

AIR ACCIDENTS (COMMONWEALTH LIABILITY).

No. 74 of 1963.

An Act to provide for the payment of Damages by the Commonwealth and Authorities of the Commonwealth in respect of the Death of, or Personal Injury to, certain persons travelling as Passengers in Aircraft.

[Assented to 31st October, 1963.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

- Short title.** 1. This Act may be cited as the *Air Accidents (Commonwealth Liability) Act 1963*.
- Commencement.** 2. This Act shall come into operation on a date to be fixed by Proclamation.
- Parts.** 3. This Act is divided into Parts, as follows:—
Part I.—Preliminary (Sections 1–5).
Part II.—Carriage in Aircraft operated by the Commonwealth or a Commonwealth Authority (Sections 6–10).
Part III.—Carriage in Aircraft not operated by the Commonwealth or a Commonwealth Authority (Sections 11–17).
Part IV.—Regulations (Section 18).
- Definitions.** 4. In this Act, unless the contrary intention appears—
“Commonwealth authority” means an authority of the Commonwealth;
“damages” includes an amount received under a compromise or settlement of a claim for damages, whether legal proceedings had been instituted or not;
“flying pay” includes flying instructional pay, flight pay and flying allowance and any other like pay or allowance;
“passenger”, in relation to an aircraft, does not include—
(a) a member of the crew, including a pilot, of the aircraft;

- (b) a member of the Defence Force, whether a member of the crew of the aircraft or not, who—
 - (i) is in receipt of flying pay; or
 - (ii) is included in a prescribed class of members of the Defence Force, being a class as to whom the terms and conditions of their service include provision for risks arising out of the performance of duties in aircraft;
- (c) a person whose carriage in the aircraft is specifically and only for the purpose of his performing in the aircraft—
 - (i) duties or services for the performance of which he is employed or engaged by the Commonwealth or a Commonwealth authority; or
 - (ii) duties as a member of the Defence Force;
- (d) a person whose carriage in the aircraft is specifically and only for the purpose of his performing duties or services in the aircraft; or
- (e) a person who is not lawfully entitled to be on board the aircraft.

5. This Act applies both within and outside the Commonwealth and extends to all the Territories of the Commonwealth. Operation of Act.

PART II.—CARRIAGE IN AIRCRAFT OPERATED BY THE COMMONWEALTH OR A COMMONWEALTH AUTHORITY.

6.—(1.) This Part applies to the carriage of a passenger in an aircraft operated by the Commonwealth or a Commonwealth authority, not being carriage to which Part IV. of the *Civil Aviation (Carriers' Liability) Act 1959–1962* applies. Application of Part.

(2.) This Part does not apply in relation to the death of, or injury to, a person in circumstances entitling any dependant of the person, or the person, to pension under the *Repatriation Act 1920–1962*, the *Repatriation (Far East Strategic Reserve) Act 1956–1962* or the *Repatriation (Special Overseas Service) Act 1962*.

7. Subject to this Part, the following provisions of the *Civil Aviation (Carriers' Liability) Act 1959–1962*, namely, section twenty-eight, sub-section (1.) of section thirty-two, sections thirty-three and thirty-four, section thirty-five (other than sub-section (2.)) and sections thirty-seven to thirty-nine (inclusive) Application of certain provisions of Civil Aviation (Carriers' Liability) Act 1959–1962.

apply to and in relation to carriage to which this Part applies as if those provisions were incorporated in this Part and as if—

- (a) references in those provisions to a carrier or the carrier were references to the Commonwealth or the Commonwealth authority by which the aircraft was being operated, as the case requires;
- (b) references in those provisions to Australia included references to the Territories of the Commonwealth; and
- (c) the reference in section thirty-three of that Act to section thirty-one of that Act were a reference to section eight of this Act.

Limitation of amount recoverable under this Part.

8.—(1.) The maximum liability of the Commonwealth or a Commonwealth authority under this Part in respect of any one person, by reason of his death or injury, is Seven thousand five hundred pounds.

(2.) The amount of any damages recoverable but for this sub-section by a person from the Commonwealth or a Commonwealth authority by virtue of this Part in respect of a death or injury shall be reduced by any amount received or receivable by that person in consequence of the death or injury by reason of—

- (a) insurance effected for the benefit of the deceased or injured person or his estate by the Commonwealth or the Commonwealth authority; or
- (b) insurance effected by the deceased or injured person that is referable to an allowance granted by the Commonwealth or the Commonwealth authority for the purpose of enabling him to effect such insurance.

