

WESTERN AUSTRALIA

**CIVIL AVIATION (CARRIERS'
LIABILITY) AMENDMENT
ACT 1996**

No. 80 of 1996

AN ACT to amend the *Civil Aviation (Carriers' Liability) Act 1961*.

[Assented to 14 November 1996.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Civil Aviation (Carriers' Liability) Amendment Act 1996*.

Principal Act

2. The *Civil Aviation (Carriers' Liability) Act 1961** is referred to in this Act as the principal Act.

[* *Approved for reprint 24 March 1971.*
For subsequent amendments see 1995 Index to
Legislation of Western Australia, Table 1, p. 35.]

Commencement

3. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

Section 3 amended

4. (1) Section 3 (1) of the principal Act is amended —

(a) by inserting, before the definition of “the Commonwealth Act”, the following definitions —

“

“**applied provisions**” means the provisions of the Commonwealth Act and the Commonwealth Regulations as they apply under this Act as laws of the State;

“**Commonwealth authority**” means an authority or officer of the Commonwealth;

”;

and

(b) by deleting “Part IV.” from the definition of “the Commonwealth Regulations” and substituting the following —

“ Part IV or IVA ”.

(2) Section 3 (2) of the principal Act is amended by deleting “sections five and twenty-six” and substituting the following —

“ sections 5, 26 and 41B ”.

Section 5 amended

5. Section 5 (1) of the principal Act is amended by deleting “not being carriage to which Part IV. of the Commonwealth Act applies or to which the Warsaw Convention, or that Convention as affected by The Hague Protocol, applies.” and substituting the following —

“ not being —

- (a) carriage to which Part IV of the Commonwealth Act applies;
- (b) carriage to which the Warsaw Convention, the Hague Protocol or the Guadalajara Convention applies; or
- (c) carriage to which the provisions of another convention, protocol or treaty apply, being provisions that have the force of law under the Commonwealth Act and that are prescribed for the purposes of this paragraph by the regulations under this Act.

”.

Section 6 amended

6. (1) Section 6 of the principal Act is amended —

- (a) by deleting “Part IV.” in both places where it occurs and substituting, in each case, the following —

“ Parts IV and IVA ”; and

- (b) by deleting “sections twenty-seven, forty and forty-one” and substituting the following —

“ sections 27, 40, 41 and 41J (8) ”.

NOTE: The effect of this subsection is to apply Part IVA (other than section 41J (8)) of the *Civil Aviation (Carriers' Liability) Act 1959* of the Commonwealth. The provisions of that Part (as at the time of enactment of this Act) are set out in a note at the end of this Act.

- (2) Section 6 (d) of the principal Act is amended by deleting “section thirty-one of”.

Sections 8, 9 and 10 inserted

7. After section 7 of the principal Act the following sections are inserted —

“

Administration of the applied provisions as Commonwealth laws

8. (1) It is the intention of Parliament that the applied provisions should be administered and enforced as if they were provisions applying as laws of the Commonwealth instead of being provisions applying as laws of the State.

- (2) To that end —

- (a) Commonwealth authorities have the same powers to enforce the applied provisions as they have to enforce the Commonwealth Act and the Commonwealth Regulations;
- (b) the laws of the Commonwealth apply to offences against the applied provisions as if they were offences against the Commonwealth Act or the Commonwealth Regulations; and
- (c) the laws of the State do not apply to offences against the applied provisions.

(3) In the application of provisions of the Commonwealth Act and the Commonwealth Regulations under this Act, any function or power conferred on a Commonwealth authority by or under those provisions may be exercised or performed (in respect of carriage to which this Act applies and matters connected with that carriage) by that Commonwealth authority.

Alternative arrangements for administration of applied provisions

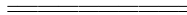
9. (1) The regulations may provide that —
- (a) any or all of the provisions of section 8 do not have effect; and
 - (b) any or all of the functions or powers conferred on a Commonwealth authority by or under the applied provisions may be exercised or performed by a person or authority specified in the regulations.

