AUSTRALIAN AIRPORTS ASSOCIATION
THE ONE VOICE FOR ALL AUSTRALIAN AIRPORTS

NATIONAL SECRETARIAT
Suite 3,
5 Asquith Street
Kew Vic. 3101
Telephone: (03) 9859 9487
Facsimile: (03) 9859 7927

31 July, 2006

Price Regulation of Airport Services Inquiry
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Sirs,

RE: PRICE REGULATION OF AIRPORT SERVICES INQUIRY

This submission to the above subject Inquiry is made on behalf of the Australian Airports Association. The preparation of this submission was facilitated by the L.E.K. Consulting Group following a lengthy consultative process with member airports.

The purpose of this submission to the Inquiry is to set out the more general views of the Association in relation to the matters raised in both the terms of reference and the issues paper. In formulating these views, the Association has, of course, canvassed the opinions of individual member airports whose interests are affected (or likely to be affected) by these issues. Generally, the views expressed in this submission coincide with and reflect the opinions of those individual member airports. However, on some issues, an individual member airport may have an opinion that does not exactly coincide with the views set out in this submission, or that they wish to convey to the Inquiry in different terms or in greater detail.

The Association expects that all of its members with an interest in the Inquiry will lodge their own individual submissions. To the extent that any such submission expresses a view at variance with anything set out in this submission, the Association is confident that the Commission will give that individual submission the full deliberation that it (and each other submission) warrants.

We thank the Productivity Commission for the opportunity to submit comment to the Inquiry and contribute to the stakeholder consultative process.

Yours sincerely,

Ken Keech
Chief Executive

attach

Australian Airports Association

Submission to the Productivity Commission

Review of Price Regulation of Airport Services

31 July 2006

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1. EXECUTIVE SUMMARY

The current light-handed regulatory regime is successfully delivering key outcomes for the Australian Aviation sector in terms of pricing levels, contract structures and the quality of aero services provided. There is substantial evidence that the current regime has encouraged airports (and airlines) to deliver outcomes which are consistent with the Government's Review Principles.

Australian airport charges are in line with their global peers. Increases in charges between 2002 and 2006 are the anticipated response to uneconomic pricing under the previous regime. Australian airports are committed to cost efficiency and controlling costs well compared to their international peers.

The current regime has created an environment where commercial investment decisions have been decentralised from Government to lie in the hands of the most involved parties. This has enabled airports and airlines to make more timely investment decisions and has led to a period of increased capital investment at airports. The ACCC and international surveys agree that Australian airports deliver benchmark levels of quality.

The current regulatory regime has also facilitated the establishment of commercial agreements between airports and airlines, more efficient risk sharing and the emergence of pricing discrimination[1] through volume discounts and new airline incentives.

These new agreements and timely airport investment have benefited consumers by providing conditions that helped to support the start-up of new Low Cost Carrier (LCC) airlines or LCC subsidiaries of full service carriers, or the inauguration of new services by existing carriers. As a result, airline power has increased, with the rapid growth of new routes, resulting in fewer routes at Sydney and more at regional airports. Sydney's international share has also decreased and Australian airports increasingly compete with airports in other countries.

As a result of these forces, the Australian airport sector is meeting, but not exceeding, its aviation costs of capital on a long-run average basis, while supporting an Australian airline industry that rates among the most profitable in the world.

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[1] Pricing discrimination is defined in line with the Government's Review Principles, which states that "price discrimination and multi-part pricing that promotes efficient use of the airport is permitted". Productivity Commission, Price Regulation of Airport Services Issues Paper, pg4

In summary, the Australian aviation market has changed significantly since the Productivity Commission's (PC's) last inquiry, and future dynamics mean that it will continue to do so. It is thus essential that regulation not deprive airports and airlines of the flexibility they need to respond speedily to these changes – eg, by rapid approval for new investments. This is best delivered by maintenance of price monitoring, rather than a more heavily regulated regime.

Furthermore, an ongoing commitment to the light handed regime should be made by removing the "probationary" status conferred when price monitoring was introduced. The current probationary status creates uncertainty that is detrimental to all parties, particularly at the end of the period, where negotiations have proved harder to conclude than previously.

There are a number of changes that should be made to enhance the operation of the regime, including refining the definition of aviation services to make Direction 27 and the *Airports Act 1996* (the Act) consistent and clarification of the guidance on asset valuation. In particular, it should be acknowledged that the asset values inherited from the FAC did not reflect the true value of those assets and require a revaluation to establish an appropriate base for aeronautical charges.

2. BACKGROUND

2.1. Scope of the AAA submission

This document has been prepared by the Australian Airports Association, with assistance from L.E.K. Consulting, in response to the Productivity Commission's review of airport price regulation. It assesses the current regime, identifies its strengths and weaknesses, and proposes changes for the future.

2.2. About the Australian Airports Association ("AAA")

The Australian Airports Association (AAA) was founded in 1982. It is a non-profit organisation that, as at 01 January 2006, represented the interests of over 285 member aerodromes and airports Australia wide, from the local country council-owned and operated community service landing strip, to the major privatised international gateway airports.

The Charter of the Australian Airports Association is to facilitate co-operation among all member airports and their many and varied partners in Australian aviation, whilst maintaining an air transport system that is safe, secure, environmentally responsible and efficient for the benefit of all Australians.

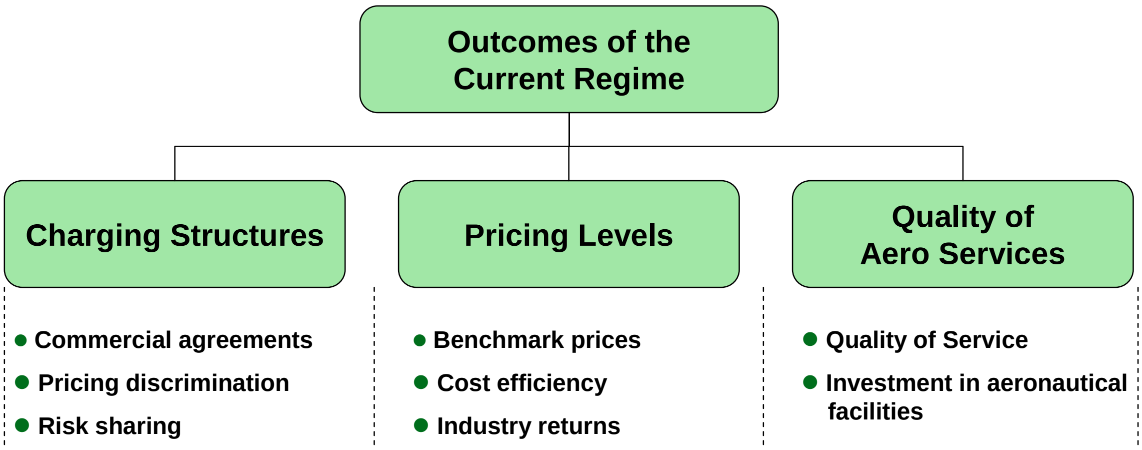
2.3. About L.E.K. Consulting (L.E.K.)

