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INFORMATION AND RESEARCH SERVICES

Bills Digest

No. 109 2000–01

**Sydney Airport Demand Management  
Amendment Bill 2001**

ISSN 1328-8091

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Published by the Department of the Parliamentary Library, 2001

I N F O R M A T I O N   A N D   R E S E A R C H   S E R V I C E S

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No. 109 2000–01

Sydney Airport Demand Management Amendment Bill  
2001

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23 March 2001

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# Sydney Airport Demand Management Amendment Bill 2001

**Date Introduced:** 8 March 2001

**House:** House of Representatives

**Portfolio:** Transport and Regional Services

**Commencement:** On Royal Assent

## Purpose

To amend the amend the *Sydney Airport Demand Management Act 1997* to:

- provide that Part IIIA (Access to Services) of the *Trade Practices Act 1974* only has effect subject to the *Sydney Airport Demand Management Act 1997*, and
- allow the Sydney (Kingsford-Smith) Airport Slot Management Scheme to be amended to allow slots to be allocated on the basis of specified categories of aircraft or service types, eg large capacity aircraft and / or inter-capital or international services.

## Background

### The Slot Management Scheme for Sydney Airport

On 13 December 2000, the Government announced its decision on the question of a second major airport for Sydney. It stated that it was 'premature' to build a second airport as in its view<sup>1</sup>

Sydney Airport will be able to handle the air traffic demand over the next ten years. The advantages of operating to the airport are so great that the airlines will adopt aggressive commercial strategies to maximise their use of the airport...[including] the use of larger aircraft.

As part of the 13 December policy announcement, the Government also flagged it would amend the existing Slot Management Scheme (SMS)<sup>2</sup> for Sydney (Kingsford Smith) Airport to 'encourage' the use of larger aircraft while maintaining access by regional

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airlines.<sup>3</sup> The proposed changes were later detailed in the second reading speech of the Sydney Airport Demand Management Amendment Bill 2001 (the Bill):<sup>4</sup>

- cap the number of regional slots allocated in peak periods at its current level
- encourage airlines progressively to introduce larger aircraft
- establish a minimum aircraft seat limit for allocating new slots, to be determined in consultation with industry, and
- remove any risk that the major airlines could avoid the regional guarantee by migrating the regional slots held by their affiliates into non-peak periods.

A Department of Transport and Regional Services discussion paper canvassing these proposed changes is due to be released by the end of March as part of the stakeholder consultation process. The Government has stated that it wants to amend the SMS 'before the airline timetables for the Northern Winter 2001 scheduling season need to be settled'.<sup>5</sup>

## Part IIIA of the Trade Practices Act 1974

Part IIIA was inserted into the *Trade Practices Act 1974* by the *Competition Policy Reform Act 1995*. The 1995 Act had its origins in the 1993 Hilmer report on Competition Policy. The relevant part of the Act's second speech reading comments:<sup>6</sup>

The bill inserts a new Part into the Trade Practices Act, to establish a legal regime to facilitate third parties obtaining access to the services of certain essential facilities of national significance. The notion underlying the regime is that access to certain facilities with natural monopoly characteristics, such as electricity grids or gas pipelines, is needed to encourage competition in related markets, such as electricity generation or gas production. Access to such facilities can be achieved if a person seeking access is successful in having the service "declared" and then negotiates access with the service provider.

Note that, if following a declaration, negotiations between parties over terms and conditions of access are unsuccessful, section 44V of Part IIIA provides that the Australian Consumer and Competition Commission (ACCC) must arbitrate the dispute and make a determination. Either disputing party may apply to have the ACCC determination reviewed by the Australian Competition Tribunal (ACT) and then eventually to the Federal Court if desired<sup>7</sup>.

Since 1995 there have been a number of applications to have airport-related services 'declared' to enable access.<sup>8</sup> However, none of the applications have been related to slots or associated aircraft movement issues.

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## Why is the Bill required?

