

## EXPLANATORY STATEMENT

Issued by the Minister for Infrastructure and Transport

### *Sydney Airport Curfew (Dispensation) Guideline 2016*

#### **Authority**

The *Sydney Airport Curfew (Dispensation) Guideline 2016* is made pursuant to section 20(5) of the *Sydney Airport Curfew Act 1995* (the Act).

#### **Background**

Section 7 of the Act prohibits aircraft from taking off from, or landing at, Sydney Airport during the curfew period, unless the take-off or landing is permitted under Part 3 of that Act. The curfew period is from 11.00 pm each night to 6.00 am the next morning. Sections 10 and 11 of the Act impose requirements in relation to which runways must be used during certain periods shortly before the commencement of the curfew period, and shortly after the end of the curfew period.

Section 18 of the Act (located in Part 3) permits an aircraft to take off from, or land at, Sydney Airport in circumstances that would otherwise contravene sections 7, 10 or 11 of the Act, if it is involved in an emergency or it has been granted a dispensation under section 20.

Under section 20(1) of the Act the Minister may grant a dispensation authorising a take-off or landing if satisfied that exceptional circumstances justify the take-off or landing. Subsection 20(5) requires the Minister to make written guidelines about the granting of dispensations including, in particular, what constitutes exceptional circumstances and the conditions to which dispensations should be subject. Section 20(3) requires the Minister to have regard to these guidelines in granting dispensations.

#### **Purpose and operation**

This legislative instrument repeals and replaces the Dispensation Guidelines made on 12 May 1996. The 1996 Guidelines had not been revised since they first came into effect in 1996. They were due to sunset on 1 April 2016.

The purpose of this instrument is to substantially continue the effect of the existing guidelines, while providing greater clarity in relation to exceptional circumstances and reflecting current drafting standards. The revised dispensation guidelines have removed the requirement for notification by facsimile, which was a common form of technology used in the early 1990s, but has been replaced by email.

The general purpose of guidelines made under s 20(5) of the Act, as set out in that provision, is to provide the guidance to which the Minister must have regard in granting curfew dispensations. In particular, the guidelines are required to provide guidance in relation to what constitutes exceptional circumstances and the conditions to which dispensations should be subject.

Details of the proposed dispensation guidelines are set out in Attachment A.

### **Regulatory impact analysis**

The expected regulatory impact was assessed using the Preliminary Assessment tool approved by the Office of Best Practice Regulation (OBPR). The OBPR considered that the dispensation guidelines could be expected to have a minor impact on business and community organisation as no substantive amendments have been made to the procedures or internal guidance which applies. Therefore a RIS was not required (OBPR 19695).

### **Consultation before making**

The Minister for Infrastructure and Transport considered the obligation to consult under both Item 1 of the Schedule to the Act and section 17 of the *Legislation Act 2003*. Consultation was considered unnecessary as the amendments do not substantially alter existing arrangements. The impact on industry and the community of the revised dispensation guidelines will be minimal as the current dispensation guidelines and procedures are well understood by industry, and community protections from adverse aircraft noise remain in place. The replacement of the previous guidelines by this instrument will not lead to the making of any substantive amendments to relevant internal procedures. Accordingly, consultation was considered unnecessary.

### **Statement of compatibility with human rights**

A Statement of Compatibility with Human Rights is set out in Attachment B prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

## **Details of the proposed dispensation guidelines**

### **Part 1 - Preliminary**

Part 1 deals with preliminary matters, being the name of the instrument, its commencement, the authority for its making, definitions of certain terms used in the instrument, and the repeal of other instruments.

Section 5, which repeals the previous guidelines made under s 20(5) of the Act, relies on subsection 33(3) of the *Acts Interpretation Act 1901*. Under this section, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Provisions relating to aircraft that are involved in emergencies which were in Sections 2 and 3 of the previous dispensation guidelines have been removed as they do not relate to the granting of dispensations under s 20(5) of the Act.

### **Part 2 – Guidelines about the granting of dispensations**

#### **What constitutes exceptional circumstances**

##### **Primary criteria for assessment**

Section 6 sets out the primary criteria to be used for assessment of whether circumstances are exceptional, other than when sections 7 or 8 apply. Generally, to be considered exceptional so as to justify a take-off or landing during a curfew period, circumstances must satisfy three primary conditions:

1. they must have originated during, or during the preparation for, the take-off of a flight scheduled to fly directly to, or depart from, Sydney Airport.
2. they must involve a delay caused by certain specified events or must otherwise be of such a character that they could not reasonably have been foreseen.
3. the operator must have demonstrated to the satisfaction of the Minister that it has made every reasonable effort to avoid the need for a dispensation but was unable to do so using alternative arrangements. Alternative arrangements may include diverting the flight to another airport, rebooking passengers on alternate flights, sourcing alternate aircraft, rebooking passengers with other carriers or cancelling flights.

The availability of accommodation for affected crew and passengers should only become a consideration in the event all three primary conditions are met. Lack of accommodation is not an exceptional circumstance and is not a factor in the initial assessment of reasonable efforts to avoid the need for a dispensation.