L.E.K. Consulting is a leading international corporate advisory firm with around 600 staff worldwide. The company is run as a single resource unit with 16 offices throughout Europe, the USA and Asia Pacific. There are more than 100 professionals in the Asia Pacific region based in offices in Sydney, Melbourne, Auckland, Singapore, Bangkok, Shanghai, Beijing, and more recently Tokyo. Since the Australasian practice was established in 1987, L.E.K. has undertaken assignments with approximately 30 of the 150 largest corporations in Australia and New Zealand.

3. OUTCOMES OF THE CURRENT ARRANGEMENTS

The AAA in this document assesses the outcomes of the current regime against the charging structures, price levels and quality of aeronautical services that have emerged. The charging structures are observed through the nature of commercial agreements that have evolved, the level of risk sharing and the emergence of price discrimination. Pricing levels are measured in terms of benchmark prices, cost efficiency and industry returns. The quality of service is addressed both through measured Quality of Service outcomes and the investment in aeronautical facilities that have been made (Figure 1).

Figure 1 Outcomes of current regime



Each of these outcomes is reviewed in turn below.

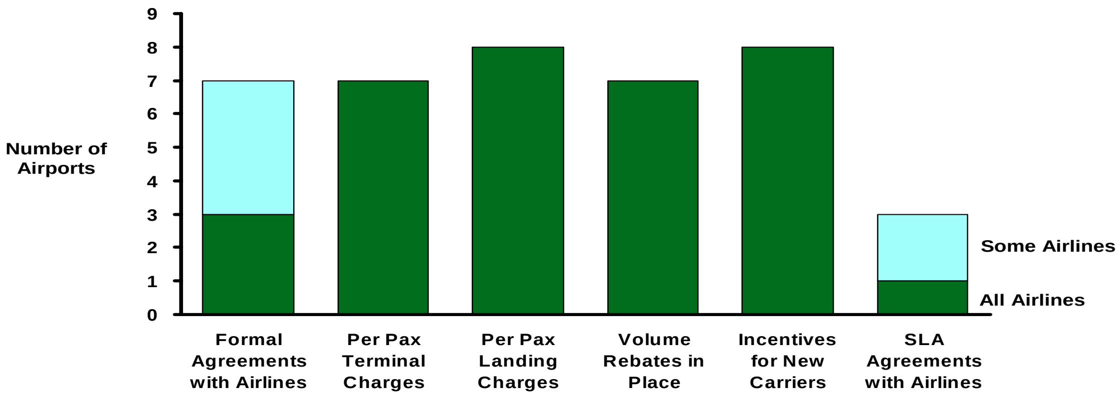
3.1. Charging Structures

Commercial agreements between airports and airlines are emerging. As most agreements are in their first iteration, the "system" is still evolving, but has shown early signs of success.

The structure and level of pricing arrangements at most Australian airports have changed significantly since the removal of price caps in 2002. The major airports have typically reached commercial agreements with carriers and are in the process of developing more innovative contract structures containing quality measures and Service Level Agreements (SLA's) (Figure 2).

Commercial incentives, including volume rebates, discounts and new carrier incentives have also emerged during the recent regulatory period in many commercial agreements and represent the early stages of price discrimination (Figure 2).

Figure 2 Incidence of commercial agreements, price discrimination and risk sharing arrangements at selected Australian airports[2]



Source: L.E.K. Analysis (n=8)

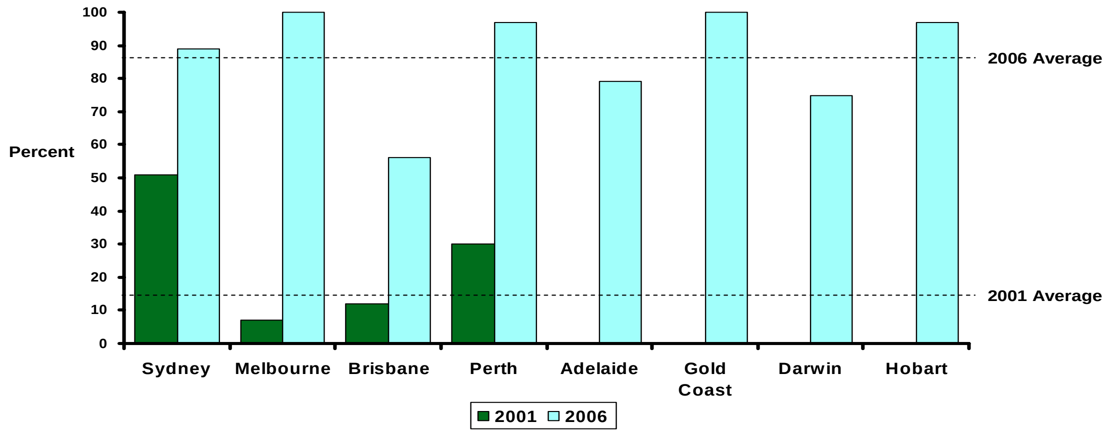
The proportion of aeronautical revenue derived from passenger based charges at all of the core regulated airports has increased dramatically. In 2006, Australia's major privatised airports generated an average of 87% of aeronautical revenue from passenger based charges, which has increased from an average of 13% in 2001 (Figure 3).

Comparisons with international airports also show that the current light handed regime has encouraged Australian airports to bear a greater proportion of passenger risk than their international peers. In the Comparison of International Airport Charges undertaken by TRL and included in the Melbourne Airports submission[3], it is noted that "at this stage, this model (single passenger based charges) has little application outside of the Australia/New Zealand region".

