



Australian Government
Department of Home Affairs

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Submission to the Productivity Commission's Inquiry into Economic Regulation of Airports

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1. Introduction

The Home Affairs portfolio (Home Affairs) provides the following Submission to the Productivity Commission's Inquiry into the Economic Regulation of Airports. This Submission responds to the Inquiry's Terms of Reference (TORs) and the Inquiry's Issues Paper, released on 9 July 2018.

It provides an overview of Home Affairs' responsibility, the operating environment for Home Affairs and its approach to border security. It also highlights that Home Affairs has a regulatory role at all international ports, including airports. This role, however, does not include regulating the economic activity of airports.

Specific commentary is provided on Home Affairs' involvement in the provision of passenger and freight transport services at, and surrounding, the main passenger airports operating in Australia's major cities. No commentary is provided on air services to access regional New South Wales and competition in the jet fuel supply as these do not relate to Home Affairs' responsibilities.

2. The Home Affairs Portfolio

Home Affairs brings together the Department of Home Affairs, the Australian Border Force (ABF), the Australian Federal Police (AFP), the Australian Criminal Intelligence Commission (ACIC)¹, the Australian Security Intelligence Organisation (ASIO), and the Australian Transaction Reports and Analysis Centre (AUSTRAC), to ensure a safer and more secure Australia.

In the airport environment, the two key agencies are the ABF and the AFP. The ABF is Australia's frontline border law enforcement agency and Australia's customs service. The ABF delivers critical border protection and national security outcomes while facilitating the movement of people and goods across the border. In the 2016-17 financial year, the ABF facilitated 43.7 million international air and sea travellers and collected revenue totalling \$15.6 billion. At airports, the ABF works closely with other Australian agencies notably the Department of Agriculture and Water Resources and the AFP at nine security-designated airports where the AFP is present. The ABF and Home Affairs more generally, partner with industry to build more effective systems and to assist with building understanding of passengers and industry who travel or transport goods across the international border. Supporting traders and travellers to encourage voluntary compliance with relevant regulations and laws is a key element in this process.

The AFP is Australia's national policing agency, responsible for leading policing efforts to keep Australians and Australian interests safe, both at home and overseas. The AFP's role is to: enforce Commonwealth criminal law; combat complex, transnational serious and organised crime impacting Australia's national security; protect Australian high office holders, foreign dignitaries, Australian Government infrastructure and designated airports; and protect Commonwealth interests from criminal activity in Australia and overseas.

In addition, the Department of Home Affairs operates as Australia's aviation transport security regulator and coordinates overall national security arrangements for aviation, engaging closely with industry to design policy settings for aviation security. It is, however, the responsibility of airports and airlines to manage day-to-day security to meet applicable regulatory requirements.

3. The operating environment

The Issues Paper highlights that the number of passengers that pass through Australian airports has more than doubled over the past 20 years and airfreight volumes have also grown strongly. These increases have an impact on border agencies, including the ABF.

¹ ACIC includes the Australian Institute of Criminology

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Travel and trade patterns are becoming more complex with significant growth in the range of goods, biosecurity hazards and economic risks. The geographic area in which the Home Affairs' portfolio operates is also expanding, with an increasing number of remote ports expressing interest in commencing international services. At the same time, entities trying to breach Australia's borders are becoming increasingly responsive and resilient to law enforcement interventions and tactics.

Internet trade is also increasing its reach over global markets. This is being manifested in increasing numbers of air cargo and mail articles requiring screening by border agencies.

4. Appropriate economic regulation of airport services

Home Affairs notes that the Productivity Commission has been requested to report on the appropriate economic regulation of airport services, including the effectiveness of the price and quality of service monitoring, in achieving the following objectives:

1. promoting the economically efficient operation of, and timely investment in, airports and related industries;
2. minimising unnecessary compliance costs; and
3. facilitating commercially negotiated outcomes in airport operations.

Home Affairs is authorised under a number of legislative instruments to perform functions and to regulate activities at international and domestic airports. These include the *Customs Act 1901* (Customs Act), the *Migration Act 1958* (Migration Act), *Australian Federal Police Act 1979* and the *Aviation Transport Security Act 2004* (ATSA). The key areas are detailed below.

Home Affairs is not authorised under any legislation to specifically regulate the economic activity of airports, although some of the regulation Home Affairs administers does have an economic impact on airports. Home Affairs seeks to ensure that its regulation is implemented and administered in as effective and efficient manner as possible. This would minimise compliance costs, while maintaining its core national and border security imperatives.

Home Affairs does not have a policy or legislative role in facilitating commercially negotiated outcomes in airport operations.

4.1. Regulation of airports

Airports are critical elements of infrastructure in any community due to their role in the movement of people and goods. Accordingly, international airports have to be designated under the Customs and Migration Acts as well as other Acts such as the *Biosecurity Act 2016* and the *Air Navigation Act 1920* that are administered by other Government Departments. The designation under the Customs and Migration Acts provides the legal authority for the ABF to exercise its activities at designated areas within international airport precincts.

