

Adelaide Airport Curfew Act 2000

Act No. 29 of 2000 as amended

This compilation was prepared on 22 October 2001
taking into account amendments up to Act No. 143 of 2001

The text of any of those amendments not in force
on that date is appended in the Notes section

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An Act to impose a curfew and related restrictions on aircraft movements at Adelaide Airport, and for related purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Adelaide Airport Curfew Act 2000*.

2 Commencement [see Note 1]

- (1) Subject to subsection (2), this Act commences at 10.45 pm on the first Sunday after a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences:
 - (a) if the first day after the end of that period is a Sunday—at 10.45 pm on that Sunday; or
 - (b) otherwise—at 10.45 pm on the first Sunday after the end of that period.

3 Definitions

- (1) In this Act, unless the contrary intention appears, the following terms have the meanings set out below:

90-95 noise level rule has the meaning given by subsection (3).

aircraft means any machine or craft that can derive support in the atmosphere from the reactions of the air.

Airservices Australia means the body called Airservices Australia that is established by the *Air Services Act 1995*.

Australia includes all the external Territories.

authorised person means:

- (a) the Secretary to the Department; or

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- (b) a person appointed under subsection 22(1); or
- (c) a person included in a class of persons appointed under subsection 22(2).

curfew period means a period that starts at 11 pm on a day and ends at 6 am on the next day.

curfew shoulder period means:

- (a) a period of one hour starting at 11 pm on a day; or
- (b) a period of one hour starting at 5 am on a day.

international aircraft has the meaning given by subsection (2).

land—an aircraft lands when it touches the ground.

low noise heavy freight aircraft means a jet aircraft that:

- (a) has a maximum take-off weight that is 34,000 kilograms or more; and
- (b) is being used solely for the purpose of carrying freight; and
- (c) complies with the maximum noise levels specified in Chapter 3 of the Annex that are applicable to the maximum take-off weight of the aircraft (whether or not the Chapter is expressed to apply to the aircraft); and
- (d) complies with the 90-95 noise level rule.

maximum take-off weight of an aircraft means the weight set out in the aircraft's flight manual as the aircraft's maximum take-off weight.

operator of an aircraft means a person who conducts an aircraft operation using the aircraft.

noise level, expressed as a figure of EPNdB, means the effective perceived noise in decibels:

- (a) measured by reference to the test procedures specified in Chapter 3 of the Annex; and
- (b) certified in a noise certificate within the meaning of the Air Navigation (Aircraft Noise) Regulations.

take off—an aircraft takes off when it leaves the ground.

the Annex means Volume 1 of Annex 16 to the Convention on International Civil Aviation concluded at Chicago on 7 December 1944, as amended and in force from time to time.

week means a period of 7 days starting at 11 pm on a Sunday.

- (2) For the purposes of this Act, an aircraft is an **international aircraft** on take-off from, or landing at, Adelaide Airport if:
- (a) the aircraft is being used for an international air service to carry passengers or freight (or both) for hire or reward, to or from the airport; and
 - (b) one of the following applies:
 - (i) the operator of the aircraft has an international airline licence granted under section 12 of the *Air Navigation Act 1920*;
 - (ii) the operator of the aircraft has a permission granted under section 15D of that Act;
 - (iii) the flight in question is covered by a permission under section 17 of that Act;
 - (iv) the flight in question is covered by a determination under subsection 17(1B) of that Act; and
 - (c) the aircraft complies with the maximum noise levels specified in Chapter 3 of the Annex that are applicable to the maximum take-off weight of the aircraft (whether or not the Chapter is expressed to apply to the aircraft); and
 - (d) if the aircraft is being used solely for the purpose of carrying freight—the aircraft is not a low noise heavy freight aircraft; and
 - (e) for a take-off from Adelaide Airport—the first or second port of call of the aircraft after taking off from Adelaide Airport is outside Australia; and
 - (f) for a landing at Adelaide Airport—the last or second last port of call of the aircraft before landing at Adelaide Airport was outside Australia.
- (3) For the purposes of this Act, a type of aircraft complies with the **90-95 noise level rule** if aircraft of that type have a noise level that:
- (a) on take-off:
 - (i) does not exceed 90 EPNdB; or
 - (ii) if the amount in excess of 90 EPNdB is offset by a maximum noise level on landing that is correspondingly
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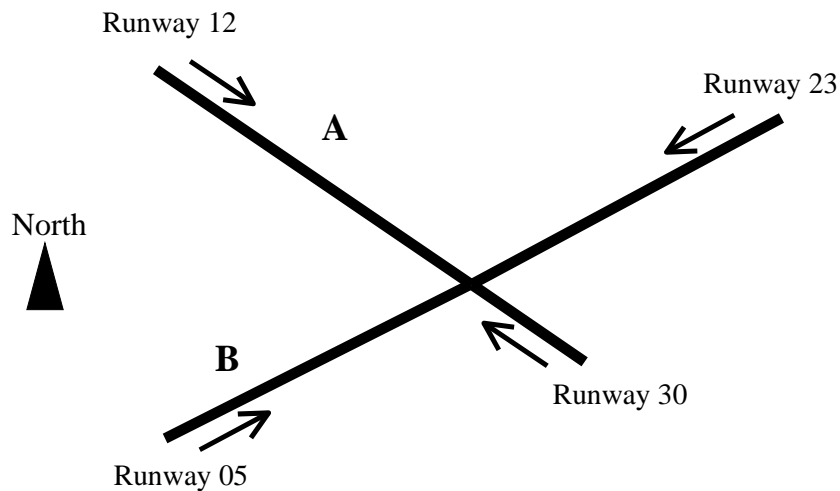
lower than the amount specified in subparagraph (b)(i) for landing noise—does not exceed 92 EPNdB; and

