



# **Civil Aviation Legislation Amendment Act 1998**

**No. 1, 1998**





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**An Act to amend the law relating to civil aviation,  
and for related purposes**



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## An Act to amend the law relating to civil aviation, and for related purposes

[Assented to 24 March 1998]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Civil Aviation Legislation Amendment Act 1998*.

### 2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (2) Item 2 of Schedule 2 is taken to have commenced on 6 July 1995, immediately after the commencement of item 77 of Schedule 1 to the *Civil Aviation Legislation Amendment Act 1995*.
  - (3) Schedule 3 is taken to have commenced on 6 July 1995, immediately after the commencement of item 7 of Schedule 3 to the *Civil Aviation Legislation Amendment Act 1995*.
  - (4) Schedule 4 is taken to have commenced on 6 November 1995, immediately after the commencement of Part 3 of the *Competition Policy Reform Act 1995*.

### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.



## **Schedule 1—Amendment of the Civil Aviation (Carriers' Liability) Act 1959**

### **1 Section 7**

Repeal the section, substitute:

### **7 Act to bind Crown**

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
- (2) Nothing in this Act makes the Crown in any capacity liable to be prosecuted for an offence.

### **2 Section 41B**

Insert:

*CASA* means the Civil Aviation Safety Authority established by the *Civil Aviation Act 1988*.

### **3 Section 41B**

Insert:

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

### **4 Section 41B**

Insert:

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

### **5 Subsection 41C(1)**

Omit “The Minister may, at any time and from time to time, by written notice given to a carrier”, substitute “CASA may, at any time and from time to time, by written notice given to a carrier (other than a carrier that is, or is an agent of, the Crown in any capacity)”.

### **6 Sections 41C, 41J and 41K**

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Omit "the Minister" (wherever occurring), substitute "CASA".

## **7 After section 41C**

Insert:

### **41CA Carrier that is, or is an agent of, the Crown may be required to show that adequate financial arrangements exist to discharge personal injury liability of the carrier**

- (1) CASA may, at any time and from time to time, by written notice to a carrier that is, or is an agent of, the Crown in any capacity, require the carrier, within a period set out in the notice, to produce evidence, satisfactory to CASA, that financial arrangements exist that are adequate to discharge any personal injury liability that has accrued or may accrue to the carrier.
- (2) If CASA is satisfied that such financial arrangements exist, CASA may give the carrier a written certificate stating that CASA is so satisfied.

## **8 Subsection 41E(1)**

After "carrier" (first occurring), insert "(other than a carrier that is, or is an agent of, the Crown in any capacity)".

## **9 After subsection 41E(1)**

Insert:

- (1A) If a carrier who is, or is an agent of, the Crown in any capacity has been required by CASA under section 41CA to produce evidence, satisfactory to CASA, of the existence of financial arrangements referred to in that section, the carrier must not carry passengers by air unless the carrier has produced such evidence.

## **10 Section 41L**

Repeal the section, substitute:

#### **41L Delegation**

- (1) The Director may, in writing, delegate all or any of CASA's powers under this Part to:
  - (a) a member; or
  - (b) a member of the staff of CASA.
- (2) The power of delegation referred to in paragraph (1)(b) includes a power to delegate a power to any member of the staff of CASA from time to time holding, occupying, or performing the duties of, a specified office or position, even if the office or position does not come into existence until after the delegation is given.
- (3) If:
  - (a) the Director has, under this section, delegated a power of CASA contained in a provision of this Part; and
  - (b) a delegate exercises the power;a reference in that provision to CASA is taken, in relation to the exercise of the power by the delegate, to be a reference to the delegate.

#### **11 At the end of Part IVA**

Add:

#### **41M Saving**

Any action taken or any other thing done by, or in relation to, the Minister or a delegate of the Minister before the commencement of this section is to be treated after that commencement as if it had been taken or done by or in relation to CASA.

#### **12 At the beginning of Part V**

Insert:

#### **41N Corresponding State laws may confer functions and powers on Commonwealth authorities and officers**

A law of a State may confer functions and powers on Commonwealth authorities and officers for the purposes of any of the provisions of sections 41B to 41M as those provisions apply as

a law of the State, either with or without modifications, and those Commonwealth authorities and officers may perform or exercise the functions or powers so conferred.

### **13 Modification of regulations**

- (1) Any regulations that were in force immediately before the commencement of this Schedule for the purposes of Part IVA of the *Civil Aviation (Carriers' Liability) Act 1959* as in force at that time have effect as if references in those regulations to the Minister were references to CASA.
- (2) Subitem (1) does not prevent regulations that have effect as mentioned in that subitem from being amended or repealed by further regulations made under the *Civil Aviation (Carriers' Liability) Act 1959*.