New and redeveloping ports

The Australian Government recognises that international transport is vital to Australia's trade and tourism, along with the need to balance the efficient movement of people and goods across Australia's border. Accordingly, it has established a transparent and consistent process to help ensure that border services (biosecurity, immigration and customs control) are available at ports (including airports).

Airport operators seeking to introduce international services at an airport where no border services are provided, or where there is a change to an existing business model that impacts on border services capabilities, need to apply to the Department of Infrastructure, Regional Development and Cities.

Airport operators are advised they are responsible for costs associated with relevant infrastructure and facilities required to support international services. This includes any costs associated with establishing a border services capability at the airport incurred by the Australian Government.

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Proposals will be assessed to determine whether they are in the national interest. The Department of Infrastructure, Regional Development and Cities coordinates advice to the Australian Government on proposals in consultation with the Department of Home Affairs, the Department of Agriculture and Water Resources, and other relevant agencies.

4.2. Regulation of air passengers and their luggage

Home Affairs has a direct and key role in controlling and facilitating the flow of passengers, their associated goods and luggage across Australia's international border, including at international airports. The passenger clearance function role is undertaken by the ABF, whose officers are present at all international airports. The ABF is not present at domestic terminals of international airports or at domestic airports.

In addition to the ABF, the AFP is present at nine security designated airports - Adelaide, Brisbane, Cairns, Canberra, Darwin, Gold Coast, Melbourne, Perth, and Sydney. It undertakes both a community policing and counter terrorist first response capability at these nine security designated airports. Policing responsibilities at other international and domestic airports is the responsibility of State or Territory police where the airport is located.

4.3. Regulation of air cargo and international mail

Air cargo and international mail are screened by border agencies to prevent the movement of prohibited and restricted goods across the border and, where appropriate, to ensure the collection of border-related revenue for the Australian Government. This screening process is underpinned by an intelligence-led, risk-based approach. Air cargo and international mail volumes have been increasing for some time, boosted by the large increase in on-line purchasing by Australian consumers.

International mail does arrive at international airports but mail articles enter Australia through four international mail gateway facilities located in Sydney, Melbourne, Brisbane and Perth. The gateways that are owned and operated by Australia Post and licensed under the Customs Act are the location where border clearance services are undertaken.

4.4. Aviation security framework

Home Affairs maintains Australia's aviation security framework by administering the *Aviation Transport Security Act 2004* (ATSA) and associated Aviation Transport Security Regulations 2005 (ATSR). The ATSA's purpose is to establish the regulatory framework to safeguard aviation against unlawful interference and meet international obligations under the Chicago Convention. Under the framework set by the ATSA, Home Affairs regulates 172² international and domestic airports across Australia and its external territories.

Aviation security settings are based on Home Affairs' best judgements about the level of security risk to each airport and the aircraft it hosts. These risk judgements are informed by intelligence and the characteristics of each airport such as its location, proximity to iconic or critical infrastructure, and regular passenger numbers. Home Affairs, together with partner intelligence and security agencies, monitors the security threat environment and adjusts security requirements from time to time as threats evolve.

Security controlled airports and air operators must maintain a Transport Security Program, which outlines the procedures and methods that the operators will use to adhere to Australia's transport security regulations. This includes restricting access to security sensitive areas and ensuring appropriate personnel undergo background checks, which is represented through display of a valid Aviation Security Identification Card.

² As at August 2018.

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Screening of passengers and baggage takes place at all major capital city airports, and at some regional and remote airports according to thresholds of aircraft size and passenger numbers. Security screening is the responsibility of authorised screening authorities and must be carried out in accordance with requirements set out in an Aviation Screening Notice issued by the Secretary of Home Affairs under the ATSR.

5. Provision of passenger and freight transport services at the main passenger airports

Home Affairs has limited regulatory and policy interests on:

1. aeronautical services and facilities provided by airport operators;
2. passenger-related aeronautical services and facilities provided by major airline tenants; and
3. the provision and quality of land transport facilities providing access to the airports.

Home Affairs has a continuing interest in regimes and practices for car parking at international airports. Official vehicles from the ABF and AFP are required to have access to both land and airside at international airports. In these instances, parking is required to be provided by airport operators.

In addition to official vehicles, the ABF and AFP have officers present at international or designated airports to undertake their respective official functions. These officers would normally require parking to be available for their use, as some airports function on a 24/7 basis. Changes in arrangements for parking would impact on these officers.

6. Conclusion

Home Affairs has an important policy and regulatory role at international and at domestic airports. Its policy and regulatory focus is on national and border security, as there is no border security role at domestic airports.

Home Affairs is not authorised under any legislation to specifically regulate the economic activity of airports, although some of the regulation Home Affairs administers has an economic impact on its regulated community that includes airports.

Home Affairs has a challenge to facilitate seamless, safe and secure movement of people and goods across the Australian border. It must also demonstrate that Australia is open to global business and connections; that Australia is an easy destination to travel to; and that we are a welcoming multicultural, open and cohesive society. In striking this balance, Home Affairs looks to modernise and reform processes that cover passengers, trade and aviation security that has the downstream effect of minimising costs to industry of meeting regulations while managing border risks. It does this by working closely and collaboratively with industry, state and territory governments and international partners.

Home Affairs can provide further information on the matters raised in this submission, if required.