

DAMAGE BY AIRCRAFT.

13° Elizabeth II., No. XLIX.

No. 49 of 1964.

AN ACT to make provision in respect of Liability for Damage caused by Aircraft and for incidental matters.

[Assented to 30th November, 1964.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the *Damage by Aircraft Act, 1964.*

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

3. In this Act, unless the contrary intention appears— Interpre-
tation.

“Air Navigation Regulations” means the Air Navigation Regulations made and as in force from time to time under the Commonwealth Act, and includes such of the provisions of those Regulations as apply to and in relation to air navigation within the State by virtue of the Air Navigation Act, 1937;

“article” includes mail and postal articles, and any liquid and liquid spray;

“Commonwealth Act” means the Air Navigation Act, 1920 of the Parliament of the Commonwealth and includes that Act as amended from time to time and any Act of the Parliament of the Commonwealth passed in substitution for the first mentioned Act;

“loss or damage” in relation to persons, includes loss of life and personal injury.

4. No action lies in respect of trespass, or in respect of nuisance, by reason only of—

(a) the flight of an aircraft over any property at a height above the ground that, having regard to the wind, the weather, and all the circumstances, is reasonable; or

(b) the ordinary incidents of such a flight,

so long as the Air Navigation Regulations are complied with.

Limitation of liability in respect of trespass or nuisance by flying over property. See 12 and 13 Geo. 6 C67 (Imp.), s. 40 (1); No. 12 of 1948 s. 5 (3) N.Z.; No. 46 of 1952 N.S.W. s. 2 (1); No. 6420 Vic. s. 30; No. 7 of 1963 Tas. s. 3.

5. (1) Where material loss or damage is caused to any person or property on land or water by, or by a person in, or by an article, animal or person falling from, an aircraft while the aircraft is in flight, or is taking off, or is landing then, unless the loss or damage was caused or contributed to by the negligence of the person by whom it was suffered, damages in respect of the loss or damage

Liability for damage by aircraft or articles, etc., falling from an aircraft. Imp. s. 40 (2); N.Z. s. 5 (3); N.S.W. s. 2 (2) (3); Vict. s. 31; Tas. s. 5.

are recoverable from the owner of the aircraft without proof of negligence, or intention, or other cause of action, as if the loss or damage had been caused by the wilful act, neglect or default of the owner.

(2) Notwithstanding anything in subsection (1) of this section, where material loss or damage is caused as mentioned in that subsection in circumstances in which—

- (a) damages in respect of that loss or damage are recoverable from the owner by virtue only of the provisions of that subsection; and
- (b) a legal liability is created in some person other than the owner to pay damages in respect of that loss or damage,

the owner is entitled to be indemnified by that other person against any claim in respect of that loss or damage.

(3) Where an aircraft has been demised, chartered, let, or hired out for a period exceeding fourteen days to any other person by the owner thereof and no pilot, commander, navigator or operative member of the crew of the aircraft is in the employment of the owner, this section has effect as if for references to the owner there were substituted references to the person to whom the aircraft has been so demised, chartered, let or hired out.