### *Part IIIA Access to Services*

The effect of the proposed changes to the Sydney Airport SMS will be to prevent regional airlines from obtaining more slots during peak times and also potentially disadvantage them vis-à-vis the major airlines servicing the inter-capital and international routes because new slots outside peak hours will only generally be available to larger capacity aircraft. It thus limits their access to services provided by the use of Sydney Airport.<sup>9</sup>

These services would likely come within the criteria set out in section 44G of Part IIIA that allows the National Competition Council (NCC) to make a recommendation to the responsible Minister<sup>10</sup> to make a declaration regarding access to services. While the Minister has the discretion not to declare a service even when a declaration has been recommended by the NCC, the Minister's decision may be reversed by ACT review. This creates the potential for conflict between government policy of capping access to Sydney Airport by smaller aircraft and an ACT decision requiring the SMS manager to negotiate with regional airlines to provide them with additional slots. By making Part IIIA subject to the provisions of the *Sydney Airport Demand Management Act 1997*, the Bill prevents this situation.

Note that section 193 of the *Airports Act 1996* also makes Part IIIA subject to the demand management provisions (sections 194-214) of that Act.<sup>11</sup> These provisions essentially allow the Commonwealth Minister to determine the capacity of a particular airport and implement measures to manage aircraft movements and other related aspects of the airport's operations. However, due to amendments made by the *Sydney Airport Demand Management Act 1997*, sections 194-214 do not apply to Sydney (Kingsford-Smith) airport.

### *How slots many be allocated under the SMS*

The issue of what the SMS may contain or deal with is covered by section 35 of the *Sydney Airport Demand Management Act 1997*. Subsection 35(1) allows for the SMS to deal with the 'allocation of slots and associated matters....such as the conditions that may be imposed on slots'. It is arguable that this would allow slots to be allocated on the basis of aircraft capacity, service type etc. However, the Government has presumably preferred to amend the Act to put the matter beyond doubt.

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## Main Provisions

### Schedule 1 - Amendment of the *Sydney Airport Demand Management Act 1997*

**Item 1** inserts a **new section 5A** into the Act. This new section specifies that 'Part IIIA of the *Trade Practices Act 1975* has effect subject to this Act'.

**Item 2** inserts a **new subsection 35(1A)** into the Act allowing the SMS to deal 'with the allocation of slots for specified categories of aircraft movements'.

## Endnotes

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- 1 'Sydney's future airport needs' *Media Release*, The Hon John Anderson, Minister for Transport and Regional Services 13 December 2001. See [http://www.dotrs.gov.au/media/anders/archive/2000/dec\\_00/a197\\_2000.htm](http://www.dotrs.gov.au/media/anders/archive/2000/dec_00/a197_2000.htm)
- 2 The SMS is essentially a system for the allocation of permission for an aircraft movement - a slot is really a technical word substituted for 'permission'. A slot is issued for a specified aircraft movement at a specified time on a specified day. More information can be found in the Bills Digest for the *Sydney Airport Demand Management Act 1997* at <http://www.aph.gov.au/library/pubs/bd/1997-98/98bd052.htm>
- 3 *ibid.* Note that the SMS does not define 'regional airline' but it does define regional service at subsection 2(1) as 'an air service operating wholly within New South Wales'. The SMS is available on-line at <http://www.dotrs.gov.au/airports/slots/scheme2.pdf>
- 4 The Hon Peter McGauran, House of Representatives *Debates*, 8 March 2001 p. 21881.
- 5 *ibid.*
- 6 Senator the Hon Rosemary Crowley, Senate *Debates*, 29 March 1995 p. 2438.
- 7 The jurisdiction of the Federal Court is restricted to matters of law only rather than the merits of the ACT decision.
- 8 Some details are provided on the National Competition Council website at <http://www.ncc.gov.au/nationalcompet/part%20iia/airports/Airports.htm>
- 9 The definition of service in Part IIIA includes 'the use of an infrastructure facility such as road or railway line': section 44B.
- 10 The *Trade Practices Act 1974* is administered by the Treasury portfolio.
- 11 Section 193 was contained in the version of the Airports Bill 1995 introduced into Parliament by the then ALP Government.

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