[2] Airports surveyed include Sydney, Melbourne, Brisbane, Perth, Adelaide, Gold Coast, Darwin and Hobart

[3] Melbourne Airport submission, Appendix 2

Figure 3 Proportion of aeronautical revenue based on passenger volumes at selected airports (2001-06)[4]



Source: L.E.K. Analysis

Dispute resolution clauses are evolving and are treated as a specific area for improvement in Section 4.2.4.

Australian airports' preparedness to negotiate, to develop individual terms and conditions and share risk have benefited consumers by providing conditions that supported the start-up of new LCC airlines or LCC subsidiaries of full service carriers and the inauguration of new services by existing carriers. For example, both Sydney and Melbourne Airports invested to facilitate the entry of Virgin Blue and Impulse by building terminals, which they have subsequently decommissioned. These new agreements have also helped to substantially improve the health of Australia's regional airport network (see Section 3.2.3).

3.2. Pricing Levels

3.2.1. Benchmark prices

Aeronautical charges across Australian airports benchmark well compared to their international peers (Figure 4).

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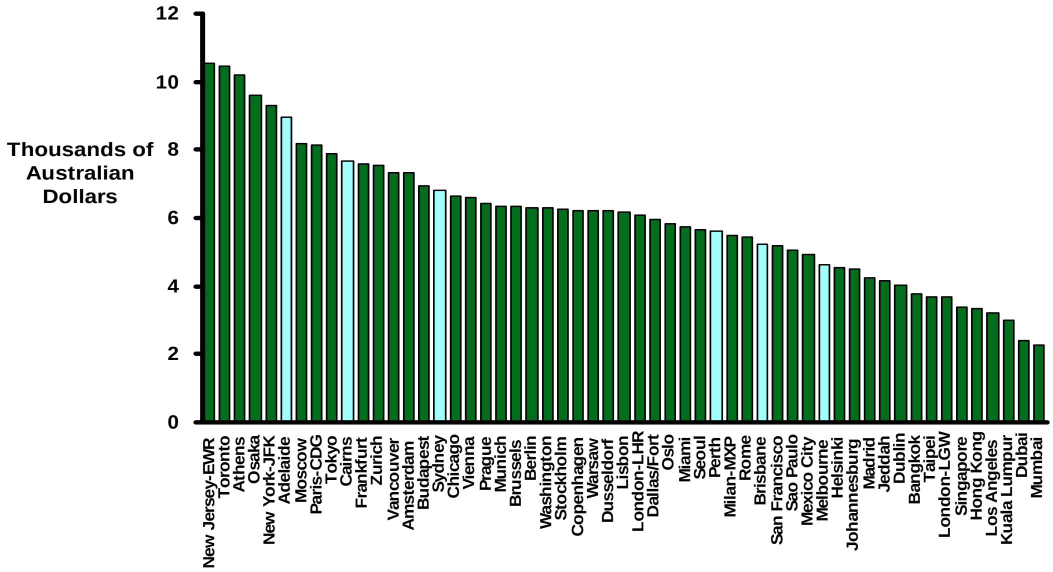
[4] Perth Airport represents proportion of revenue to 30 June 2001 and 2005.

Figure 4 Total aeronautical charges per aircraft for selected airports (2005)[5][6]



Source: TRL

Australian airports deliver these charges despite being on average significantly smaller than their international peers. The six major gateways average c.17 million pax per year, while their international peers average c.25 pax per annum (Figure 5). Adelaide, Cairns and Perth in particular face a significant scale disadvantage in the comparison of aeronautical charges with international airport peer set above.

Furthermore, it is worth noting that Adelaide's charges are in large part explained by the recent investment, and their early stage in the capacity cycle.

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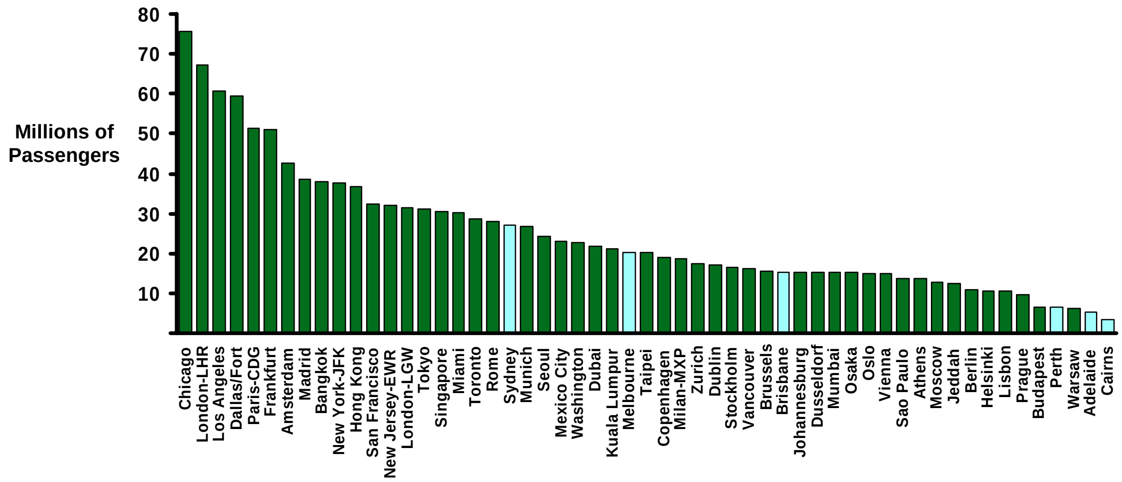
[5] While this data provides the best basis available to benchmark airport charges with international peers, it does possess a number of limitations that need to be understood. Firstly, charges are calculated by TRL based on international services only for a sample of 8 aircraft types and does not reflect the actual aircraft mix or passenger load factor at each airport. Secondly, total charges include services such as Terminal Navigation, Fire Services and Noise Levies, imposed directly by third parties and are outside the control of the airport in question. Finally, the charges do not take into account the scale of the airports benchmarked which has a propensity to skew the analysis towards showing those airports with low throughput as being relatively more expensive.

[6] Adelaide airport charges include recent increases associated with the opening of its new terminal

Figure 5 Annual passenger movements for selected airports (2005) [7]



Source: TRL

While aeronautical prices at Australia's airports have generally increased since the removal of price caps in 2002, it is important to recognise that increases do not represent an abuse of the flexibility offered by the new regime; they were fully anticipated by the Government and were agreed with the airlines in the initial round of commercial agreements with airports.

The price increases represented a necessary reaction to the constraints of the former regime and the economically inefficient FAC network pricing, and have brought aeronautical pricing towards a commercially sustainable level.

