the aviation industry. Delivering a positive passenger experience at Sydney Airport sits at the core of our business, which is why (amongst other things) we have a longstanding commitment to customer service excellence.

SYD's sophisticated customer care team promptly responds to passenger enquiries, suggestions, complaints, and notes of thanks received via phone, email, social media, and our website. Over the last few years, we have significantly improved our customer care processes to ensure the timely resolution of complaints and that each complainant is satisfied with their interaction with SYD. Between 2022 and 2023, the total number of cases raised with SYD reduced by 15%, and our passenger care case handling time across all case types, as measured in days, decreased by 50%. In 2023, SYD resolved 95.5% of all cases raised with the remaining

¹ Sydney Airport's Demand Management Framework comprises of the *Sydney Airport Demand Management Act 1997* (Cth), *Sydney Airport Demand Management Regulations 1998*, *Sydney Airport Slot Management Scheme 2013*, and the *Sydney Airport Compliance Scheme 2012*.

² *Sydney Airport Demand Management Amendment Bill 2004*. [online] Available at: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7256

³ Deloitte Access Economics Pty Ltd (2024). *Economic contribution of Sydney Airport 2023*.

4.5% being classified as 'unresolved' due to SYD not receiving a response from the passenger. SYD was especially pleased to record an 84% increase in the number of 'thank you' cases received between 2019 and 2023, with more than half of these cases specifically thanking Sydney Airport staff.

(c) Designing the Scheme

(i) Membership, powers, functions of the Scheme

Notwithstanding our established and successful complaints-handling processes, SYD supports an independent and impartial Scheme which applies broadly across the Australian aviation industry to all airports and airlines operating within Australia, air navigation service providers (including Airservices Australia) and government service providers (including Australian Border Force and Customs).

SYD supports a body with the power to receive and investigate complaints, consistent with the principles of procedural fairness, conduct conciliations and facilitate other informal exchanges with the parties aimed at resolving complaints expeditiously and cost-effectively before any formal findings or binding determinations are made. For example, SYD supports in principle how a Case Manager under the Telecommunications Industry Ombudsman Complaint Handling Procedure may lead a conciliation process and verbally recommend an outcome at the conclusion of a conciliation conference call.⁴

To facilitate the resolution of the complaint, SYD supports a Scheme with the power to collect information and, if necessary, require the production of targeted information that would be reasonably required to facilitate the resolution of the complaint. For example, in response to complaints about flight delays and cancellations, or to investigate patterns of airlines' behaviour over an extended period, the Scheme must be able to compel information about the reasons for these interruptions. If the preliminary data provided by airlines is incomplete or has limited utility, it would be helpful for the Scheme to be authorised to require further additional information.

It will be important for the Scheme to be resourced in a manner that would enable it to analyse all the information – some of which may be technical data requiring subject-matter expert analysis – and make findings about which parties are (partially or wholly) responsible for causing the event/s that triggered the complaint.

The ombudsperson should be enabled to refer instances of alleged systemic misconduct that may raise concerns under the *Competition and Consumer Act 2010* (Cth) to the ACCC for investigation and enforcement.

(ii) Governance and funding arrangements

It will be important for the Scheme to be an independent and impartial body. While the design of the Scheme can and should be informed by other Australian industry ombuds schemes, the Australian aviation industry is unique and complex and the scheme will need to be tailored accordingly.

⁴ Telecommunications Industry Ombudsman (2024). *Complaint Handling Procedures*. [online] Available at: <https://www.tio.com.au/about-us/policies-and-procedures#/unresolved-complaints> [Accessed 2 Oct. 2024].

Consistent with other industry schemes in Australia, a Governing Board should oversee the Scheme, including the appointment of the ombudsperson. The Governing Board should exercise their powers having regard to the importance of:

- preserving the independence, integrity and fairness of any decision-making process operated by the Scheme; and
- ensuring the Scheme is appropriately resourced to carry out the objectives in a timely and efficient manner.

The Governing Board should be comprised of:

- one director with general aviation industry experience;
- one director with specific expertise in the airline sector of the aviation industry (not currently employed by an airline);
- one director with specific expertise in the airport sector of the aviation industry (not currently employed by an airport);
- one director with specific expertise in aircraft noise (not currently employed by Air Services Australia);
- three independent directors with consumer advocacy experience and applicable corporate governance and dispute resolution experience; and
- an independent Chair appointed by the Governing Board in a similar manner as that which is prescribed by clause 12.7 of the [Constitution of the Telecommunications Industry Ombudsman](#).⁵

SYD supports a funding model that incentivises internal dispute resolution and which does not place a disproportionate burden on larger industry stakeholders simply by virtue of their size. A ‘user-pays’ approach should result in ‘heavy users’ of the Scheme having a more substantial financial burden (which SYD notes is a feature of the Australian Financial Complaints Authority’s model).⁶

(iii) Multiple Ombudspersons

Given the highly technical nature of the ANO’s work, it is appropriate to appoint two individual Ombudspersons within the Scheme – one with responsibility for aviation consumer issues, and the other with responsibility for aircraft noise.