Liability under this Part to be in substitution for certain other liabilities.

9.—(1.) Subject to the provisions of section thirty-seven of the *Civil Aviation (Carriers' Liability) Act* 1959–1962, in its application by virtue of this Part, the liability of the Commonwealth or a Commonwealth authority under this Part in respect of the death of a passenger, or personal injury to a passenger that has not resulted in his death, is in substitution for any other civil liability of the Commonwealth or the Commonwealth authority in respect of that death or injury other than—

- (a) a liability under Part II. or Part III. of the *Civil Aviation (Carriers' Liability) Act* 1959–1962; or
- (b) a liability arising otherwise than by reason of the operation of the aircraft by the Commonwealth or the Commonwealth authority.

(2.) Notwithstanding anything contained in Part II. or Part III. of the *Civil Aviation (Carriers' Liability) Act* 1959–1962, but without prejudice to the operation of the next succeeding section, any liability of the Commonwealth or a Commonwealth authority

under this Part is not excluded by reason of the existence of any liability of the Commonwealth or of that Commonwealth authority under either of those Parts.

10.—(1.) Where, apart from this section, damages in respect of any death or injury are recoverable from the Commonwealth or a Commonwealth authority by or for the benefit of a person under this Part and such damages are also recoverable from the Commonwealth or a Commonwealth authority by or for the benefit of that person otherwise than under this Part—

Liability of Commonwealth, &c., independently of this Part.

- (a) if damages are recovered otherwise than under this Part, damages are not recoverable under this Part; and
- (b) if damages are recovered under this Part, the amount of damages recoverable otherwise than under this Part shall be reduced by the amount of the damages so recovered.

(2.) In the last preceding sub-section, “damages” does not include compensation under the *Commonwealth Employees’ Compensation Act 1930–1962* or the *Seamen’s Compensation Act 1911–1960*.

(3.) Nothing in this section prevents the application of section seventeen A of the *Commonwealth Employees’ Compensation Act 1930–1962* or section ten A of the *Seamen’s Compensation Act 1911–1960* in relation to damages recovered or recoverable under this Part.

PART III.—CARRIAGE IN AIRCRAFT NOT OPERATED BY THE COMMONWEALTH OR A COMMONWEALTH AUTHORITY.

11.—(1.) Subject to this section, this Part applies to the carriage in an aircraft operated by a person other than the Commonwealth or a Commonwealth authority of a passenger being—

Application of Part.

- (a) a person who is—
 - (i) an employee within the meaning of the *Commonwealth Employees’ Compensation Act 1930–1962* or a person to whom that Act applies as if he were such an employee; or
 - (ii) a seaman to whom the *Seamen’s Compensation Act 1911–1960* applies, being a seaman employed by the Commonwealth or a Commonwealth authority,and is travelling in the course of his employment by the Commonwealth or a Commonwealth authority;
- (b) a person the cost of whose carriage has been, or is to be, borne by the Commonwealth or a Commonwealth authority; or

(c) a person travelling by air for the purposes of the Commonwealth or of a Commonwealth authority in pursuance of arrangements made or authority given by the Commonwealth or the Commonwealth authority.

(2.) This Part does not apply to carriage to which Part IV. of the *Civil Aviation (Carriers' Liability) Act* 1959–1962 applies or to which any provisions of a State Act for the time being declared by the Treasurer by notice in the *Gazette* to correspond with the provisions of that Part apply.

(3.) This Part does not apply in relation to the death of, or injury to, a person in circumstances entitling any dependant of the person, or the person, to pension under the *Repatriation Act* 1920–1962, the *Repatriation (Far East Strategic Reserve) Act* 1956–1962 or the *Repatriation (Special Overseas Service) Act* 1962.

Liability of Commonwealth, &c. for death or injury.

12. Subject to this Part, where this Part applies to the carriage of a person, the Commonwealth, or, if the person is employed by a Commonwealth authority or a Commonwealth authority has borne, or is to bear, the cost of his carriage or has arranged for or authorized his carriage, that Commonwealth authority, is liable for damage sustained by reason of the death of that person or any personal injury suffered by that person resulting from an accident that took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Application of certain provisions of *Civil Aviation (Carriers' Liability) Act* 1959–1962.

