

From 'open skies' to 'slot-hoarding': The turbulent world of aviation laws explained

December 15 2023, by Lilly Matson



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Despite national and state border closures during the pandemic, the global aviation market has been growing steadily since 1995, at nearly [twice the rate of global GDP each year](#).

Domestic aviation remains one of the most concentrated industries in Australia, with the Qantas Group and Virgin Australia accounting for

95% of [market share](#).

The industry has also featured in recent headlines.

You may have read about Australia's Transport Minister's decision to reject Qatar's bid to secure more flights into some of the country's biggest cities. Perhaps you have heard about the accusations of airlines "slot hoarding." Or maybe you had a flight cancelled and are finding it difficult to claim compensation.

Now the government is preparing to submit the Aviation White Paper, which will examine and address issues across the aviation sector. Dr. Ian Douglas, honorary Senior Lecturer at UNSW's School of Aviation, explains why some processes and aviation consumer laws in Australia are outdated, and what needs to be done to ensure sustainable and manageable growth for the industry.

"It's time to address these problems," Dr. Douglas says. "The regulations and consumer protections that were fit for purpose 20 years ago may not be fit for purpose now."

Aviation laws and the Chicago Convention

The structure of international aviation was defined towards the end of World War II under the Chicago Convention.

"Essentially, this convention says that countries control the airspace over the respective landmass, and each territory can make decisions about who comes and goes," Dr. Douglas says.

The framework developed by the Chicago Convention disallows international commercial flights unless expressly permitted—so, in order for an airline to fly internationally, there must be a government-level

agreement to permit it.

Lots of aviation law and regulation around [market](#) access in Australia has remained unchanged since it was first brought into effect.

"Many of the international treaties have been in place for ages. Some remain, even though the capacity allocations are no longer used, while others limit growth on routes where market demand has changed," Dr. Douglas says.

"A number of countries have moved towards 'open skies' arrangements to free up market access and enhance competition. But Australia has very few open skies treaties, and there is no regular process in place to ensure that capacity leads market demand. It's often only when an airline approaches its government and says, 'I want to change something' that capacity negotiations resume, and even then it can take months or years to change."

What is slot hoarding?

While the aviation market has been steadily increasing in Australia, airports aren't being built at the same rate. "And that means that we've got increasing congestion," Dr. Douglas says.

"Some years back, the International Air Transport Association created a set of rules that graded airports as Level 1, 2 or 3, depending on the level of congestion. These rules provide an internationally recognized structure for managing access 'slots' where an airport is so congested that we need to restrict who can fly there."

Both Sydney and Melbourne airports are listed as Level 3 airports, with a restricted number of slots available each day.

Once an airline secures a slot during a scheduling season, they are granted "grandfather rights" to retain the same slots year-on-year, as long as they fly at least 80% of the flights scheduled. "So you could cancel 1 flight in 5 on a Tuesday afternoon at 3 pm that flies from Sydney to Melbourne and still retain the slot next year. It costs you nothing to have the slot, and you block out potential competitors from entering the market," Dr. Douglas says.

Both Qantas and Virgin have been [accused of hoarding these slots](#) and restricting competitors from expanding on routes between congested Australian airports.

"Qantas has two thirds of the market and is the dominant carrier on the Sydney-to-Melbourne route," Dr. Douglas says. "Rex is slowly squeezing in a few flights a day, but it's not providing strong competition. And the only other player that could try is Bonza, and they've effectively said, 'Sydney's too hard, we can't get any slots there' and have focused on regional leisure routes.

"If the slots are held so that a new entrant doesn't join the route, and the airlines are selectively limiting the amount of flying they do, the consequence is that airfares are more expensive, because less capacity means higher price."

Open skies agreements

As Dr. Douglas explains, he believes the adoption of a broader "open skies" policy could provide answers to some of the current problems, at least within the international aviation industry.

An open-skies agreement is a deal between two or more nations that allows for unlimited commercial services, without the need for the explicit government-level approval that was written into the Chicago

Convention. The market determines the capacity. Nations can still intervene, but intervention is usually on safety and security grounds.

"This whole 80-year-old structure is really not fit for purpose anymore. What we should be doing is saying as long as airlines meet the safety requirements, we should let the market determine who flies where."

Being so far from major international population centers, there has been concern that an open skies agreement would leave Australia without aviation service, but Dr. Douglas assures that this wouldn't be the case.

"Even if Qantas said we're stopping flying internationally, the market is big enough and wealthy enough that a range of international airlines will still come here to serve it. We see this already for markets like Malaysia that are not served by any Australian airline, but have multiple flights daily connecting Australian cities with Kuala Lumpur."

A need for aviation-specific compensation

Slot hoarding isn't the only criticism facing the aviation industry right now.

While individual airlines offer varying levels of compensation, and Australian consumer laws apply at a national level, there are no aviation-specific regulations enforcing a minimum payment or timeframe for compensation after cancellations, significant delays or denied boardings.

Those who are calling for a compensation scheme believe the airline consumer regulations in Australia are "lagging behind the rest of the world."

"In Europe, if an airline cancels your flight within two weeks of departure, it is required by law to compensate the passenger," Dr.

Douglas says.

"The airline is then responsible for getting them to where they were going, or to refund the customer in full. It is an obligation for the airline to provide accommodation, meals and anything else that customers need until they arrive at their destination."

Dr. Douglas believes that aviation consumer laws instigated in Canada could work well in Australia.

"Canadian laws compensate for inconvenience and require airlines to get the passenger where they're destined within nine hours, either on the original airline or on one of its partner carriers. In a worst case, if there isn't a flight available, they must get the customer there within 48 hours, even if it involves transferring the passenger to another airport or buying a new ticket on another airline."

While there are a series of compensations in Australian airlines, such as a meal voucher after a three-hour delay, or a hotel room if you are not in your home city, unlike the EU and Canadian compensation schemes, Australia has no consistent, clear laws which apply to all airlines.

Time to catch up

As the government prepares to develop the Aviation White Paper next year, organizations and agencies across the country have been consulted on key issues facing the aviation industry.

Dr. Douglas believes that now is a good time to catch up and put the consumer first.

"We are behind [aviation](#) consumer law in other similar countries. We are behind on open skies agreements. And we need to look at the legislation

around Sydney Airport, alongside the broader industrywide risk of slot hoarding crowding out competition.

"The treaties and laws surrounding those three important issues may have been fit for purpose 20 years ago but are not necessarily fit for purpose now. The upcoming white paper needs to address international market liberalization, Sydney Airport legislation and—perhaps most importantly—consumer protection."

Provided by University of New South Wales

Citation: From 'open skies' to 'slot-hoarding': The turbulent world of aviation laws explained (2023, December 15) retrieved 9 May 2024 from <https://techxplore.com/news/2023-12-skies-slot-hoarding-turbulent-world-aviation.html>

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