



Aviation Legislation Amendment (Liability and Insurance) Act 2020

No. 148, 2020

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	2
Schedule 1—Amendments		3
Part 1—Liability limits		3
	<i>Air Accidents (Commonwealth Government Liability) Act 1963</i>	3
	<i>Civil Aviation (Carriers' Liability) Act 1959</i>	3
Part 2—Insurance exclusions		9
	<i>Civil Aviation (Carriers' Liability) Act 1959</i>	9
Part 3—Servants and agents		10
	<i>Civil Aviation (Carriers' Liability) Act 1959</i>	10



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No. 148, 2020

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

[Assented to 17 December 2020]

The Parliament of Australia enacts:

1 Short title

This Act is the Aviation Legislation Amendment (Liability and Insurance) Act 2020.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	17 June 2021

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Liability limits

Air Accidents (Commonwealth Government Liability) Act 1963

1 Paragraphs 8(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the amount applicable under subsection 31(1AA) of the *Civil Aviation (Carriers' Liability) Act 1959*, unless paragraph (b) applies; or
- (b) if, at the date of the accident, a regulation was in force under the *Civil Aviation (Carriers' Liability) Act 1959* prescribing an amount for the purposes of paragraph 31(1)(b) of that Act and that amount is higher than the amount applicable under subsection 31(1AA) of that Act—the amount so prescribed.

2 Paragraphs 14(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the amount applicable under subsection 31(1AA) of the *Civil Aviation (Carriers' Liability) Act 1959*, unless paragraph (b) applies; or
- (b) if, at the date of the accident, a regulation was in force under the *Civil Aviation (Carriers' Liability) Act 1959* prescribing an amount for the purposes of paragraph 31(1)(b) of that Act and that amount is higher than the amount applicable under subsection 31(1AA) of that Act—the amount so prescribed.

Civil Aviation (Carriers' Liability) Act 1959

3 Paragraph 31(1)(a)

Repeal the paragraph, substitute:

- (a) if none of paragraphs (b), (c) and (d) applies—the amount applicable under subsection (1AA); or

4 Paragraph 31(1)(b)

Omit “higher than \$725,000 for the purposes of this subsection but”, substitute “for the purposes of this paragraph and that amount is higher than the amount applicable under subsection (1AA) and”.

5 Paragraph 31(1)(c)

Omit “\$725,000”, substitute “the amount applicable under subsection (1AA)”.

6 Paragraph 31(1)(d)

Repeal the paragraph, substitute:

- (d) if, at the date of the accident, a regulation was in force under paragraph (b) prescribing an amount and that amount is higher than the amount applicable under subsection (1AA) but the contract of carriage under which the passenger was carried specified the limit of the carrier’s liability as an amount that exceeds the amount so prescribed—the amount so specified.

7 After subsection 31(1)

Insert:

(1AA) The amount applicable under this subsection is:

- (a) \$925,000, unless paragraph (b) applies; or
- (b) if the regulations provide for indexation in relation to that dollar amount—the indexed amount worked out in accordance with the regulations.

8 Paragraph 31(1A)(a)

Repeal the paragraph, substitute:

- (a) if none of paragraphs (b), (c) and (d) applies—the number of SDRs applicable under subsection (1B); or

9 Paragraph 31(1A)(b)

Omit “that exceeds 260,000 for the purpose of this section”, substitute “for the purposes of this paragraph and that number exceeds the number of SDRs applicable under subsection (1B)”.

10 Paragraph 31(1A)(c)

Omit “260,000”, substitute “the number of SDRs applicable under subsection (1B)”.

11 Paragraph 31(1A)(d)

Omit “prescribing a number of SDRs exceeding 260,000 was in force under paragraph (b)”, substitute “was in force under paragraph (b) prescribing a number of SDRs and that number exceeds the number of SDRs applicable under subsection (1B)”.