(b) on landing:

- (i) does not exceed 95 EPNdB; or
- (ii) if the amount in excess of 95 EPNdB is offset by a maximum noise level on take-off that is correspondingly lower than the amount specified in subparagraph (a)(i)—does not exceed 97 EPNdB.

4 Explanation of runway names

(1) The diagram below shows the runways at Adelaide Airport.



(2) The following runway names have the meanings indicated where they are used in this Act:

- (a) **runway 12**—this is the name for the runway marked A when used for a take-off to the south-east or a landing from the north-west;
- (b) **runway 30**—this is the name for the runway marked A when used for a take-off to the north-west or a landing from the south-east;
- (c) **runway 23**—this is the name for the runway marked B when used for a take-off to the south-west or a landing from the north-east;

- (d) **runway 05**— this is the name for the runway marked B when used for a take-off to the north-east or a landing from the south-west.

5 Time is legal time in South Australia

References in this Act to time are references to legal time in South Australia.

5A Application of the *Criminal Code*

Chapter 2 (except Part 2.5) of the *Criminal Code* applies to all offences created by this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part 2—The curfew

6 Prohibition on taking off or landing during curfew periods

- (1) The operator of an aircraft commits an offence if:
- (a) the operator engages in conduct; and
 - (b) the conduct results in an aircraft taking off or landing at Adelaide Airport during a curfew period.

Penalty: 200 penalty units.

Note: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

- (2) Subsection (1) does not apply if the take off or landing is permitted under Part 3.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) In this section:

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

Part 3—Permitted aircraft movements

Division 1—International aircraft movements during curfew shoulder periods

7 International aircraft to which this Division applies

This Division applies to international aircraft other than international aircraft of a type specified in the regulations.

8 Quota on movements by international aircraft during curfew shoulder periods

The regulations may prescribe the maximum number of take-offs and the maximum number of landings by international aircraft that are permitted during the curfew shoulder periods in a week.

9 Applications to operate international aircraft during curfew shoulder periods

- (1) The operator of an international aircraft may apply to the Minister for permission to take-off from, or land at, Adelaide Airport during a curfew shoulder period.
- (2) An application:
 - (a) must be in writing; and
 - (b) must specify the day and time of the proposed take-off or landing; and
 - (c) must set out the reasons why the applicant thinks the permission should be granted.
- (3) The Minister may request further information from the applicant that is, in the Minister's opinion, relevant to making a decision whether or not to grant a permission.
- (4) The Minister may, in writing, grant or refuse to grant permission. However, the Minister must not grant permission where to do so would result in more take-offs or landings occurring during a curfew shoulder period than is permitted by regulations made for the purposes of section 8.

