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THE PARLIAMENT OF COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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**SYDNEY AIRPORT CURFEW BILL 1995**

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EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport,  
the Honourable Laurie Brereton MP)



## **SYDNEY AIRPORT CURFEW BILL 1995**

### **General Outline**

This Bill imposes a curfew at Sydney Airport, together with a number of related restrictions.

The Bill reflects the present curfew controls embodied in the Air Navigation (Aerodrome Curfew) Regulations together with some additional controls following the House of Representatives Standing Committee on Transport, Communications and Infrastructure advisory report on the Sydney Airport Curfew (Air Navigation Amendment) Bill 1995.

In particular the Bill:

- reduces the quotas for international passenger movements during the curfew shoulder periods and requires these movements to be fully justified;

- increases penalties for curfew breaches;

- introduces restrictions on take-offs after 10.45 pm to over Botany Bay;

- at weekends, restricts aircraft movements to take-offs and landings over Botany Bay in the hours immediately before the commencement and after the end of a curfew period;

- introduces specific consultation provisions;

- imposes additional restrictions on large propeller-driven aircraft.

### **FINANCIAL IMPACT STATEMENT**

There are no budgetary implications.

The new controls in the Bill will have the effect of imposing additional restrictions on operators using Sydney Airport at night. This may have some adverse financial implications for some operators.

## **NOTES ON CLAUSES**

### **PART 1 - PRELIMINARY**

#### **Clause 1 - Short title**

1. This clause provides for the Bill to be cited as the *Sydney Airport Curfew Act 1995*.

#### **Clause 2 - Commencement**

2. Since a "week", for the purposes of the quota provisions contained in the Bill, commences on a Sunday, the clause provides for the Bill to commence at 10.45 pm, 28 days after the day on which it receives Royal Assent if that day is a Sunday, or, where it is not, on the Sunday following the 28th day after Royal Assent.

3. The delayed commencement of 28 days will provide an opportunity for users of the legislation to familiarise themselves with its provisions, particularly in relation to offences under the Bill. The commencement time of 10.45 pm. is to encompass the provisions of clause 10 which requires all take-offs between 10.45 pm and 11 pm to be over Botany Bay.

#### **Clause 3 - Definitions**

4. This clause defines the terms used in the Bill.

#### **Clause 4 - Explanation of runway names**

5. This clause shows in diagrammatic form the layout of the relevant runways at Sydney Airport.

#### **Clause 5 - Time is legal time in New South Wales**

6. This clause specifies that the references to time are references to the legal time in New South Wales.

### **PART 2 - THE CURFEW AND RELATED RESTRICTIONS**

#### **Division 1 - The curfew**

#### **Clause 6 - Curfew periods**

7. This clause provides for a curfew period to operate at Sydney Airport between the hours of 11 o'clock at night and 6 o'clock in the morning.

### **Clause 7 - Prohibition on taking off or landing during curfew periods**

8. This clause prohibits an aircraft from taking off from or landing at Sydney Airport during a curfew period unless the aircraft is permitted to do so under other provisions of the Bill.
9. The operator of an aircraft that contravenes the provision will be guilty of an offence.

### **Clause 8 - Use of reverse thrust during curfew periods**

10. Reverse thrust of engines is used to slow down aircraft when they are on the runway. This can be a particularly noisy operation.
11. This clause requires the operator of an aircraft that uses reverse thrust greater than idle reverse thrust during a landing at Sydney Airport during a curfew period to provide a return to an authorised person, within 7 days, giving details of the date, time and reasons for using the greater reverse thrust.
12. The clause also requires that:
  - an operator should not plan to land during the curfew period if the operator is aware that the landing would require reverse thrust greater than idle reverse thrust; and
  - the pilot of an aircraft landing at Sydney Airport during a curfew period should use the minimum reverse thrust necessary for the safe landing of the aircraft.

However, in the best interests of aviation safety, the Bill does not impose penalties in relation to these activities.

