



Sydney Airport Demand Management Amendment Bill 2008

Mary Anne Neilsen
Law and Bills Digest Section

Contents

Purpose.....	2
Background.....	2
<i>Sydney Airport Demand Management Act 1997</i>	2
Definition of aircraft movement.....	4
Financial implications.....	5
Main provisions	5

Sydney Airport Demand Management Amendment Bill 2008

Date introduced: 20 March 2008

House: House of Representatives

Portfolio: Infrastructure, Transport, Regional Development and Local Government

Commencement: The substantive provisions commence 6 months from the day of Royal Assent or earlier by Proclamation.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Bill amends the *Sydney Airport Demand Management Act 1997* removing technical inconsistencies in key terminology, so as to clarify and strengthen the regulatory arrangements relating to the demand management scheme.

Background

Sydney Airport Demand Management Act 1997

The *Sydney Airport Demand Management Act 1997* (SADM Act) provides the framework for the long-term management of aviation demand at Sydney Airport. The SADM Act is intended to meet the commitment made by the Howard Government prior to the March 1996 Federal election that aircraft movements at Sydney Airport would be capped at 80 per hour. In this respect, the requirements of the SADM Act take precedence over voluntary coordination practices advocated by the International Air Transport Association (IATA), and in place at other major Australian airports.¹

-
1. Australian National Audit Office, Implementation of the Sydney Airport Demand Management Act 1997, Audit Report, No. 29, 2006–07, Performance Audit, p. 14. At: http://www.anao.gov.au/uploads/documents/2006-07_Audit_Report_29.pdf Accessed on 24 April 2008

This section of the Digest draws heavily on the ANAO report.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The SADM Act requires Airservices Australia² to monitor actual movements and to report quarterly to the Minister for Transport and Regional Services on the extent of infringements of the 80 per hour limit in the quarter.

The SADM Act limits aircraft movements at Sydney Airport to a maximum of 80 per hour. Each arm of the operational requirements created by the SADM Act is put into effect by legislative instruments made under the Act. The two most important are:

- The **Slot Management Scheme**, under which aircraft operators are required to seek a slot (a permission to undertake an aircraft movement) from the Slot Manager
- The **Compliance Scheme**, which requires operators to carry out authorised aircraft movements within a prescribed tolerance period before or after the scheduled slot time. The Compliance Scheme also deals with certain matters concerning the application of penalties to aircraft operators who operate aircraft without a slot or outside of the prescribed tolerances.

The combined action of these two instruments is intended to implement the movement limit, by controlling the scheduling of aircraft movements under the Slot Management Scheme and requiring timely performance through the Compliance Scheme.³

Key Issues

In 2006 the Australian National Audit Office (ANAO) undertook an audit to assess the performance of the Demand Management Scheme established under the existing legislation. The Report was finalised on 7 March 2007.

Amongst other things, the ANAO analysis showed that:

- Elements of the legislative scheme are unclear, do not operate in the way intended or are ineffective.
- There is evidence of a high number of unauthorised aircraft movements (i.e. movements without a slot and movements outside the slot tolerances) having occurred at Sydney Airport. However, since the scheme commenced in 1998, no infringement notices have been issued to operators or other penalties applied.
- There is evidence to suggest that record keeping has been unreliable and consequently reporting and monitoring of breaches of the aircraft movement limit to Parliament through the Minister have therefore been inaccurate.⁴

2. [Airservices Australia](#) is a government-owned corporation providing air traffic control management and related airside services to the aviation industry.

3. *ibid.*, p.15.

4. *ibid.*, p. 17.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The Bill is aimed at addressing the first of these points.

Definition of aircraft movement

The concept of ‘aircraft movement’ underpins the operation of the demand management scheme. In this respect, valid and effective definitions of aircraft movement are necessary to underpin:

- the allocation of slots
- the enforcement of compliance with the requirement to have a slot and operate in accordance with the allocated slot time, and
- incumbent aircraft operators retaining historical precedence to slots they have previously operated.⁵

The definition of aircraft movement in the SADM Act relates to movements of aircraft *on and off runways*. Airservices Australia’s monitoring of the movement limit accords with this definition.

However a different definition is used to administer the Slot Management Scheme and the Compliance Scheme. This definition relates to movements *from gates*, and was adopted for ease of administration by the industry.⁶ During the course of the audit, ANAO drew attention to this inconsistency in the definition/interpretation of aircraft movement, which is fundamental to the effectiveness of the demand management scheme.

Legal advice subsequently obtained by the Department of Transport and Regional Services (DOTARS) was that:

In so far as the definitions in the Compliance Scheme are inconsistent with the Act, they are invalid and of no effect. However, while this invalidity has important consequences for the administration of the SADM Act, the Slot Management Scheme and the Compliance Scheme, I do not think that it necessarily makes the Act unworkable or the Schemes as a whole invalid or otherwise unworkable.⁷

ANAO recommended that in view of the importance of valid and effective aircraft movement definitions to the demand management scheme, DOTARS take steps to ensure consistency between the Compliance Scheme and the SADM Act.⁸

5. *ibid.*, p. 21.