3.2.2. Cost efficiency

A key driver of price competitiveness versus international airport peers is the highly efficient cost structure of Australian airports.

In the Issues Paper circulated at the commencement of this Review, the Commission noted that "operating expenses per passenger at most airports have stabilised or fallen". However, this was partly attributed to "the fixed nature of many airport costs and rising passenger numbers". While certainly a contributing factor, it would be remiss to overemphasise the benefits of rising passenger numbers, at the expense of recognising the real improvements in operational efficiency achieved by airports since 2002. When comparing relevant measures of operational efficiency with international airport peers of a comparable size, Australian airports have better controlled the scale of cost increases experienced internationally (Figure 6). Across seven overseas peers

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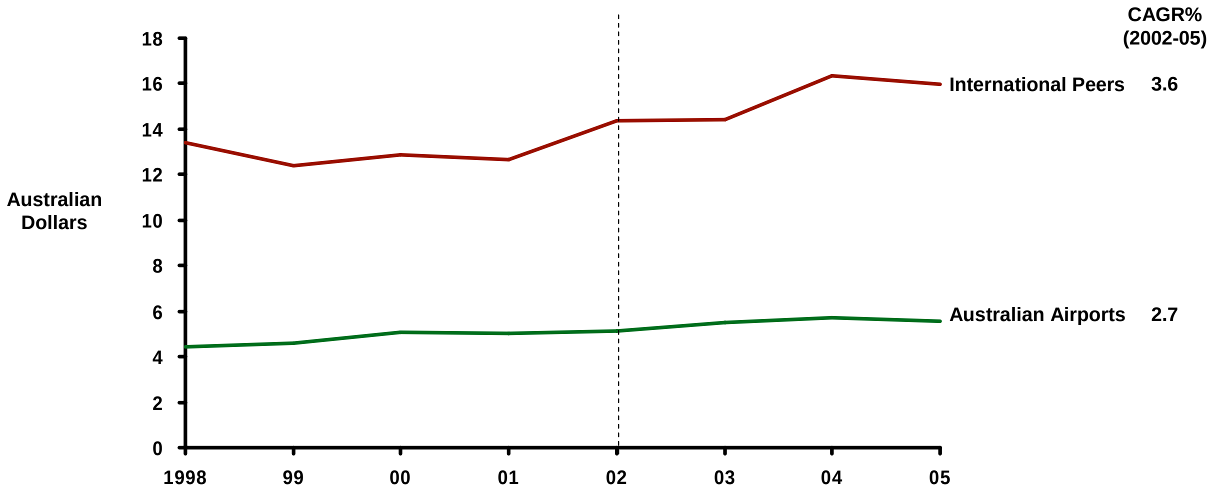
[7] Includes international and domestic passengers

selected for their similar size, average operating costs increased by 3.6% per annum between 2002 and 2005. Over the same period, Australian airports' costs increased by 2.7%.

Figure 6 Operating costs per passenger for selected airports (1998-05)[8]



Source: TRL

This cost control has been delivered during a period of significant investment, with a number of airports expanding facilities provided to include the former Ansett terminals.

3.2.3. Industry returns

Comparison of aeronautical returns with international peer airports is difficult due to different regulatory environments, different risk profiles, and the artificial impact that this can have on published returns. Even within Australia, the risk profiles of airports vary. Smaller, more leisure focussed airports inherently face greater risk than larger airports.

The nature of the aviation industry precludes the setting of return ceilings, due to the uncertain nature of passenger growth and the large and "lumpy" capital investments required over time. Returns should be assessed on a long-run average basis, recognising that airport returns may temporarily increase above their long-run average as airports reach the peak of their capacity cycles.

[8] Australasian Airports = Sydney, Melbourne, Brisbane and Perth International Peers Airports = Calgary, Copenhagen, Manchester, Stockholm, Vancouver, Vienna and Washington

Under the current light handed regulatory regime, most Australian airports have entered into commercial agreements with airlines that reflect agreed risks and costs of capital (Figure 2). In most cases, the underlying riskiness of the business is reflected through an asset beta of 0.65-0.75.

A number of precedents exist supporting this beta range:

- In August 2004, the ACCC accepted PriceWaterhouse Coopers' recommendation of an asset beta of 0.6 for the calculation of asset returns for Airservices Australia, arguably a less risky organisation than airports. As noted by BARA in its submission to the ACCC's consideration of the pricing structure of Airservices Australia, "Traffic flows determine the revenue of both the airports and AsA. (The) AsA is likely to experience less volatility than the airports. Competition between Australian airports for travellers has less of an affect on AsA than the airports themselves as a traveller switching airports has a minimal (if any) effect on AsA."

- Asset betas and WACC assumptions provided to airports in negotiation of the initial round of commercial agreements have been accepted by airlines, as noted by a number of Airports in their submission to this inquiry. In particular, Melbourne Airport, which currently reports the highest asset returns for Australian airports, specifically states that pricing structures based on an asset return beta of 0.7 were "accepted without dispute by airlines, without any counter offer being made"[9].

Against these agreed bases, Australian airports' aeronautical returns are not excessive. That is not to say that Australian airports are not profitable. The Commission itself acknowledges that "operating margins are low to moderate at most airports"[10], having increased from "low or even negative operating margins at the beginning of the (regulatory) period". The ACCC calculates the returns on tangible aeronautical assets in 2005 for monitored Australian airports of between 4.2% and 14.2%. While the significant limitations and inconsistencies in the ACCC analysis have been noted in a number of airport submissions[11], the AAA believes that the data does confirm that returns generated by Australian airports are not excessive.