13. A penalty applies where an operator fails to provide a return where required to do so.

### **Clause 9 - Missed approaches during curfew periods**

14. During the curfew period aircraft are required to land from the south over Botany Bay onto the main north-south runway. When an aircraft "misses an approach" it aborts a landing and applies power as it passes over suburbs to the north of the Airport. These events have high noise impacts.
15. This provision requires the operator of an aircraft that misses the approach while attempting to land at Sydney Airport during a curfew period to provide a return to an authorised person within 7 days setting out the circumstances of the missed approach.

16. The return must identify the aircraft, give reasons for missing the approach, give details of the wind conditions prevailing at the time of the attempted landing and specify the down wind limits for landing specified for that aircraft type.

17. A penalty applies where an operator fails to provide a return where required to do so.

18. The provision is designed to discourage operators who suspect that weather conditions are unfavourable from attempting the landing in those conditions. However, for safety reasons the Bill does not impose penalties for missing an approach.

## **Division 2 - Related restrictions**

### **Clause 10 - Runways to be used for take-offs between 10.45 pm and 11 pm**

19. This clause requires all take-offs between 10.45 pm and 11 pm to be to the south from either the main north-south runway or the new runway.

20. The provision is designed to alleviate inconvenience suffered by residents of suburbs around the Airport from noise generated by aircraft taking off shortly before the commencement of the curfew period and passing over those suburbs after 11 pm.

21. The clause does not cause the curfew period to commence at a time earlier than 11 pm, it merely stipulates the runways that must be used for take-offs during the 15 minutes prior to the commencement of the curfew period.

22. The operator of an aircraft that takes off from a runway other than over Botany Bay between 10.45 pm and 11 pm will be guilty of an offence.

### **Clause 11 - Runways to be used for take-offs and landings on weekends between 6 and 7 am and 10 and 11 pm**

23. Under the current procedures aircraft operate over residential areas to the north of the Airport during these periods. During times of low traffic loads and suitable weather conditions it will be possible to extend the period when aircraft are able to both land and take-off over Botany Bay. This provision is designed primarily to address complaints by residents about being woken up by early morning flights at weekends.

24. During these periods aircraft will be able to take-off to the south from either the main north-south runway or the new runway or land on the main north-south runway from the south (landings from the south over Kurnell onto the new runway will not be permitted). This provision differs from the runway controls during the curfew period in that the restriction to movements over Botany Bay is not mandatory and air traffic control may nominate runways not over the water where circumstances warrant.

25. The operator of an aircraft that takes off or lands in contravention of the provision, other than where another runway has been nominated by an air traffic controller, will be guilty of an offence.

26. Airservices Australia will be required to submit a report to the Secretary at the end of every calendar month setting out the number of times during the month (if any) that air traffic controllers nominated runways other than those specified during the specified periods together with the reasons for having nominated the other runways.

### **PART 3 - PERMITTED AIRCRAFT MOVEMENTS**

#### **Division 1 - Movements permitted during curfew periods**

##### **Clause 12 - International passenger aircraft movements during curfew shoulder periods**

27. This clause permits a limited number of international passenger aircraft movements during the first and last hour of the curfew period (the curfew shoulder periods).

28. This clause establishes a regime under which international passenger aircraft movements will only be permitted if they can be fully justified. An operator may apply to the Secretary for approval to land at or take off from the airport during a curfew shoulder period.

29. In considering the application the Secretary must take into account the constraints placed on operators by curfews at overseas airports, the availability of capacity at Sydney Airport outside the curfew period and the existence of alternative airports in the Sydney area.

30. The Secretary is prevented from approving more than 14 landings or take offs during any week between 11 pm and midnight, with a maximum of 4 on any night or more than 35 landings during any week between 5 am and 6 am, with a maximum of 7 on any day. Consistent with a proposal of the House of Representatives Standing Committee on Transport, Communications and Infrastructure, the Bill allows the regulations to lower, but not increase, the number of permitted movements.

31. An international operator who is refused permission to land at or take off from Sydney Airport during a curfew shoulder period may apply to the Administrative Appeals Tribunal for a review of the decision.

32. International passenger aircraft operating during the curfew period must use the main north-south runway and must operate over Botany Bay.

