



Western Australia

Damage by Aircraft Act 1964

As at 04 Oct 2002

Version 02-a0-11
Published on www.legislation.wa.gov.au

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Defined terms

Damage by Aircraft Act 1964

An Act to make provision in respect of liability for damage caused by aircraft and for incidental matters.

1. Short title

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

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation¹.

3. Interpretation

In this Act, unless the contrary intention appears —

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. Limitation of liability in respect of trespass or nuisance by flying over property²

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.

5. Liability for damage by aircraft or articles, etc., falling from an aircraft²

- (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 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) 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 14 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.

Notes

¹ This is a compilation of the *Damage by Aircraft Act 1964*. The following table contains information about that Act and any previous reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Damage by Aircraft Act 1964</i>	49 of 1964	30 Nov 1964	24 Dec 1964 (see s. 2 and <i>Gazette</i> 24 Dec 1964 p. 4093)
Reprint of the <i>Damage by Aircraft Act 1964</i> authorised 12 Mar 1973			
Reprint of the <i>Damage by Aircraft Act 1964</i> as at 4 Oct 2002			

² Marginal notes in the *Damage by Aircraft Act 1964* referring to legislation of other jurisdictions have been omitted from this reprint.

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
Air Navigation Regulations	3
article	3
Commonwealth Act	3
loss or damage	3