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[9] Melbourne Airport Submission, pg 34

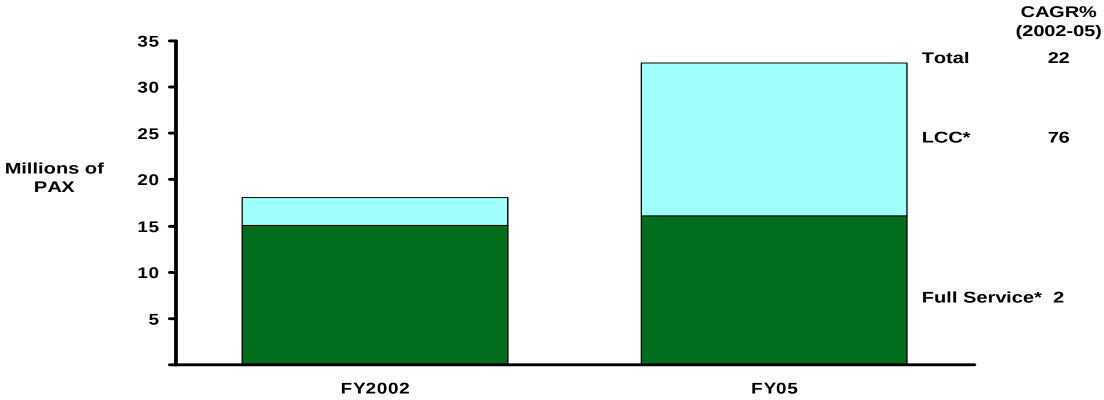
[10] Price Regulation of Airport Services Issues Paper, Productivity Commission, pg16

[11] The major limitation identified by a number of airports is the different valuation methodologies incorporated into airport asset bases, which is used by the ACCC for calculation of EBITA returns

The Commission's attention is drawn in particular to the fact that prices based on agreed returns are set ex ante. It is inevitable in an environment where the airports are bearing passenger risk that the ex-post returns will differ from these levels. This explains the current higher returns at Perth and Darwin, where stronger than expected passenger growth has benefited airlines, airports and the general economy. Had the growth been lower than expected, these returns would have been considerably lower. It is unlikely that these airports would continue to deliver higher aeronautical returns than their peers over the long term.

The growth of LCC's in Australia has increased the level of market power held by airlines in the domestic market. LCC's now account for 51% of domestic passenger movements, up from 17% in 2002 (Figure 7).

Figure 7 Australian domestic passenger movements by airline type (2002-05)



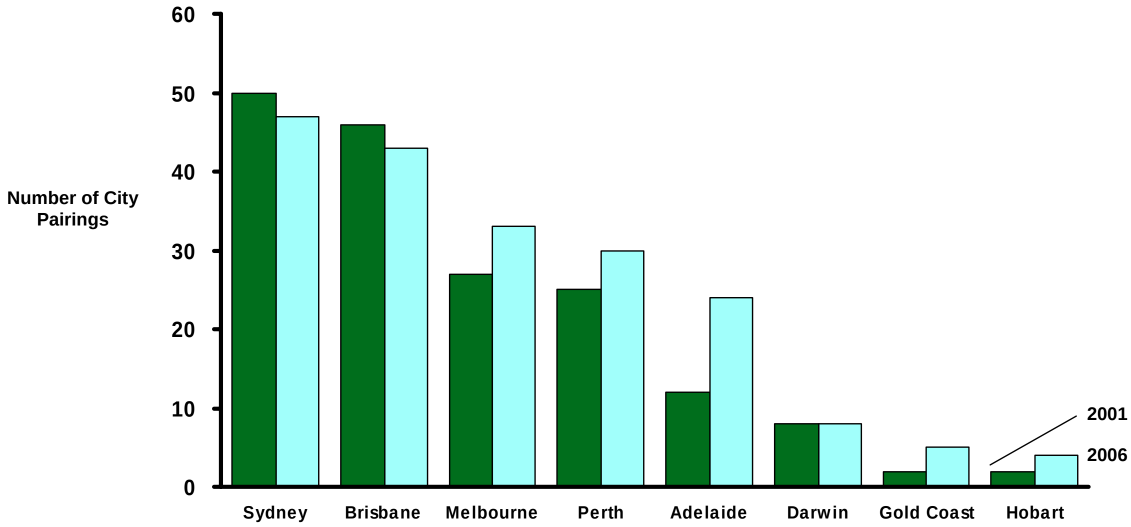
Source: ASX, Virgin Blue prospectus, Virgin Blue Interim Results Presentation, L.E.K. Analysis

LCC's have even greater flexibility than full service carriers in selecting city pairs, due to their leisure biased passenger mix. This flexibility, combined with their ability to alter flight schedules based on the seasonal nature of leisure travel, provides them with significant power over airports. The growth of city pairings at airports such as the Gold Coast, Adelaide and Hobart, combined with reduced city pairings out of Sydney, during a period of significant passenger growth, demonstrates the increased ability of carriers to favour routes outside of Australia's largest airports (Figure 8).

Airlines have been further encouraged to increase the use of smaller and regional airports by the commercial incentives put forward by specific airports. These incentives have provided particularly strong competitive pressure for airports such as Brisbane, the Gold Coast, Maroochydore and to a lesser extent Ballina, which compete directly for scheduled LCC services into the region.

This significant structural change in the aviation market increases airports competition with each other and reduces any incentive to overprice.

Figure 8 Australian domestic city pairings for selected airports (2001-06)

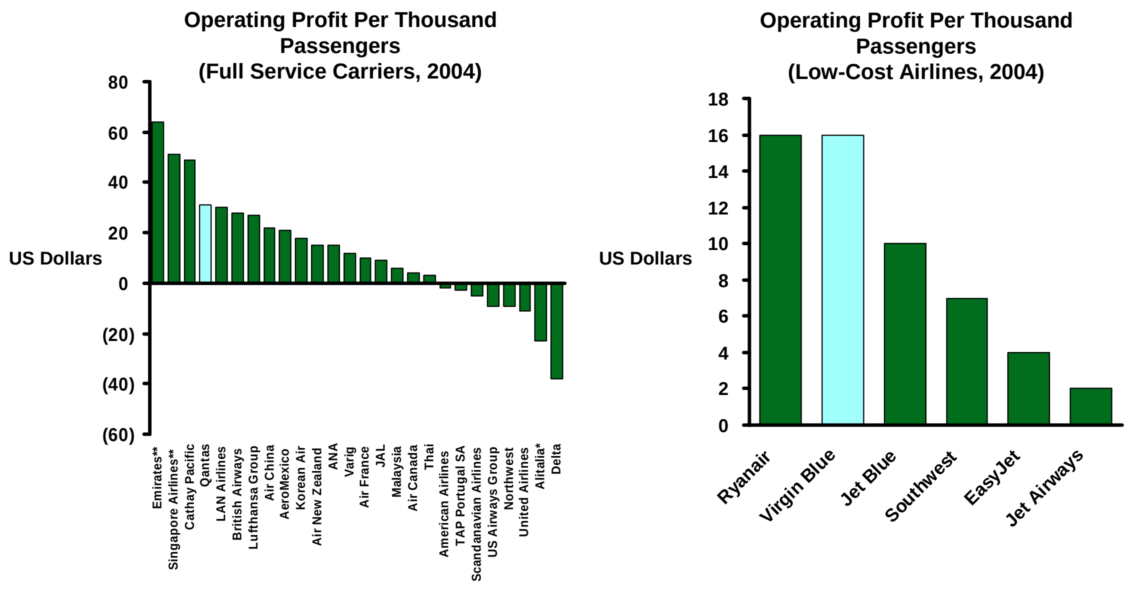


	Sydney	Brisbane	Melbourne	Perth	Adelaide	Darwin	Gold Coast	Hobart
Growth of City Pairings (%)	(6)	(7)	22	20	100	-	150	100