Part 3 Permitted aircraft movements

Division 1 International aircraft movements during curfew shoulder periods

Section 9

- (5) The Minister may impose conditions on a permission.
- (6) Without limiting subsection (5), a permission is subject to the following conditions:
 - (a) if the permission relates to a take-off—the take-off is from runway 23; and
 - (b) if the permission relates to a landing:
 - (i) the landing is on runway 05, unless meteorological conditions require the aircraft to land on another runway; and
 - (ii) the aircraft does not use reverse thrust greater than idle reverse thrust.
- (7) Application may be made to the Administrative Appeals Tribunal for review of a decision:
 - (a) to refuse to grant a permission; or
 - (b) to grant a permission subject to conditions.

Note: Under section 27A of the *Administrative Appeals Tribunal Act 1975*, the decision-maker must notify persons whose interests are affected by the making of the decision of their right to have the decision reviewed. In notifying such persons, the decision-maker must have regard to the Code of Practice determined under section 27B of that Act.
- (8) Aircraft taking off or landing as permitted by section 14 or 16 are not to be counted towards the maximum number of take-offs and landings under regulations made for the purposes of section 8.

Division 2—Low noise heavy freight aircraft movements during curfew periods

10 Restrictions on movements by low noise heavy freight aircraft during curfew periods

The regulations:

- (a) may prescribe the maximum number of take-offs and the maximum number of landings by low noise heavy freight aircraft that are permitted during the curfew periods in a week; and
- (b) may prescribe those maximum numbers of take-offs and landings by reference to the types of low noise heavy freight aircraft that may take off and land.

11 Applications to operate low noise heavy freight aircraft during curfew periods

- (1) The operator of a low noise heavy freight aircraft of a type specified in the regulations may apply to the Minister for permission to take off from, or land at, Adelaide Airport during a curfew period.
- (2) An application:
 - (a) must be in writing; and
 - (b) must:
 - (i) specify the day and time of the proposed take-off or landing; or
 - (ii) if the applicant does not know the day and time of the proposed take-off or landing—specify the maximum number of take-offs and landings for which the applicant seeks permission during the curfew periods in a week; and
 - (c) must set out the reasons why the applicant thinks the permission should be granted.
- (3) The Minister may request further information from the applicant that is, in the Minister's opinion, relevant to making a decision whether or not to grant a permission.

Part 3 Permitted aircraft movements

Division 2 Low noise heavy freight aircraft movements during curfew periods

Section 11

- (4) The Minister may, in writing, grant or refuse to grant permission. However, the Minister must not grant permission where to do so would result in more take-offs or landings occurring during the curfew periods in a week than is permitted by regulations made for the purposes of section 10.
- (5) The Minister may impose conditions on a permission.
- (6) Without limiting subsection (5), a permission is subject to the following conditions:
 - (a) if the permission relates to a take-off—the take-off is from runway 23; and
 - (b) if the permission relates to a landing:
 - (i) the landing is on runway 05, unless meteorological conditions require the aircraft to land on another runway; and
 - (ii) the aircraft does not use reverse thrust greater than idle reverse thrust.
- (7) Application may be made to the Administrative Appeals Tribunal for review of a decision:
 - (a) to refuse to grant a permission; or
 - (b) to grant a permission subject to conditions.

Note: Under section 27A of the *Administrative Appeals Tribunal Act 1975*, the decision-maker must notify persons whose interests are affected by the making of the decision of their right to have the decision reviewed. In notifying such persons, the decision-maker must have regard to the Code of Practice determined under section 27B of that Act.
- (8) Aircraft taking off or landing as permitted by section 14 or 16 are not to be counted towards the maximum number of take-offs and landings under regulations made for the purposes of section 10.

Division 3—Other aircraft movements during curfew periods

12 Propeller-driven aircraft under 34,000 kilograms that comply with noise standards

A propeller-driven aircraft that:

- (a) has a maximum take-off weight of 34,000 kilograms or less; and
- (b) complies with the maximum noise levels specified in Chapter 3, 5 (other than paragraph 5.1.3), 6 or 10 of the Annex that are applicable to aircraft of the class to which the aircraft belongs;

may take off or land at Adelaide Airport during a curfew period.