6. DOTARS advised ANAO in February 2007 that the Slot Management Scheme and the Compliance scheme are premised on definitions of ‘take off’ and ‘land’ consistent with worldwide practice. *ibid.*, p. 22.

7. *ibid.*, p. 22.

8. *ibid.*, p. 64.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

DOTARS agreed with this recommendation stating:

The Department has initiated action to seek agreement to the passage of legislative amendments to improve consistency between the Act and the Compliance Scheme.⁹

The key change proposed by the Bill is to introduce a distinction between aircraft movements on the runway and aircraft movements at the gate. The distinction is significant because the slot management scheme as set out in the regulations is based on gate movements and the movement limit (i.e. 80 per hour) applies to runway movements.

The proposed amendments would overcome the flaw identified in the ANAO audit that the day-to-day administration of slot allocation and compliance do not technically comply with the current SADM Act. More particularly, the term ‘aircraft movement’ is interchangeably used to describe the two separate but related actions.¹⁰

The Minister’s second reading speech emphasises that the Bill does not change any of the fundamental policy settings but rather the amendments are essentially technical and will clarify, strengthen and tighten the regulatory arrangements.¹¹

Financial implications

There will be no financial impact.

Main provisions

Existing section 4 provides a summary of the various Parts contained in the SADM Act. **Items 1-3** would amend the section to reflect the changes proposed by the Bill. **Item 1** clarifies that the maximum movement limit at Sydney Airport is specifically related to *aircraft movements*. **Item 2** specifies that penalties in Part 3 relate to unauthorised *gate movements* and not to unauthorised *aircraft movements*. **Item 3** adds that Part 5 (Compliance Scheme) will also deal with the power of the Minister¹² to determine modifications of the Compliance Scheme.

9. *ibid.*, p. 64–65.

10. Hon. Anthony Albanese, ‘Second reading speech: Sydney Airport Demand Management Act 1997’, House of Representatives, *Debates*, 20 March 2008, p. 2393.

11. *ibid.*

12. The Minister for Infrastructure, Transport, Regional Development and Local Government.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Section 6 is the central provision of the Act. It restricts the aircraft movements to a maximum of 80 in any regulated hour of airport operation. Hourly movements are measured at 15 minute intervals. A regulated hour is defined to exclude any curfew period. Regulation within the curfew period is covered by a separate statute, the *Sydney Airport Curfew Act 1995* (the Curfew Act). **Items 4** and **5** amend **section 6** clarifying terminology relating to aircraft movement.

Item 6 corrects a drafting error in subsection 8(4). It replaces a reference to the *Legislative Instruments Act 1997* with *Legislative Instruments Act 2003*. **Item 38** makes an identical amendment to subsection 46(6).

Items 7–24 propose amendments to **Part 3**, which is the Part setting out the penalty regime for the Slot Management Scheme. The majority of these amendments would replace the term ‘aircraft movements’ with the concept of ‘gate movements’. For example **item 7** amends the title of Part 3 so that it would read ‘Part 3—Penalties for unauthorised gate movements’. **Item 8** repeals and replaces section 10 setting out the *gate movements* (as opposed to the aircraft movements) to which Part 3 would apply. With the exception of certain movements that are exempt under the Act, Part 3 will apply to all *gate movements* (as opposed to aircraft movements) at Sydney Airport.

Existing part 4 (sections 33 to 47) sets out the Slot Management Scheme. It is, essentially, a system for the allocation of permission for an aircraft movement at Sydney Airport within the maximum aircraft movement limit of 80 per regulated hour. A slot is issued for a specified aircraft movement at a specified time on a specified day. Again many of the amendments to Part 4 relate to terminology and will replace the term ‘aircraft movement’ with ‘gate movement’.

For example, existing subsection 33(2) sets out that the basic purpose of the Slot Management Scheme is to provide a system for the allocation of permissions for aircraft movements at Sydney Airport within the maximum movement limit (aircraft movements being defined as runway movements). **Item 25** amends subsection 33(2) so that the basic purpose of the Scheme would be to provide a system for the allocation of permissions for *gate movements*. The system must be consistent with the maximum movement limit of 80 aircraft movements.

Section 34 deals with the concept of a ‘slot’ and is amended by **items 26** and **27** so that a slot would be a permission for a scheduled *gate movement* (rather than an aircraft movement). A slot allocated will permit a specified gate movement at a specified time on a specified day. **Item 28** repeals and replaces subsection 34(3) so that other laws will apply to gate movements as well as aircraft movements. Section 35 deals with the contents of the Slot Management Scheme. **Items 29, 31** and **34** make similar amendments to this section, replacing the term ‘aircraft movements’ with ‘gate movements’.

Item 30 amends subsection 35(1) to remove the reference to ‘other than movements during the curfew period’. The rationale being that this is an unnecessary phrase as slots

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

cannot be allocated for movement during the curfew period. The curfew period is dealt with under the Curfew Act.

New subsection 35(1B) is inserted by **item 32**. It clarifies that the Scheme must not allow slots to be allocated for times during curfew periods.