Section 6, subparagraph (c) incorporates the provisions which were in Section 12 of the previous dispensation guidelines and Section 11 which specified ‘circumstances of any kind where there has not been sufficient time for alternative arrangements to be put in place where a normal degree of operational flexibility should have sufficed to address the problem’. The drafting in the current guidelines provides more clarity regarding the interaction between the primary criteria and recognises the flexibility available for aircraft operators to manage delays which may occur throughout an operating day.

#### Unavailability of main runway

Certain aircraft take-offs and landings are permitted during curfew periods under Division 1 of Part 3 of the Act. These include, for example, international passenger aircraft movements between 11pm and midnight, and between 5am and 6am. Such take-offs and landings are referred to in the Guideline as ‘regular curfew traffic’ (see the definition in section 4).

Permissions under Division 1 of Part 3 for regular curfew traffic only permit use of the main runway. Consequently, unless a dispensation is granted, such traffic cannot generally use other runways without contravening section 7 of the Act.

Major maintenance of runways at Sydney Airport is carried out on a schedule which requires the partial closure of the main runway for an extended period every eight to ten years. There may also be, from time to time, a need to close or limit the use of the main runway to carry out urgent repairs or to accommodate other works at Sydney Airport.

Section 7 provides that exceptional circumstances will exist in relation to regular curfew traffic where the main runway is unavailable because of certain maintenance or repairs. The effect of dispensations being granted in circumstances identified in section 7 of the Guideline is that regular curfew traffic can continue during maintenance and repairs that affect use of the main runway. Section 7 replaces Section 9 and Section 10 of the previous dispensation guidelines.

It is envisaged that the public will be given notice of impending works that could result in changes to the normal patterns of curfew operations.

#### Protracted industrial disputes

Section 8 deals with protracted industrial disputes which involve long-term severe industrial action that affects network wide operations. Such industrial disputes may give rise to exceptional circumstances. Short-term industrial disputes do not constitute exceptional circumstances for granting of a dispensation. Section 8 incorporates protracted industrial disputes which were considered under Section 11 of the previous dispensation guidelines.

#### Circumstances that are not generally exceptional

Section 9 covers circumstances which are not considered to be exceptional and include a) adverse weather conditions which could have been reasonably foreseen b) short term industrial disputes other than those referred to in Section 8; and c) disruptions to an

operator's network or schedule due to mechanical problems other than those referred to in Section 6(b)(i). Section 9 covers situations under Section 11 of the previous dispensation guidelines of circumstances which were not considered exceptional.

### **Matters to be considered**

Section 10 specifies that a key consideration in the administration of the dispensation guidelines is the avoidance of any circumstances which would compromise the safety or security of an aircraft. Section 10 covers the general principles which were Section 5 of the previous dispensation guidelines.

Section 11 provides for other relevant considerations once the three primary conditions are met for consideration in granting a dispensation. These relevant considerations are:

- by what margin the predicted time of movement falls into the curfew period, i.e. whether it is it shortly after 11.00 pm or shortly before 6.00 am;
- whether the take-off or landing would be over water;
- whether the cause of delay was or is within the control of the operator;
- the noise level of the aircraft (aircraft must comply with Chapter 3 noise standards specified in the Act)
- the number of passengers involved that would be affected if the dispensation was not granted; and
- the severity of the likely hardship likely to be caused to passengers if the dispensation was not granted.

Section 11 includes the provisions of Section 11 in the previous dispensation guidelines with the exception of protracted industrial disputes which are included at Section 8.

### **Conditions**

Section 12 provides that a dispensation should generally be subject to a condition that specified procedures be followed to limit the noise exposure of Sydney residents. These specified procedures are the Approach and Departure procedures for Sydney Airport published in the Aeronautical Information Package. Section 12 includes the provisions of Section 13 under the previous dispensation guidelines.

### **Administrative procedures**

Applications for dispensations may be made by phone. Where this occurs, section 13 aims to ensure that a written confirmation of the circumstances leading to the application is provided as soon as possible. Section 13 includes the provisions of Section 14 and Section 15 of the previous dispensation guidelines.

Section 20(4) of the Act provides that a dispensation need not be in writing. Section 14 ensures that, regardless of whether a dispensation is granted by phone or in writing, the applicant will promptly receive written confirmation of the conditions, if any, to which the dispensation is subject.

## ATTACHMENT B

### **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

#### ***Sydney Airport Curfew (Dispensation) Guideline 2016***

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the legislative instrument**

This instrument repeals and replaces the guidelines for granting of curfew dispensations under s 20 of the Act that were in effect since 1996.

The effect of these guidelines is substantially the same as the effect of the 1996 guidelines: the changes that have been made were for the purposes of improving clarity and reflecting current drafting standards.

#### **Human rights implications**

The amendments proposed by this legislative instrument do not engage any of the applicable rights or freedoms.

#### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Minister for Infrastructure and Transport, the Hon Darren Chester MP**