13 Jet aircraft under 34,000 kilograms that comply with noise standards

- (1) A jet aircraft of a type specified in regulations made for the purposes of subsection (2) may take off or land at Adelaide Airport during a curfew period.
- (2) The regulations may specify a type of jet aircraft that:
 - (a) has a maximum take-off weight of 34,000 kilograms or less; and
 - (b) complies with the maximum noise levels specified in Chapter 3 of the Annex that are applicable to the maximum take-off weight of the aircraft (whether or not the Chapter is expressed to apply to the aircraft); and
 - (c) complies with the 90-95 noise level rule.

14 Take-off when taxi clearance received before start of curfew period

An aircraft may take off during a curfew period if it received taxi clearance for the take-off before the start of the curfew period.

Division 4—Landing on runways other than runway 05

15 Landing of aircraft during curfew periods on runways other than runway 05

- (1) An international aircraft that is permitted to land at Adelaide Airport during a curfew shoulder period may land, subject to any conditions imposed under subsection 9(5), on a runway other than runway 05 if the pilot of the aircraft thinks that the meteorological conditions in which the aircraft is to land require it.
- (2) A low noise heavy freight aircraft that is permitted to land at Adelaide Airport during a curfew period may land, subject to any conditions imposed under subsection 11(5), on a runway other than runway 05 if the pilot of the aircraft thinks that the meteorological conditions in which the aircraft is to land require it.
- (3) If an aircraft lands at Adelaide Airport in the circumstances referred to in subsection (1) or (2), the operator of the aircraft must, within 7 days after the landing, give to an authorised person, at an address specified in the regulations, a return that states:
 - (a) the date and time of the landing; and
 - (b) the runway on which the landing occurred; and
 - (c) the aircraft's registration mark, its operator, and its type; and
 - (d) the reasons for landing on a runway other than runway 05, including the wind conditions prevailing at the time; and
 - (e) the down wind limits for landing specified in the aircraft's flight manual.
- (4) Airservices Australia must, as soon as practicable after the end of each month, give the Secretary a written report setting out:
 - (a) the number of times (if any) during the month that an international aircraft landed at Adelaide Airport, during a curfew shoulder period, on a runway other than runway 05; and
 - (b) the number of times (if any) during the month that a low noise heavy freight aircraft landed at Adelaide Airport, during a curfew period, on a runway other than runway 05; and
 - (c) the relevant meteorological conditions on each occasion.

Division 5—Emergencies and dispensations

16 Aircraft may take off or land in emergencies or if Minister grants dispensation

An aircraft may take off from, or land at, Adelaide Airport in circumstances that would otherwise contravene section 6 if:

- (a) the aircraft is involved in an emergency as described in section 17; or
- (b) the aircraft is taking off from Adelaide Airport in order to resume the flight interrupted by such an emergency; or
- (c) a dispensation granted by the Minister under section 18 authorises the take-off or landing, and the take-off or landing is in accordance with any conditions of the dispensation.

17 Emergencies

An aircraft is involved in an emergency if:

- (a) the aircraft is being used for or in connection with:
 - (i) a search and rescue operation; or
 - (ii) a medical emergency; or
 - (iii) a natural disaster; or
- (b) the pilot of the aircraft has declared an in-flight emergency; or
- (c) the aircraft has insufficient fuel to be diverted to another airport; or
- (d) there is an urgent need for the aircraft to land or take off:
 - (i) to ensure the safety or security of the aircraft or any person; or
 - (ii) to avoid damage to property.

18 Minister may grant dispensations

- (1) The Minister may grant a dispensation authorising an aircraft to take off from, or land at, Adelaide Airport in circumstances that would otherwise contravene section 6 if the Minister is satisfied that there are circumstances justifying the take-off or landing.

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- (2) A dispensation may be granted subject to conditions including, for example, conditions relating to when the take-off or landing must occur and the runway to be used.
- (3) In granting dispensations, the Minister must have regard to any matters specified in the regulations.
- (4) Without limiting what regulations made for the purposes of subsection (3) may specify, they may specify:
 - (a) what constitutes circumstances justifying take-offs and landings for the purposes of subsection (1); and
 - (b) the conditions to which dispensations should be subject.
- (5) Subject to subsection (6) and despite paragraph 23(b), and subsection 33(3A), of the *Acts Interpretation Act 1901*, each dispensation must relate only to one take-off of an aircraft or one landing of an aircraft.
- (6) Subsection (5) does not apply during the period spanning the Sydney 2000 Olympic Games and the Sydney 2000 Paralympic Games, from 27 August 2000 to and including 1 November 2000.