Source: L.E.K. Analysis

The growth in the LCC's and the success of smaller regional airports is indicative of the health of the domestic aviation industry in recent years, under which the current regime operated. During this period, robust passenger growth has delivered most Australian airports with reasonable levels of returns by global standards. Qantas and Virgin have also been able to deliver higher profits than many of their international peers, although they, like all airlines, are now facing increased fuel costs (Figure 9).

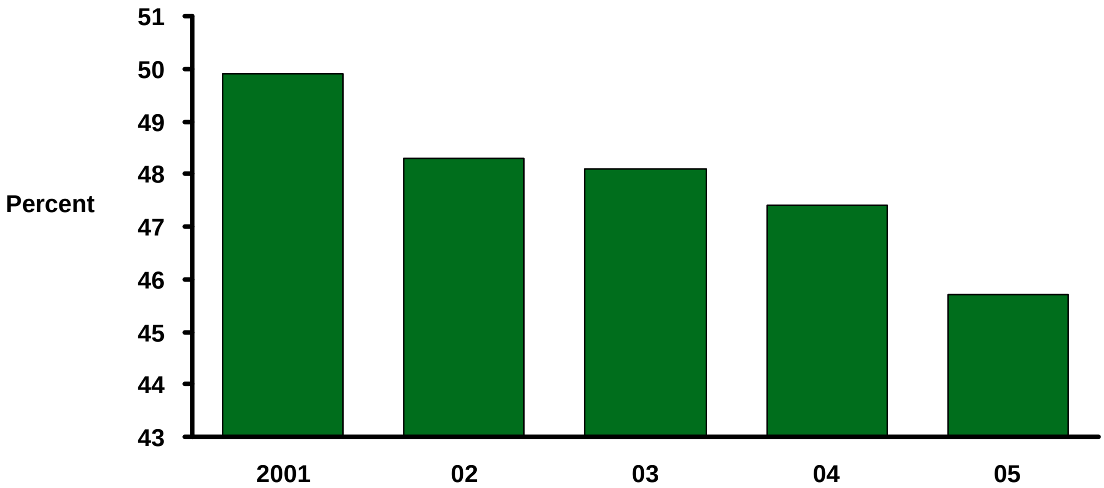
Figure 9 Profitability of Australian domestic airlines versus relevant peers (2004)



Source: ATW World Airline Report

Airports also compete for international traffic. This can be seen at two levels. First the number of Australian airports competing for services has lowered Sydney's share of total international passengers from 50% to 45% over the last five years (Figure 10). Second, Australian airports compete for new inbound international routes with overseas ports. No international carrier, other than Qantas, has a stronger reason to fly to Sydney than any other equivalent destination in the world and hence Australian airports are required to compete aggressively in order to maintain and increase international capacity.

Figure 10 Sydney Airport's share of international passenger movements in Australia (2001-05)



Source: BTRE

3.3. Quality of Service and Investment in New Facilities

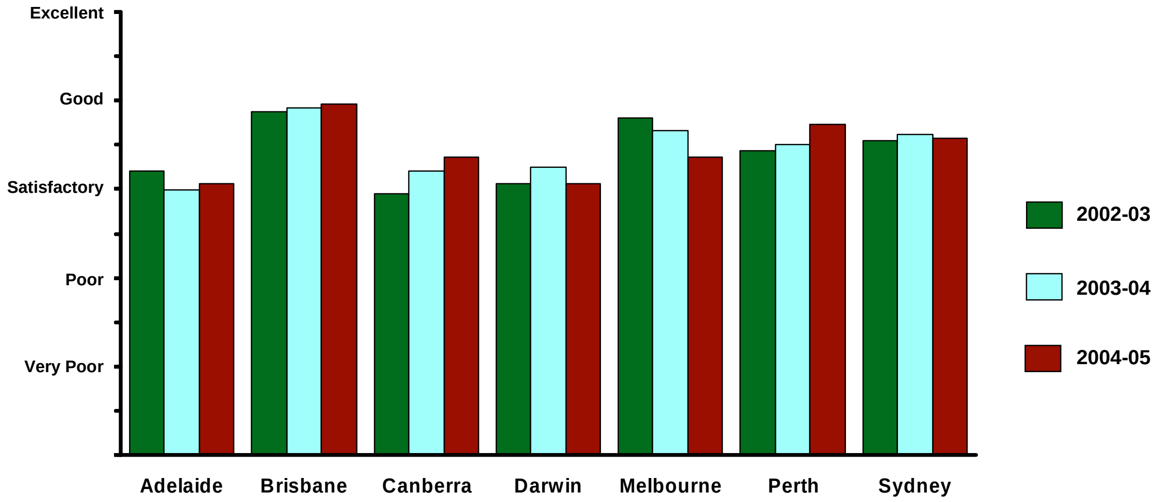
3.3.1. Quality of service monitoring

Quality of service monitoring is an important component of the current regulatory regime. The ACCC quality of service monitoring reports identify a number of key outcomes under the current regulatory regime:

- All monitored airports have maintained ratings of between satisfactory and good under the current regulatory regime (Figure 11)
- Five of the seven monitored airports have maintained or improved quality levels since 2002. The decreases measured by the ACCC at other two

airports have related to tightening capacity and the related disruptions from capital investments required to address these issues. Despite these disruptions, changes in the measured quality ratings have been relatively immaterial, with both maintaining "satisfactory" quality of service according to the ACCC ratings

