

Sydney Airport Demand Management Regulations 1998 1998 No. 119

EXPLANATORY STATEMENT

STATUTORY RULES No. 119

Issued by the authority of the Minister for Transport and Regional Development

Sydney Airport Demand Management Act 1997

Sydney Airport Demand Management Regulations 1998

Subsection 74 (1) of the *Sydney Airport Demand Management Act 1997* ('Demand Management Act') provides that the Governor-General may make regulations prescribing matters required or permitted under the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 67 of the Demand Management Act provides that regulations may deal with:

"(a) matters relating to the appointment of members of the Compliance Committee, including (but not limited to):

- (i) how many members may be appointed; and
- (ii) requirements (if any) as to who may be appointed; and
- (iii) the duration of appointments and the terms and conditions of appointments; and
- (iv) the termination of appointments; and

(b) matters relating to the operations of the Compliance Committee."

The Compliance Committee is the body appointed to develop and administer the Compliance Scheme under the Demand Management Act; the Committee oversees aircraft operators' compliance with the Act. The *Sydney Airport Demand Management Regulations 1998* ('the Regulations') deal with the matters listed in section 67 of the Demand Management Act. The Regulations:

* prescribe the number of members of the Compliance Committee, and who those members may be nominated by (regulation 5);

* provide for the appointment of alternate members (regulation 6) and the Chair of the Committee (regulation 8);

* allow for the Committee to determine its general procedures (regulation 9);

and

* provide for specific procedures relating to attendance by observers at meetings (regulation 10), quorum at meetings (regulation 11), voting (regulations 12, 13 and 14), and resolutions without meetings

(regulation 15).

The structure of the Committee is designed to ensure that those with an interest in its decisions (which have financial consequences, in terms of fines) are represented. Thus, regulation 5 permits the nomination of members by airlines which regularly use Sydney Airport (including regional airlines), by the operator of Sydney Airport, and by the body providing air traffic control services at the airport. Proposed regulation 8 provides that the Chair is appointed by the Minister. In practice, the Government proposes to appoint a Commonwealth officer to Chair the Committee.

Under regulation 13, a member of the Committee who has a direct or indirect interest in a matter before the Committee is not permitted to vote on that matter, although he or she may be permitted to attend the meeting at the discretion of the other members. Thus, a member who is of an employee of an airline may not vote on any resolution which affects that airline. Where an interest is not clear, the Committee may determine for itself whether a member has an interest that would preclude him or her from voting, regulation 14.

Details of the Regulations are contained in the Attachment. The Regulations commence on gazettal

Attachment

SYDNEY AIRPORT DEMAND MANAGEMENT REGULATIONS 1998

PART 1 - PRELIMINARY

Regulation 1 - Name of Regulations

The regulations are the *Sydney Airport Demand Management Regulations 1998*.

Regulation 2 - Commencement

The regulations will commence on the date of notification in the *Gazette*.

Regulation 3 - Definition

This regulation defines the term *Demand' Management Act* for the purposes of the regulations.

PART 2 - THE COMPLIANCE COMMITTEE

Section 67 of the Demand Management Act provides that regulations may deal with:

"(a) matters relating to the appointment of members of the Compliance Committee, including (but not limited to):

- (i) how many members may be appointed; and
- (ii) requirements (if any) as to who may be appointed; and
- (iii) the duration of appointments and the terms and conditions of appointments;

and

- (iv) the termination of appointments; and
- (b) matters relating to the operations of the Compliance Committee."

Part 2 of the regulations puts in place provisions relating to the appointment of members to the Compliance Committee, as well as provisions relating to the operations of that Committee.

Regulation 4 - Meaning of *member*

The use of the term *member* in Part 2 of the regulations does not include an alternate member unless otherwise provided for in the regulation. Alternate members are those members appointed to attend at a meeting of the Compliance Committee when the appointed member is unable to, see generally regulation 6.

Regulation 5 - Committee membership (Demand Management Act, s 67)

The Compliance Committee may have up to 7 members. At least three of these members must be people nominated by airlines that regularly use Sydney Airport (i.e. that have scheduled more than 10 aircraft movements per week at the airport) or their representative; one of these three must be nominated by regional airlines or their representative. A fourth member must be nominated by the, operator of Sydney Airport (currently the Federal Airports Corporation), and a

fifth member must be nominated the body providing air traffic control services at the airport (currently Airservices Australia).

Regulation 6 - Alternate members

Regulation 6 provides for the appointment of alternate members of the Committee. An alternate member may only be appointed on the nomination of the person or body who nominated the member to whom he or she is alternate.

Alternate members may attend meetings of the Compliance Committee, but may not vote unless the member to whom he or she is alternate is absent.

Regulation 7 - Duration of appointment etc

A member or alternate member is appointed for as long as the instrument of appointment specifies, but may resign, in writing, at any time.

Regulation 8 - Chair of the Committee

One of the members of the Compliance Committee is appointed by the Minister to be the Chair of the Committee. The Chair has a casting vote, see subregulation 12 (1). If the Chair is not present at a meeting, the alternate member for the Chair presides, or if neither the Chair nor his or her alternate is present, the members present appoint one of their number to be Chair for that meeting.

Regulation 9 - Procedures of the Committee generally

The Compliance Committee may determine its general procedures for meetings, subject to the procedural rules set out in the regulations.

Regulation 10 - Attendance by observers at meetings

A representative of the Slot Manager (the corporate body appointed to develop and administer the Slot Management Scheme under the Demand Management Act) must be permitted to attend any meeting of the Committee. Otherwise, the Committee may invite any other person to attend a meeting as an observer.

Regulation 11 - Quorum

A quorum of the Compliance Committee is constituted by four members (including an alternate member if the member to whom he or she is alternate is absent). Note that a simple majority of the members constituting a quorum may pass a resolution at a meeting, whereas it requires at least two-thirds of the total number of members to pass a resolution without a meeting, see regulation 15.

Regulation 12 - Voting

Each member of the Compliance Committee has one vote, and the Chair of the Committee also has a casting vote. Matters before the Committee are to be determined by a simple majority of the members present and voting.

Regulation 13 - Disclosure of interests by members of the Committee

A member who has a direct or indirect interest in a matter before the Compliance Committee may not vote on the matter, and is not permitted to be present when the matter is discussed

without the permission of the other members of the Committee. However, simply because a member is involved in the part of the aviation industry which has a connection to Sydney Airport does not preclude that member from voting.

Regulation 14 - Facts that may indicate an interest

It is not always clear whether a member has an interest in a matter before the Committee which would preclude him or her from voting. In such circumstances, the Committee (other than the possibly interested member) decides whether such an interest exists.

Regulation 15 - Resolutions without meetings

It is possible for the Compliance Committee to pass a resolution without holding a meeting. The member who proposes the resolution must pass a copy of the resolution to each member of the Committee. If two-thirds or more of the members of the Committee who would be qualified to vote on the resolution were it to be put at a meeting approve the resolution, the resolution is taken to have been passed on the day on which the last approval is given.