(iv) Complaint-handling

The Scheme should be authorised to consider complaints in relation to any aspect of the Aviation Customer Rights Charter (the **Charter**). SYD understands the Charter will be informed by consumer guarantee rights under Australian Consumer Law and other relevant legislation and will be separately consulted on. Expanding

⁵ Telecommunications Industry Ombudsman (2022). *Constitution of Telecommunications Industry Ombudsman Limited*. [online] Available at: <https://www.tio.com.au/sites/default/files/2022-11/CONSTITUTION%20as%20amended%2015%20November%202022.pdf> [Accessed 2 Oct. 2024].

⁶ Australian Financial Complaints Authority (2018). *AFCA Funding Model Consultation Report | Australian Financial Complaints Authority (AFCA)*. [online] AFCA Funding Model Consultation Report. Available at: <https://www.afca.org.au/afca-funding-model-consultation-report> [Accessed 2 Oct. 2024].

the scope of the Scheme should be considered only once the Charter has been established to minimise risk of duplication or inconsistency.

Complaints that are out-of-scope

Consistent with other complaints handling schemes such as the Telecommunications Industry Ombudsman and the Australian Financial Authority, the Scheme should not accept a complaint:

- if the complaint is not first received in writing;
- if the complainant has not first contacted the member. The member should have at least 10 business days to resolve a complaint before it can be considered by the Scheme;
- made more than two years after the complainant first discovered the matter. The Scheme may accept a complaint up to three years after first discovery only if there are exceptional circumstances to explain the delay and only if the Scheme determines (after seeking input from the member) that the member will not suffer significant harm because of the delay;
- if the complaint is so complex or of such significant monetary value that a court (or tribunal or regulator) would be the more appropriate forum in which to advance arguments about same;
- if the complaint is regarding personal injury or death;
- if the complainant is seeking compensation for losses that are not a direct cause of the complaint;
- if the Scheme is satisfied the member has made a fair offer to resolve the complaint and the consumer has not accepted the offer;
- if the complainant has reached a full and final settlement with the member (unless the complainant can demonstrate the settlement was obtained by fraud, duress, misleading and deceptive or unconscionable conduct);
- if it is wholly or in-part subject of actual or threatened proceedings in a court or tribunal;
- if there is a more appropriate place to deal with the complaint such as the Office of the Australian Information Commissioner, a court/tribunal, or another dispute resolution scheme; and
- if it is frivolous, vexatious, misconceived, or lacking substance.⁷

Complaints regarding specialist matters (such as members' breaches of privacy)

The Scheme should not accept complaints where other established (Commonwealth and state/territory) tribunals, regulators or agencies have deep subject-matter expertise to accept and resolve those matters. Overlapping remits may confuse consumers and may compromise consumer outcomes, lead to forum-shopping and operational inefficiencies. The Office of the Australian Information Commissioner or the

⁷ Telecommunications Industry Ombudsman (2022b). *Telecommunications Industry Ombudsman Terms of Reference*. [online] Available at: <https://www.tio.com.au/sites/default/files/2021-08/TIO%202021%20Modernised%20Terms%20of%20Reference%20FINAL.pdf> and [Accessed 2 Oct. 2024] and Australian Financial Complaints Authority (AFCA) (2024). *Rules and guidelines*. [online] www.afca.org.au. Available at: <https://www.afca.org.au/about-afca/rules-and-guidelines> [Accessed 2 Oct. 2024].

Australian Human Rights Commission (amongst others) may be more appropriate forums to resolve certain complaints.

(v) The Scheme's publications

The Scheme should issue quarterly reports containing aggregated and deidentified data about complaint volumes and processing times, as well as analysis of statistics and trends. Members should be given reasonable time to consider the proposed publication of any information that may be confidential, commercially sensitive or adversely affect the member. For example, members should be able to seek redactions or object entirely to the disclosure of commercially sensitive, confidential, or personal information. The Scheme should enable an escalation or review mechanism if a member's objection is refused.

(vi) Show cause arrangement

SYD supports a targeted show cause arrangement requiring airlines to report the reasons for delays and cancellations as part of regular reporting of flight data to BITRE. SYD also supports giving the Scheme audit powers and the authority to require additional information from airlines about specific (or patterns of) delays or cancellations.

To this end, SYD notes the ACCC currently uses BITRE data to monitor flight cancellations. Our Aviation Green Paper Submission outlines how the industry's reliance on BITRE datasets for monitoring slot usage and compliance at Sydney Airport is flawed because the datasets:

- do not adequately track flight cancellations. They do not capture flights cancelled more than seven days from the scheduled departure date, and do not measure cancellations for slots reserved at the beginning of a slot season against the historic baseline data; and
- do not accurately represent an airline's compliance with the slot rules. A slot permits an aircraft to take off or land at Sydney Airport at a specified time on a specified day. However, delayed flights that depart within the same day (24-hour period) as the scheduled time (e.g., flights that depart at 9:00 p.m. when originally scheduled for 7:00 a.m.) are recorded as compliant for the purposes of the Sydney Airport Demand Management Framework's 'use it [the slot] or lose it [the slot]' rule.⁸

SYD urges the Government to consider the interaction between this reporting requirement and the reforms to the Sydney Airport Demand Management Framework, noting inconsistency and duplication between different reporting regimes may be burdensome and result in poorer reporting and passenger outcomes.⁹

⁸ Sydney Airport Corporation Limited (2023). *Sydney Airport's Aviation Green Paper Submission*. [online] Available at: <https://www.infrastructure.gov.au/sites/default/files/documents/agp2023-submission-c133-sydney-airport.pdf> [Accessed 30 Sep. 2024].