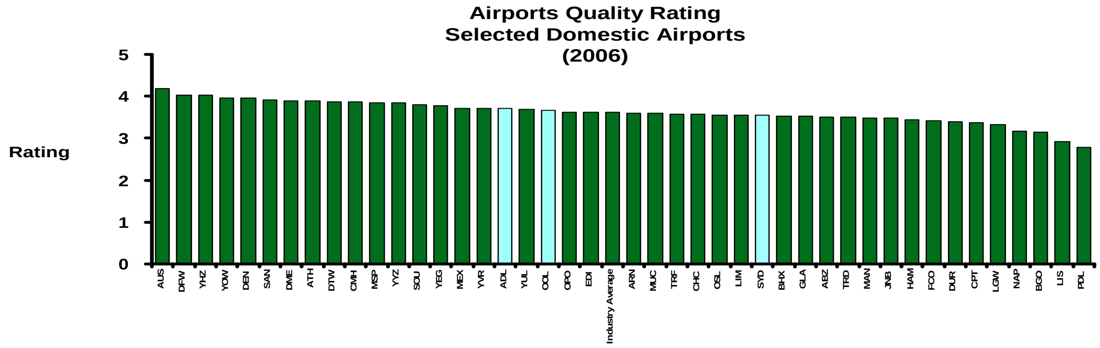
Figure 11 Quality of service ratings published by the ACCC (2003-05)



Source: ACCC

Global surveys confirm that those Australian airports that participate in the survey are delivering international benchmark levels of quality (Figure 12). These benchmarks are broadly consistent with international pricing comparisons (Figure 4), implying that Australian airports are delivering value for money, which is at least equivalent to international peers.

Figure 12 Quality of service at selected international and domestic airports



Source: ACI

3.3.2. Investment in facilities

The current regulatory environment has provided a more conducive environment for aeronautical investment than previously existed.

Under price regulation, most aeronautical investment required the approval of the ACCC, as necessary new investment (NNI)[12]. This process often delayed commitment to necessary investment agreed by both airlines and airports, and always reduced the certainty of investment projects and the ability to execute to a timetable. This process is likely to have had the effect of discouraging aeronautical investment.

A more commercial approach to planning and investing in aeronautical assets now exists than that during the period of CPI-x price regulation. Critical investment decisions reside directly in the hands of the key stakeholders, airlines and airports. As a result, lead times between planning and construction have been condensed.

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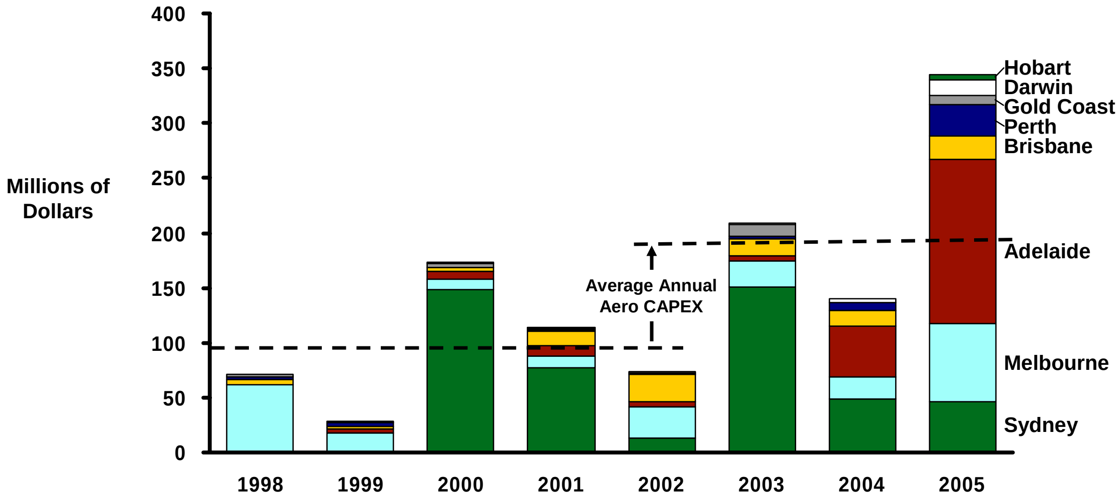
[12] Under price regulation, the ACCC was directed to approve price increases outside of the price cap that complied with NNI criteria. The NNI criteria specifically precluded maintenance CAPEX, such as runway overlays.

This has coincided with a significant increase in the level of investment in aeronautical assets compared to the previous regulatory period. In a sample of Australian airports surveyed, average annual capital investment in aeronautical assets increased by $94 million (97%) between 1998-01 and 2002-05 (Figure 13)

Figure 13 Aeronautical investment by selected airports (1998-05)



Source: L.E.K. Analysis

3.4. Summary

The current light-handed regulatory regime is successfully delivering key outcomes for the Australian Aviation sector in terms of pricing levels, contract structures and the quality of aero services provided. There is substantial evidence that the current regime has encouraged airports (and airlines) to deliver outcomes which are consistent with the Government's Review Principles.

Australian airport charges are in line with their global peers. Increases in charges between 2002 and 2006 are the anticipated response to uneconomic pricing under the previous regime. Australian airports are committed to cost efficiency and are controlling costs well compared to their international peers.

The current regime has created an environment where commercial investment decisions have been decentralised from Government to lie in the hands of the most involved parties. This has enabled airports and airlines to make more timely investment decisions and has led to a period of increased capital investment at airports. The ACCC and international surveys agree that Australian airports deliver benchmark levels of quality.

The current regulatory regime has also facilitated the establishment of commercial agreements between airports and airlines, more efficient risk sharing and the emergence of pricing discrimination through volume discounts and new airline incentives.

These new agreements and timely airport investment have benefited consumers by providing conditions that helped to support the start-up of new Low Cost Carrier (LCC) airlines or LCC subsidiaries of full service carriers, or the inauguration of new services by existing carriers. As a result, airline power has increased, with the rapid growth of new routes, resulting in fewer routes at Sydney and more at provincial airports. Sydney's international share has also decreased and Australian airports increasingly compete with airports in other countries.

As a result of these forces, the Australian airport sector is meeting, but not exceeding, its aviation costs of capital on a long-run average basis, while supporting an Australian airline industry that rates among the most profitable in the world.

4. FUTURE ARRANGEMENTS

4.1. Price Monitoring of Airports

The AAA recommends that the current light handed approach to regulation be retained, which is limited to periodic monitoring of price and quality[13]. The current regulatory regime has successfully delivered outcomes consistent with the Government's Review Principles in a relatively short period of time. Given further support and time, a light handed regulatory regime will support the evolution of the next iteration of commercial agreements between airports and airlines.