33. Approvals under the clause will take place every 6 months to allow for different scheduling periods around the world caused by changes in daylight saving periods and northern summer and winter periods. To take account of schedules already approved under the current regulations, the clause contains provision for the Minister to specify a day, by notice in the *Gazette*, within 6 months of the

commencement of the Act, as the time after which approvals under this clause will be required.

#### **Clause 13 - BAe-146 and DC9 aircraft used for freight**

34. This clause allows a number of specified larger jet aircraft registered in the name of, or operated by or for persons specified in the regulations, which are used for the sole purpose of carrying freight, to take-off or land at Sydney Airport during a curfew period. The Bill allows regulations to lower, but not increase the number of permitted movements.

35. It is intended that the regulations will ensure continuity with the existing entitlements in the Air Navigation (Aerodrome Curfew) Regulations.

36. The aircraft must use the main north-south runway and must operate over Botany Bay.

37. DC9 aircraft specified in the clause must be modified to meet the strictest international noise standards (ICAO Chapter 3). No movements by DC9s will be allowed after 5 May 1996.

#### **Clause 14 - Propeller-driven aircraft under 34,000 kilograms that comply with noise standards**

38. This clause specifies that propeller-driven aircraft which have a maximum take-off weight of 34,000 kilograms or less and which comply with specified maximum noise levels applicable to aircraft of the class to which the aircraft belongs, may land at or take off from Sydney Airport during a curfew period.

39. The aircraft must use runway 34L for landings and 16R for take-offs.

#### **Clause 15 - Jet aircraft under 34,000 kilograms that comply with noise standards and that are specified by the Minister**

40. This clause allows the Minister to specify, by notice in the *Gazette*, jet aircraft that have a maximum take-off weight of 34,000 kilograms or less and comply with specified noise standards to operate during the curfew period. These aircraft are commonly known as "low noise" jets and are, in effect, "quiet" ICAO Chapter 3 aircraft.

41. The provision saves approvals given to aircraft already Gazetted under a similar provision in the Air Navigation (Aerodrome Curfew) Regulations.

42. An instrument made under this clause will be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

43. It is intended that an instrument specifying that a type of aircraft meets all of the specified criteria will be a legislative instrument within the meaning of the *Legislative Instruments Act 1995*. Pending the enactment of that Bill, consultation

provisions based on Part 3 of that Bill have been included in a Schedule to this Bill. In essence the consultation provisions require the Minister to seek submissions in relation to the instrument, prepare a proposal, give public notice of the proposal and allow at least 21 days for interested persons to lodge submissions.

**Clause 16 - Take-off from runway 16R when taxi clearance received before start of curfew period**

44. This clause allows an aircraft that received taxi clearance before the commencement of the curfew period to take off after the start of the curfew period without penalty.

**Clause 17 - Sections 13, 14 and 15 do not apply after airport at Badgerys Creek is available for night use**

45. This clause states that when Sydney West Airport is capable of handling night time freight aircraft all approvals for freight aircraft movements during the curfew period at Sydney Airport will be withdrawn.

**Division 2 - Emergencies and dispensations**

**Clause 18 - Aircraft may take-off or land in emergencies or if Minister grants dispensation**

46. This clause permits an aircraft to land at or take-off from Sydney Airport during the curfew period, without penalty, in circumstances that would otherwise contravene provisions of the Bill. The circumstances contemplated relate to emergency situations and cases in which the Minister grants a dispensation to allow an aircraft to land at or take off from the Airport during the curfew period.

**Clause 19 - Emergencies**

47. This clause specifies the circumstances which constitute an emergency and thereby allow an aircraft to land at or take-off from the Airport.

**Clause 20 - Dispensations in exceptional circumstances**

48. This clause allows the Minister to grant a dispensation to an operator to take-off from or land at Sydney Airport during the curfew period in exceptional circumstances and provides for the Minister to impose conditions on the dispensation.

49. The Minister is required to prepare guidelines specifying the circumstances under which a dispensation may be given and the conditions to which it may be subject. In developing the guidelines the Minister must follow a consultation process based on the provisions of Part 3 of the Legislative Instruments Bill (when enacted) or otherwise the Schedule to this Bill to ensure that widespread consultation occurs.