Part 5 of the Act (sections 48–59) deals with the Compliance Scheme for the Slot Management Scheme. **Item 40** would repeal subsection 49(6) to remove the requirement that the Compliance Scheme must include definitions of when an aircraft takes off or lands. The definitions are no longer necessary as the Schemes are based on a concept of gate movements rather than take offs and landings.

Item 41 proposes **new section 59A** giving the Minister a new power to make modifications to the Compliance Scheme in exceptional circumstances. The modifications would be made via a determination which must be given to the Compliance Committee as soon as practicable. The determination must set out the Minister's reasons for the modifications. The determination would be a legislative instrument but not subject to disallowance by the Parliament. **New subsection 59A(4)** clarifies that modifications made by the Minister under this section do not have to comply with the Compliance Scheme. The Explanatory Memorandum states that exceptional circumstances will be events, such as major changes to the operations of all airlines for reasons beyond the airlines' control, that impact on airline on-time performance for a period of time. It cites as examples the collapse of Ansett in 2001 and the events immediately following September 11, 2001.¹³

Part 8 of the Act deals with miscellaneous matters including Ministerial delegations. Section 71 allows the Minister to delegate certain powers to the Secretary and Senior Executive Service officers in the Department. **Item 44** amends section 71 so that the Minister may also delegate the power to make appointments to the Compliance Committee.¹⁴

According to the Explanatory Memorandum the seven members of the Compliance Committee are representatives of domestic, regional and international airlines, Airservices Australia and Sydney Airport Corporation Limited.¹⁵ In addition, it states that members of the Committee are 'nominated' by their respective organisations¹⁶ – although as a matter of law these nominees are appointed to the Committee by the Minister (or under proposed **item 44**, the Minister's delegate) under existing subsection 66(3).

13. Explanatory Memorandum, p. 8.

14. Section 66 of the SADM Act provides that there is to be a Compliance Committee for Sydney Airport. The functions of the Compliance Committee are firstly to develop, administer and amend the Compliance Scheme and secondly to carry out any other functions conferred by the SADM Act and regulations.

15. Explanatory Memorandum, p. 1

16. *ibid.*

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Items 43 and **45** are savings provisions. Their effect is that delegations in force under section 70 made prior to commencement of the Bill and evidentiary certificates made under section 71 prior to commencement would continue to have effect.

Item 46 amends paragraph 74(2)(b). It would allow the regulations to prescribe penalties of up to 50 penalty units for offences against the regulations.¹⁷ The current limit is 10 penalty units. In the second reading speech the Minister outlined his commitment to producing regulations to penalise both ‘no-slot’ and ‘off-slot’ gate movements. A regulation to enable the Slot Manager to require operators to provide information and impose penalties for failure to comply is proposed.¹⁸ However the regulation had not been publicly released at the time of preparing this bills digest. The increased amounts in item 46 relate to that proposed regulation.

Schedule 1 of the Act contains definitions relevant to the Act. **Items 47 – 54** make amendments to these definitions to reflect the changes proposed in the Bill. For example **item 51** inserts a new definition of ‘gate movement’ to reflect that a gate movement is the first movement of an aircraft in preparation for an aircraft movement that is a take-off and the last movement after a landing when the aircraft comes to a standstill and the engines are turned off.¹⁹ This new definition is related to the numerous amendments that replace ‘aircraft movement’ with the concept of a ‘gate movement’.

Items 52 and **54** would remove the definitions of land and take off. This is consequential to the fact that the Compliance Scheme would no longer define when an aircraft takes off or lands.

Concluding Comments

The 2007 ANAO audit highlighted the need for some improvement in administration of the slot management scheme at Sydney Airport. It states:

... the SADM Act requires Airservices Australia to monitor and report breaches of the movement limit to the Parliament through its Minister. However, reliable and accurate records do not exist to evidence past monitoring of compliance with the movement limit, and support the reports made to the Parliament. The available data indicates that some of the 61 reported breaches may not, in fact, have occurred. This

17. Under the *Crimes Act 1914*, in a law of the Commonwealth a penalty unit is equal to \$110. This means that the maximum penalty for each offence under the SADM Act is \$5,500.

18. Hon. Anthony Albanese, op. cit., p. 2393.

19. In contrast, aircraft movement is already defined as the landing on or take off from a runway.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

data also indicates that there may have been many other, unreported, breaches of the movement limit.²⁰

The possibility that these Ministerial reports made to Parliament may have been inaccurate is a matter of serious concern. Whilst this Bill and the previously mentioned proposed regulations should improve the scheme's compliance framework, it would be useful if the Government provided more information on the specifics on how it will ensure the accuracy of all future reporting.

© Copyright Commonwealth of Australia

This work is copyright. Except to the extent of uses permitted by the *Copyright Act 1968*, no person may reproduce or transmit any part of this work by any process without the prior written consent of the Parliamentary Librarian. This requirement does not apply to members of the Parliament of Australia acting in the course of their official duties.

This work has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

Feedback is welcome and may be provided to: web.library@aph.gov.au. Any concerns or complaints should be directed to the Parliamentary Librarian. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library's Central Entry Point for referral.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2438.

20. Australian National Audit Office, op. cit., p. 17.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.