However, the current regime imposes considerable compliance costs on airports. For all airports, these costs have a material impact on airport profitability, with limited benefits for consumers. Consequently, the AAA recommends that the PC consider whether it is necessary to continue monitoring all of the airports which are currently subject to price monitoring and submission of audited regulatory accounts under Part 7 of the Airports Act. A number of airports that are currently subject to the monitoring regime have outlined strong arguments for their exclusion from this process going forward based on relative size and market power. The AAA fully supports and concurs with the views outlined by each of these airports.

Consequently the AAA believes that periodic review of any regulatory regime is an important component of good governance and that regulatory certainty is essential to encourage timely and adequate investment, both from airlines and airports. It has been the experience of some Australian airports that the stated "probationary" nature of the present regime has acted as a deterrent to airlines agreeing to otherwise reasonable terms and conditions where they perceive that, if heavy handed regulation were reintroduced, it could result in potentially more favourable price or non-price terms. Therefore the AAA believes that the "probationary" status of the current regime should be removed. This would provide benefits to all stakeholders by removing the uncertainty created through scheduled reviews of the regulatory regime within a "probationary" framework.

4.2. Enhancement of Price Monitoring Arrangements

Within the broad price monitoring framework, the AAA would like to see changes made in four areas to improve the effectiveness of the current light handed regime:

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[13] Regional services at Sydney Airport are currently subject to price regulation

4.2.1. Greater clarity around the definition of aeronautical services

The current inconsistencies in the definition of aeronautical services between Direction 27 and the Airports Act are generating unnecessary confusion within the industry. It is the view of the AAA that these definitions should be made consistent by updating the regulations made under Part 7 of the Airports Act to reflect the definition outlined in Direction 27. This realignment should not be used to expand the scope of the affected revenue-generating services beyond those already governed by the definitions.

Furthermore, Clause 3 of the Direction should be maintained, effectively carving out services that were subject to a specific lease contract upon sale of the airport. This is crucial in order to maintain consistency with the conditions on which the airports were originally privatised.

4.2.2. Guidance on accepted asset valuation methodology

While definition of aeronautical assets is an issue that influenced prices directly under the CPI-x price regulation regime, it is the view of the AAA that the continued evolution of commercial agreements between airports and airlines will largely cause asset valuations to become a redundant issue from a policy perspective.

Not withstanding the AAA's confidence in the ability of commercial agreements to resolve current issues relating to asset valuation, the Government should clarify its approach to asset valuation when considering whether an airport has complied with the stated review principals. Specifically:

- At most airports, opening book asset values inherited from the FAC did not reflect an appropriate value of those assets, as they were high level, desktop valuations only, and in some cases asset registers were incomplete. A once-off revaluation is required to set the appropriate base for aeronautical charges. The AAA believes that this approach is consistent with the approach taken by the ACCC in reviewing electricity transmission in 2004
- Revaluation of aeronautical assets should be undertaken on a Depreciated Optimised Replacement Cost basis, with land valued at fair market value based on uses consistent with surrounding sites, to provide an appropriate starting point.
- Frequent revaluations to increase prices are not appropriate. However, in certain circumstances, it may be appropriate for parties to commercial

agreements to agree to revaluations that reflect the market value of assets.

4.2.3. Quality of service monitoring

The AAA fully supports the delivery of quality of service demanded by airlines and passengers.

Quality of Service monitoring should therefore continue to be undertaken. However, as has been pointed out in the individual airport submissions, in certain key areas the current monitoring process is based on the response of a small number of survey participants, or the view of individual organisations with a potentially vested interest in understating the quality performance of Australian airports.

The AAA believes that quality monitoring should continue, but with a greater emphasis on genuine customer feedback based on the findings of existing broad-based surveys conducted by all airports, whether in house or through appropriately qualified external bodies.

The emerging service level agreements with airlines should also be viewed as a positive reinforcement of Australian airports' commitment to delivering quality aeronautical services.

4.2.4. Dispute resolution

Within the broad principle of commercial agreements, there is a clear need for a shared understanding of the dispute resolution mechanism. It is the view of the AAA that under a continued light handed regulatory environment, there should be a preference to allow airlines and airports to reach their own commercial agreements. Dispute resolution clauses are currently included in most commercial agreements between airports and airlines and this should be encouraged as best practice in developing an appropriate framework for the commercial resolution of disputes.

Part IIIA

Part IIIA of the TPA provides a suitable mechanism to deal with the unlikely possibility of an airport denying or constructively denying access to its aeronautical facilities and services. Although there is a need for some improvement to Part IIIA, this will largely be achieved when the Parliament passes the Trade Practices Amendment (National Access Regime) Bill to give effect to the Government's response to the Productivity Commissions review of Part IIIA. In particular, the inclusion in Part IIIA of the pricing principles recommended by the PC will provide important guidance to airlines and airports in their negotiations. It should also be noted that in its submission to the PC, the National Competition Council has noted that Part IIIA is not a suitable mechanism for general price control where denial of access or other anticompetitive behaviour is not involved.

Other Legislative Remedies

Parts IV and VIIA, together with the possibility of new legislation, provide powerful constraints on airports in their dealings with airlines. Part IV provides an established mechanism to deal with abuse of substantial market power, particularly where an airport's actions explicitly damage competition between airlines. Part VIIA provides a readily available mechanism for the Government to reintroduce prices surveillance, although the AAA has concerns about the efficacy and accountability of the notification procedures outlined in this Part.

Proposed improvements

The recent Australian Competition Tribunal decision which resulted in declaration of the domestic Airside Service at Sydney Airport has introduced considerable uncertainty about the purpose and scope of Part IIIA. Essentially, that decision says that the availability of arbitration by the ACCC would in itself increase access, even where access is already freely available. Unless the Federal Court decision on the appeal from that decision quite clearly restores the intended policy purpose underlying Part IIIA, it may be necessary to amend the TPA to do so. Such amendments would ensure that Part IIIA was confined to remedying any actual or constructive denial of access to relevant facilities and services.

Further improvements could also be made to Part IIIA to encourage parties to pursue good faith negotiations to the greatest extent and resort to regulatory intervention only as a true last resort – for example, Part XIC allows the ACCC to direct parties to return to the negotiating table where it considers that there remain prospects for mutual agreement, and the ACCC could usefully be given this power under Part IIIA also.

For additional options to restructuring of the dispute resolution process within the industry, the AAA would like to draw the Commission's attention to a number of alternatives outlined in the submissions lodged by Australian airports.