⁹ The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (2024). *Reforms to the Sydney Airport Demand Management Framework*. [online] Department of Infrastructure, Transport, Regional Development, Communications and the Arts. Available at: <https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/airports/reforms-sydney-airport-demand-management-framework> [Accessed 30 September 2024].

(d) The Demand Management Framework

(i) *The misuse of the Demand Management Framework*

An ineffective and outdated Demand Management Framework significantly contributes flight delays and cancellations at Sydney Airport. This is compounded by a highly concentrated domestic airline market, and a lack of transparency and data sharing between government, industry and the public.

The Demand Management Framework was established 27 years ago for the purpose of minimising aircraft noise for the benefit of surrounding communities.¹⁰ An integral part of the Demand Management Framework is the slot scheme, which controls the scheduled movement times of airlines so that no more than 80 runway movements occur in any hour.

Under the scheme, airlines apply for slots and are incentivised to hold onto more slots than they need due to outdated grandfathering provisions. Data has revealed a trend of major incumbent domestic airlines filing for more slots than required, then strategically cancelling specific flights on high frequency domestic routes such as Sydney to Melbourne.¹¹ These cancelled flights are then consolidated and serviced by flights either side of the original scheduled departure time, but typically remaining above the 80 per cent usage requirement (known as the 80/20 'use it or lose it' rule) to retain the slots for the following season.

Flight cancellations on popular domestic routes are unnecessarily high. Weather and Air Traffic Control (**ATC**) staffing issues contribute to flight changes and cancellations; however, a substantial number of cancellations occur for reasons within airlines control. For example, in June 2024, 8 days of the month were impacted by weather or ATC staffing to some degree. However, 67 per cent of all Sydney to Melbourne cancellations occurred on the other 22 days in June, where there were no weather impacts or ATC issues declared at SYD.¹²

This strategic misuse of the slot scheme limits competition in Australia's domestic airline market because it locks up part of the slot pool, leading to significant interruptions and poor service for passengers while also making it much more difficult for new or expanding airlines to gain a foothold in the market. Ultimately, it provides protection to Australian-domiciled carriers. It is not within the public's interest for airlines to cancel one in every five services (based on the abovementioned 80/20 rule). The public interest is best served by facilitating sustainable competition between airlines based on price, service, destination, and frequency, which ultimately delivers better outcomes for passengers.

(ii) *Reform of the Demand Management Framework*

SYD has been advocating to federal governments for many years about the urgent need to reform the Demand Management Framework. Given the nation-wide flow-on effects of cancellations and delays at Sydney Airport, our advocacy has been as much about improving the passenger experience at SYD as it has been about improving the experiences of passengers across the country. If the Demand Management Framework is not

¹⁰ Harris AO, P. (2021). *Review of the Sydney Airport Demand Management Scheme*. [online] p.8. Available at: <https://www.infrastructure.gov.au/sites/default/files/documents/sydney-airport-demand-management-review.pdf> [Accessed 30 Sep. 2024]

¹¹ Sydney Airport Corporation Limited (2023). *Sydney Airport's Aviation Green Paper Submission*. [online] Available at: <https://www.infrastructure.gov.au/sites/default/files/documents/agp2023-submission-c133-sydney-airport.pdf> [Accessed 30 Sep. 2024].

¹² Airservices Australia ATFM Daily plan [National Operations Management Centre - Airservices \(airservicesaustralia.com\)](https://www.airservicesaustralia.com). *Operated data from Sydney Airport operational database*.

reformed effectively, airlines will continue to unnecessarily delay and cancel flights and passengers will continue to bear the inconvenience and costs.

SYD is pleased the Federal Government has since introduced the Bill to reform the Demand Management Framework and we remain hopeful of it passing through the Parliament imminently. Passage of the legislation, and implementation of updated regulations, are not a fait accompli, meaning Government will need to prioritise these important reforms if they are to be implemented.

(e) Conclusion

SYD takes its passenger outcomes and service extremely seriously. We resolve complaints in an expeditious manner and continuously strive to improve our operations to provide a better experience for passengers.

It is critical the Bill is passed and the legislation is implemented as a matter of priority to address the root cause of passenger complaints. To complement reform of the Demand Management Framework, mandatory public reporting of slot usage information by airlines will increase transparency and public accountability for on-time performance. Achieving this reform and strengthening reporting requirements will improve service and reliability, which will in turn reduce passenger complaints that would have otherwise clogged up the newly formed Scheme, delaying its ability to provide timely resolutions.

SYD thanks the Government for the opportunity to provide input into the design of the Scheme and looks forward to working with government to implement the Scheme together with meaningful reforms to the Demand Management Framework.