(2) To the extent that, because of regulations referred to in subsection (1), the laws of the Commonwealth do not apply to an offence against the applied provisions, the offence is to be regarded as a crime under the laws of the State, but may, at the election of the defendant and with the consent of the prosecutor, be dealt with summarily.

Regulations

10. The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

”.



No. 80] *Civil Aviation (Carriers' Liability)*
Amendment Act 1996

NOTE:

**PART IVA OF THE CIVIL AVIATION (CARRIERS' LIABILITY) ACT 1959
OF THE COMMONWEALTH**

**PART IVA — CARRIERS TO BE INSURED AGAINST LIABILITY TO
PASSENGERS FOR DEATH OR PERSONAL INJURY**

Object of Part

41A. The object of this Part is to require carriers to hold, in respect of carriage to which Part II, III or IV applies, insurance that will ensure, as far as practicable, that compensation within the limits of liability prescribed by this Act will be paid in respect of death or personal injury suffered by passengers on aircraft.

Definitions

41B. In this Part:

'acceptable contract of insurance' means a contract of insurance in respect of which a certificate is in force under subsection 41C(7);

'business day' means a day other than a Saturday, a Sunday or a public holiday in the Australian Capital Territory;

'carrier' means a person engaged, or offering to engage, in an air transport operation for the carriage of passengers to which Part II, III or IV applies;

'contract of insurance' means a contract between a carrier and an insurer under which the insurer indemnifies the carrier against personal injury liability in respect of each passenger carried, or to be carried, by air by the carrier;

'personal injury liability', in relation to a carrier, means liability under this Act in respect of the death of, or personal injury suffered by, passengers carried, or to be carried, by air by the carrier.

Carriers may be required to produce evidence that an acceptable contract of insurance is in force between the carrier and an insurer

41C. (1) The Minister may, at any time and from time to time, by written notice given to a carrier, require the carrier, within a period set out in the notice, to produce evidence, satisfactory to the Minister, that there is in force between the carrier and an insurer a contract of insurance that meets the prescribed requirements.

(2) The prescribed requirements are:

- (a) the requirements of subsections (3) and (4); and
- (b) any other requirements made by the regulations for the purposes of this section.

(3) It is a requirement in relation to a contract of insurance that, under the contract, the insurer's liability to indemnify the carrier against personal injury liability, in respect of each passenger carried, or to be carried, by air by the carrier, is for an amount that is not less than:

- (a) in respect of carriage by a domestic carrier to which Part IV applies — \$500,000; or
- (b) in respect of any other carriage — 260,000 SDRs.

(4) It is a requirement of a contract of insurance that, under the contract, the insurer's liability to indemnify the carrier against personal injury liability:

- (a) is not affected by any breach of a safety-related requirement imposed by or under any Act or by the Civil Aviation Safety Authority; and
- (b) is not contingent upon the financial condition or solvency of the carrier or upon the carrier not being or not becoming bankrupt or not beginning to be or not being wound up.

(5) The prescribed requirements do not prevent a contract of insurance from including provisions indemnifying the carrier against a liability other than personal injury liability.

(6) A contract of insurance under which:

- (a) the insurer indemnifies the carrier against liability as required by Part 205 of the Federal Aviation Regulations of the United States of America made under the law known as Title 49 United States Code-Transportation; and
- (b) the insurer's liability to indemnify the carrier:
 - (i) extends to carriage in, to or from Australia; and
 - (ii) is not affected by any breach of a requirement referred to in paragraph (4) (a);

is taken to meet the requirements referred to in subsection (4).

(7) If the Minister is satisfied that there is in force between a carrier and an insurer a contract of insurance that meets the prescribed requirements, the Minister may give the carrier a written certificate stating that the Minister is so satisfied.

Insurer's liability not affected by exclusions or breaches

41D. Except as prescribed by the regulations, an insurer's liability under a contract of insurance to indemnify the carrier against personal injury liability to the extent mentioned in subsection 41C(3) is not affected by any warranty or exclusion in the contract of insurance or by any breach of the contract of insurance by the carrier.

Carriers to be covered by acceptable insurance

41E. (1) A carrier must not carry passengers by air unless an acceptable contract of insurance is in force in relation to the carrier.