Part 4—Provision of information

19 Authorised person may require the provision of information

- (1) An authorised person may, by notice in writing given to the operator of an aircraft, require the operator to give the authorised person, within 30 days of receiving the notice:
 - (a) information relating to the noise level of the aircraft; or
 - (b) information relevant to determining whether a take-off or landing of the aircraft was permitted by paragraph 16(a) (emergencies).
- (2) An operator commits an offence if:
 - (a) the operator is subject to a notice under subsection (1); and
 - (b) the operator engages in conduct; and
 - (c) the operator's conduct contravenes the notice.

Penalty: 50 penalty units.

Note 1: If the operator is a body corporate, the maximum penalty that may be imposed is 250 penalty units (see subsection 4B(3) of the *Crimes Act 1914*).

Note 2: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

- (3) This section does not affect a person's right to refuse to give information on the ground that the information, or giving the information, might tend to incriminate the person or expose the person to a penalty.
- (4) In this section:

engage in conduct means:

 - (a) do an act; or
 - (b) omit to perform an act.

20 Provision of false information

An operator is guilty of an offence if:

- (a) the operator gives information to an authorised person; and

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- (b) the operator does so reckless as to whether that information is false or misleading in a material particular.

Penalty: 50 penalty units.

Note 1: If the operator is a body corporate, the maximum penalty that may be imposed is 250 penalty units (see subsection 4B(3) of the *Crimes Act 1914*).

Note 2: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

Part 5—Miscellaneous

21 Delegation

The Minister may, in writing, delegate the Minister's powers under section 9, 11 or 18 to:

- (a) the Secretary to the Department; or
- (b) an APS employee in the Department.

22 Appointments as authorised persons

- (1) The Secretary of the Department may appoint an APS employee in the Department, or an employee of Airservices Australia, to be an authorised person for the purposes of this Act.
- (2) The Secretary of the Department may appoint persons in a class of persons to be authorised persons for the purposes of this Act. The class must consist of persons who are APS employees in the Department or employees of Airservices Australia.
- (3) An appointment under this section must be in writing.

23 Conduct by directors, employees and agents

- (1) If, in proceedings for an offence against this Act, it is necessary to prove the state of mind of a body corporate in relation to particular conduct, it is enough to show:
 - (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, employee or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by a director, employee, or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate proves that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

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- (3) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of an individual in relation to particular conduct, it is enough to show:
- (a) that the conduct was engaged in by an employee or agent of the individual within the scope of his or her actual or apparent authority; and
 - (b) that the employee or agent had the state of mind.
- (4) Any conduct engaged in on behalf of an individual by an employee or agent of the individual within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the individual, unless the individual proves that he or she took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) In this section:

director, in relation to a body that:

- (a) is incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory; and
- (b) is constituted by one or more members;

means the member, or any of the members, constituting the body.

engage in conduct includes fail or refuse to engage in conduct.

offence against this Act includes the following:

- (a) an offence against section 6 of the *Crimes Act 1914* that relates to an offence against this Act;
- (b) an offence against section 11.1, 11.4 or 11.5 of the *Criminal Code*.

state of mind, in relation to a person, includes:

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

24 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or

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- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Table of Acts

Notes to the *Adelaide Airport Curfew Act 2000***Note 1**

The *Adelaide Airport Curfew Act 2000* as shown in this compilation comprises Act No. 29, 2000 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Adelaide Airport Curfew Act 2000</i>	29, 2000	19 Apr 2000	27 Aug 2000 (see s. 2(1) and <i>Gazette</i> 2000, No. GN32)	
<i>Transport and Regional Services Legislation (Application of Criminal Code) Act 2001</i>	143, 2001	1 Oct 2001	2 Oct 2001	S. 4

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted	
Provision affected	How affected
S. 5A	ad. No. 143, 2001
S. 6	rs. No. 143, 2001
S. 19	am. No. 143, 2001
S. 20	rs. No. 143, 2001
S. 23	am. No. 143, 2001

Table A

Table A

Application, saving or transitional provisions

Transport and Regional Services Legislation Amendment (Application of Criminal Code) Act 2001 (No. 143, 2001)

4 Application of Amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.