## **Schedule 2—Amendment of the Civil Aviation Act 1988**

### **1 Subsection 18(3) (definition of *permission*)**

Repeal the definition, substitute:

*permission* means a permission under this Part (other than paragraph 19(2)(c) or section 27A), but does not include an AOC.

### **2 Paragraph 28(1)(c)**

Omit “subsection 27AE(1)”, substitute “section 28A”.

### **3 Paragraph 28BA(1)(a)**

Omit “and 28BH”, substitute “, 28BH and 28BI”.

### **4 Subsection 28BA(2)**

Repeal the subsection, substitute:

(2) If a condition of an AOC referred to in paragraph (1)(a) is breached, the AOC continues, despite the breach, to authorise flights or operations to which the condition relates.

(2A) If a condition of an AOC referred to in paragraph (1)(b) or (1)(c) is breached, the AOC does not authorise any flight or operation to which the condition relates while the breach continues.

### **5 Paragraph 28BC(1)(b)**

Omit “or” (last occurring).

### **6 Paragraph 28BC(1)(c)**

Repeal the paragraph.

### **7 After subsection 28BC(1)**

Insert:

- (1A) CASA must not suspend or cancel an AOC of the kind to which paragraph (1)(a) applies or an authorisation of the kind to which paragraph (1)(b) applies except:
- (a) to ensure that the aircraft's operation, maintenance and airworthiness are of a standard that CASA considers necessary in the interests of the safety of air navigation; or
  - (b) as provided by subsection (1B).
- (1B) Subject to subsection (1C), CASA may suspend or cancel an AOC of the kind to which paragraph (1)(a) applies or an authorisation to which paragraph (1)(b) applies if the condition of the AOC or the condition relating to the authorisation, as the case may be, that section 28BI is complied with has been breached.
- (1C) To the extent that an AOC, or an authorisation contained in a mixed authority AOC, authorises carriage by air that is not covered by Part II, III or IV of the *Civil Aviation (Carriers' Liability) Act 1959*, CASA does not have power to suspend or cancel the AOC or authorisation because of a breach of the condition that section 28BI is complied with unless the holder of the AOC is:
- (a) a trading corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution); or
  - (b) a foreign corporation within the meaning of that paragraph; or
  - (c) a corporation formed in a Territory.

**8 Paragraph 28BC(2)(b)**

Omit "or" (last occurring).

**9 Paragraph 28BC(2)(c)**

Repeal the paragraph.

**10 After subsection 28BC(2)**

Insert:

- (2A) CASA must not suspend or cancel an AOC of the kind to which paragraph (2)(a) applies or an authorisation of the kind to which paragraph (2)(b) applies except:
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- (a) to ensure compliance with the provisions of this Act, the regulations, and the Civil Aviation Orders, relating to safety;  
or
  - (b) as provided by subsection (2B).
- (2B) Subject to subsection (2C), CASA may suspend or cancel an AOC of the kind to which paragraph (2)(a) applies or an authorisation to which paragraph (2)(b) applies if the condition of the AOC or the condition relating to the authorisation, as the case may be, that section 28BI is complied with has been breached.
- (2C) To the extent that an AOC, or an authorisation contained in a mixed authority AOC, authorises carriage by air that is not covered by Part II, III or IV of the *Civil Aviation (Carriers' Liability) Act 1959*, CASA does not have power to suspend or cancel the AOC or authorisation because of a breach of the condition that section 28BI is complied with unless the holder of the AOC is:
- (a) a trading corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution); or
  - (b) a foreign corporation within the meaning of that paragraph;  
or
  - (c) a corporation formed in a Territory.

**11 At the end of Subdivision E of Division 3 of Part III**

Add:

**28BI Acceptable contract of insurance or satisfactory financial arrangements**

The holder of an AOC must at all times comply with whichever of the following provisions are applicable:

- (a) subsection 41E(1) or (1A) of the *Civil Aviation (Carriers' Liability) Act 1959*; or
- (b) subsection 41E(1) or (1A) of the *Civil Aviation (Carriers' Liability) Act 1959* as that subsection has effect under a law of a State.

## **Schedule 3—Amendment of the Civil Aviation Legislation Amendment Act 1995**

### **1 Item 7 of Schedule 3**

Omit “a duty” (first occurring), substitute “duty”.



## **Schedule 4—Amendment of the Competition Policy Reform Act 1995**

### **1 Schedule 3 (amendments of the *Civil Aviation Act 1988* and heading to the amendments)**

Repeal the amendments and heading.

Note: This item repeals amendments that had no effect because the provisions that were purported to be amended had previously been repealed.

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*[Minister's second reading speech made in—  
House of Representatives on 22 October 1997  
Senate on 27 November 1997]*

(194/97)

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