50. If the Minister gives a dispensation he or she must table a report in Parliament within 5 sitting days stating the reasons for giving the dispensation.



51. Guidelines made under the provision will be disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

#### **PART 4 - PROVISION OF INFORMATION**

##### **Clause 21 - Authorised person may require the provision of information**

52. This clause empowers an authorised officer to request information to determine whether an aircraft complies with noise standards applicable to the aircraft or to justify the use of a runway that would otherwise be prohibited during the curfew period. The clause preserves the privilege against self incrimination.

##### **Clause 22 - Provision of false information**

53. This clause provides for a penalty where an operator knowingly or recklessly supplies to an authorised person information that is false or misleading in a material particular.

#### **PART 5 - CONSULTATION BEFORE ACT IS AMENDED**

##### **Clause 23 - Minister to consult**

54. This clause requires the Minister to follow consultation procedures to provide an opportunity for persons who may be affected by a proposed amendment to make submissions, prior to proposing the amendment. The provision specifies the process that must be followed prior to presenting an amending Bill and requires the Minister to table a report, specifying details of the consultation process that was undertaken, at the time at which he or she introduces the amending Bill into either House of Parliament.

#### **PART 6 - MISCELLANEOUS**

##### **Clause 24 - Delegation**

55. This clause allows the Minister to delegate his or her powers to give dispensations to the Secretary, officers of the Department or officers of Airservices Australia.

56. The clause also allows the Secretary to delegate his or her powers to approve international aircraft movements during curfew shoulder periods to an officer of the Department.

##### **Clause 25 - Conduct by directors, servants and agents**

57. This clause provides guidance to a court in prosecutions for an offence against the Bill against a body corporate.

## **Clause 26 - Regulations**

58. This clause allows the Governor-General to make regulations prescribing matters that are required or permitted by the Bill to be prescribed, or that are necessary and convenient to be prescribed for carrying out or giving effect to the Bill.

## **SCHEDULE**

### **CONSULTATION PROCEDURES**

#### **Clause 1 - Schedule sets out consultation procedures**

59. This clause stipulates the consultation procedure that must be followed if the Minister proposes to do any of the following:

publish a notice specifying a type of jet aircraft that has a maximum take-off weight of 34,000 kilograms or less, that complies with specified noise standards

- make or amend guidelines to apply to operators seeking dispensations

introduce a Bill to amend this Bill into a House of the Parliament.

Following the enactment of the *Legislative Instruments Bill 1995* consultation under the first two points above will take place under that Act.

#### **Clause 2 - Minister may determine that a body or organisation represents those likely to be affected**

60. The Minister may, by notice in the Gazette, determine that a specified body or organisation represents the interests of those likely to be affected by the proposed action. The Minister would then be required to notify the body or organisation and provide it with an opportunity to make a submission. This requirement does not displace the requirement for the Minister to consult publicly.

#### **Clause 3 - Minister must prepare a written proposal**

61. The Minister must prepare a written proposal containing a summary of the proposed action, a statement of reasons for that proposed action and a broad indication of the relative costs and benefits to the Government and the affected public of the proposed action.

#### **Clause 4 - Public to be invited to make submissions**

62. The Minister is required to follow procedures to ensure that persons affected by any of the proposed actions receive adequate opportunity to make submissions on the proposed action. The provision requires the Minister to publish notice of the

proposed action in a daily newspaper circulating in the Sydney metropolitan area inviting the public to make submissions within a period of at least 21 days.

#### **Clause 5 - Body or organisations specified under clause 2 to be consulted**

63. If the Minister has specified a body or organisation under clause 2, the Minister must give that body or organisation a copy of the proposal and invite the body or organisation to make written submissions on the proposal within the time specified.

#### **Clause 6 - Minister to consider submissions**

64. The Minister is required to consider all written submissions received during the consultation period before taking action in relation to the proposal.

#### **Clause 7 - Failure to comply does not invalidate**

65. This item contains a provision ensuring that failure of the Minister to comply with the specified consultation requirements does not affect the validity of a relevant decision. This provision is included to maintain consistency with the *Legislative Instruments Bill 1995*.