(2) A carrier who intentionally contravenes subsection (1) is guilty of an offence punishable on conviction by imprisonment for a period of not more than 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

Conduct by directors, servants and agents

41F. (1) If, in proceedings for an offence against this Part, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant 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 Part, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

(3) If, in proceedings for an offence against this Part, it is necessary to establish the state of mind of an individual in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the individual within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of an individual by a servant 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 Part, to have been engaged in also by the individual unless the individual establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

(5) If:

- (a) a person who is an individual is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for the offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

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

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of, or to a member of a board or other group of persons administering or managing the affairs of, a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

(9) A reference in this section to an offence against this Part includes a reference to an offence created by section 6, 7 or 7A or subsection 86 (l) of *the Crimes Act 1914* that relates to this Part.

Grounds of cancellation of contract of insurance not affected

41G. Nothing in this Part affects:

- (a) the grounds on which an insurer may cancel a contract of insurance between the insurer and a carrier; or
- (b) any right that an insurer may have to recover from a carrier an amount paid by the insurer under a contract of insurance between the insurer and the carrier.

Conflict of laws

41H. If:

- (a) the proper law of a contract of insurance would, except for a term that it should be the law of a foreign country or a term to a similar effect, be the law of any part of Australia; or
- (b) a contract of insurance contains a term that purports to substitute, or has the effect of substituting, the law of a foreign country for all or any of the provisions of this Part;

this Part applies to the contract despite that term.

Injunctions

41J. (1) In this section:

'prohibited carriage' means carriage by a carrier at a time when an acceptable contract of insurance is not in force between the carrier and an insurer.

(2) If the Minister has reason to believe that a carrier has engaged, or is proposing to engage, in prohibited carriage, the Minister may apply to a court of competent jurisdiction for an injunction restraining the carrier from engaging in the carriage.

(3) If the carrier does not satisfy the court that it is not engaging, or proposing to engage, in prohibited carriage, the court must grant the injunction.

(4) If in the opinion of the court it is desirable to do so, the court may grant an interim injunction pending determination of an application under subsection (2).

(5) The court may discharge or vary an injunction or an interim injunction granted under this section.

(6) The power of the court to grant an injunction or an interim injunction restraining a carrier from engaging in prohibited carriage may be exercised:

- (a) whether or not it appears to the court that the carrier intends to engage again, or to continue to engage, in prohibited carriage of that kind; and
- (b) whether or not the carrier has previously engaged in prohibited carriage of that kind.

(7) A court must not require the Minister, as a condition of granting an interim injunction, to give any undertakings as to damages.

(8) The Federal Court of Australia is invested with federal jurisdiction in matters where the Minister applies for an injunction or an interim injunction under this section.

Regulations

41K. The regulations may make provision for or in relation to:

- (a) the manner and form in which notices may be given under subsection 41C(1); and
- (b) the period that may be set out in such notices; and
- (c) the manner and form in which evidence is to be produced under that subsection; and
- (d) the giving by persons referred to in the regulations (who may be individuals not resident in Australia or corporations not incorporated or carrying on business in Australia) of notice (whether in advance, or after the occurrence of the event concerned) to the Minister of any modification, cancellation, non-renewal or expiry, or of any proposed modification, cancellation or non-renewal, or of any impending expiry, of an acceptable contract of insurance; and
- (e) the consequences (including any effect on the contract of insurance) of failure to give a notice referred to in paragraph (d).

Delegation

41L. (1) The Minister may, in writing, delegate to the Director, or to an officer, of the Civil Aviation Safety Authority all or any of the Minister's powers under this Part.

(2) In this section:

'Director' has the same meaning as in the *Civil Aviation Act 1988*.

No. 80]

*Civil Aviation (Carriers' Liability)
Amendment Act 1996*

(3) If:

- (a) the Minister has, under this section, delegated a power of the Minister contained in a provision of this Part; and
- (b) a delegate exercises the power;

a reference in that provision to the Minister is taken, in relation to the exercise of the power by the delegate, to be a reference to the delegate.

Note: See sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* on delegations.