13. Subject to this Part, the following provisions of the *Civil Aviation (Carriers' Liability) Act* 1959–1962, namely, sections thirty-four, thirty-five (other than sub-sections (2.) and (10.)), thirty-eight and thirty-nine, apply to and in relation to carriage to which this Part applies as if those provisions were incorporated in this Part and as if—

(a) references in those provisions to a carrier were references to the Commonwealth or a Commonwealth authority; and

(b) references in those provisions to Australia included references to the Territories of the Commonwealth.

Limitation of amount recoverable under this Part.

14.—(1.) The maximum liability of the Commonwealth or a Commonwealth authority under this Part in respect of any one person, by reason of his death or injury, is Seven thousand five hundred pounds.

(2.) The amount of any damages recoverable but for this sub-section by a person from the Commonwealth or a Commonwealth authority by virtue of this Part in respect of a death or injury shall be reduced by—

(a) the amount of any damages or compensation paid or payable in respect of the death or injury to or for the benefit of that person by, or recovered or recoverable by or for the benefit of that person, from the carrier,

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a servant or agent of the carrier or any other person other than the Commonwealth or the Commonwealth authority, as the case may be; and

- (b) any amount received or receivable by that person in consequence of the death or injury by reason of—
 - (i) insurance effected for the benefit of the deceased or injured person or his estate by the carrier or by the Commonwealth or the Commonwealth authority; or
 - (ii) insurance effected by the deceased or injured person that is referable to an allowance granted by the Commonwealth or the Commonwealth authority for the purpose of enabling him to effect such insurance.

15.—(1.) Where, apart from this section, damages in respect of any death or injury are recoverable from the Commonwealth or a Commonwealth authority by or for the benefit of a person under this Part and such damages are also recoverable from the Commonwealth or a Commonwealth authority by or for the benefit of that person otherwise than under this Part—

Liability of Commonwealth, &c., independently of this Part.

- (a) if damages are recovered otherwise than under this Part, damages are not recoverable under this Part; and
- (b) if damages are recovered under this Part, the amount of damages recoverable otherwise than under this Part shall be reduced by the amount of the damages so recovered.

(2.) In the last preceding sub-section, “damages” does not include compensation under the *Commonwealth Employees’ Compensation Act 1930–1962* or the *Seamen’s Compensation Act 1911–1960*.

(3.) Nothing in this section prevents the application of section seventeen A of the *Commonwealth Employees’ Compensation Act 1930–1962* or section ten A of the *Seamen’s Compensation Act 1911–1960* in relation to damages recovered or recoverable under this Part.

16.—(1.) Damages under this Part in respect of a death or injury are not recoverable from the Commonwealth or a Commonwealth authority by or for the benefit of a person where that person, or a person lawfully acting or entitled to act on behalf of that person—

Damages not recoverable under this Part in certain circumstances.

- (a) has failed to take any action that he could reasonably have been expected to take, if this Part had not been enacted, to recover damages in respect of the death

or injury from any other person who was, or may have been, liable to pay damages in respect of the death or injury;

- (b) has, without the consent in writing of the Commonwealth or the Commonwealth authority, as the case may be, entered into a compromise, settlement or agreement whereby a person other than the Commonwealth or the Commonwealth authority has been discharged in whole or in part from liability in respect of the death or injury to which he was, or might have been, subject; or
- (c) has refused to comply with a request under the next succeeding sub-section.

(2.) The Commonwealth or a Commonwealth authority may, in writing, request a person who appears to be entitled to recover damages in respect of a death or injury to which this Part applies against a person other than the Commonwealth or the Commonwealth authority, or a person lawfully acting or entitled to act on behalf of such a person, to take or continue proceedings (whether in the Commonwealth or elsewhere) to recover those damages and, where proceedings are so taken or continued, the proceedings shall be conducted on behalf of the first-mentioned person at the expense of the Commonwealth or the Commonwealth authority.

(3.) The Commonwealth or a Commonwealth authority may, at any time, by notice in writing, revoke a request made under the last preceding sub-section, and, in that event, is not liable for any costs or expenses incurred in respect of the continuance of the proceedings after the revocation.

Action against Commonwealth, &c., under this Part not to be heard if other proceedings Pending.

17. An action against the Commonwealth or a Commonwealth authority for damages under this Part in respect of a death or injury shall not be heard or determined if an action against a person other than the Commonwealth or the Commonwealth authority for damages in respect of that death or injury is pending in any court, whether in the Commonwealth or elsewhere.

PART IV.—REGULATIONS.

Regulations.

18. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.