12 After subsection 31(1A)

Insert:

(1B) The number of SDRs applicable under this subsection is:

- (a) 480,000, unless paragraph (b) applies; or
- (b) if the regulations provide for indexation in relation to that number—the indexed number worked out in accordance with the regulations.

13 Paragraph 31(2)(a)

Repeal the paragraph, substitute:

- (a) if neither paragraph (b) nor (c) applies—the amount applicable under subsection (2A); or

14 Paragraph 31(2)(b)

Omit “higher than \$900 for the purposes of this subsection but”, substitute “for the purposes of this paragraph and that amount is higher than the amount applicable under subsection (2A) and”.

15 Subparagraph 31(2)(c)(i)

Omit “as mentioned in that paragraph—\$900”, substitute “under that paragraph—the amount applicable under subsection (2A)”.

16 Subparagraph 31(2)(c)(ii)

Omit “a regulation prescribing an amount was in force as mentioned in that paragraph”, substitute “a regulation was in force under that paragraph prescribing an amount and that amount is higher than the amount applicable under subsection (2A)”.

17 After subsection 31(2)

Insert:

(2A) The amount applicable under this subsection is:

- (a) \$3,000, unless paragraph (b) applies; or
- (b) if the regulations provide for indexation in relation to that dollar amount—the indexed amount worked out in accordance with the regulations.

18 Paragraph 31(3)(a)

Repeal the paragraph, substitute:

- (a) if neither paragraph (b) nor (c) applies—the amount applicable under subsection (4); or

19 Paragraph 31(3)(b)

Omit “higher than \$90 for the purposes of this subsection but”, substitute “for the purposes of this paragraph and that amount is higher than the amount applicable under subsection (4) and”.

20 Subparagraph 31(3)(c)(i)

Omit “as mentioned in that paragraph—\$90”, substitute “under that paragraph—the amount applicable under subsection (4)”.

21 Subparagraph 31(3)(c)(ii)

Omit “a regulation prescribing an amount was in force as mentioned in that paragraph”, substitute “a regulation was in force under that paragraph prescribing an amount and that amount is higher than the amount applicable under subsection (4)”.

22 At the end of section 31

Add:

- (4) The amount applicable under this subsection is:
 - (a) \$300, unless paragraph (b) applies; or
 - (b) if the regulations provide for indexation in relation to that dollar amount—the indexed amount worked out in accordance with the regulations.

23 Paragraphs 41C(3)(aa), (a) and (b)

Repeal the paragraphs, substitute:

- (a) in respect of carriage by a carrier to which Part IA applies:
 - (i) the number of SDRs applicable under subsection (3A), unless subparagraph (ii) applies; or
 - (ii) if the regulations prescribe a number of SDRs for the purposes of this subparagraph and that number exceeds the number of SDRs applicable under subsection (3A)—the number of SDRs so prescribed; or
- (b) in respect of carriage by a domestic carrier to which Part IV applies:
 - (i) the amount applicable under subsection (3B), unless subparagraph (ii) applies; or
 - (ii) if the regulations prescribe an amount for the purposes of this subparagraph and that amount is higher than the amount applicable under subsection (3B)—the amount so prescribed; or
- (c) in respect of any other carriage:
 - (i) the number of SDRs applicable under subsection (3A), unless subparagraph (ii) applies; or
 - (ii) if the regulations prescribe a number of SDRs for the purposes of this subparagraph and that number exceeds the number of SDRs applicable under subsection (3A)—the number of SDRs so prescribed.

24 After subsection 41C(3)

Insert:

- (3A) The number of SDRs applicable under this subsection is:
 - (a) 480,000, unless paragraph (b) applies; or
 - (b) if the regulations provide for indexation in relation to that number—the indexed number worked out in accordance with the regulations.
- (3B) The amount applicable under this subsection is:
 - (a) \$925,000, unless paragraph (b) applies; or
 - (b) if the regulations provide for indexation in relation to that dollar amount—the indexed amount worked out in accordance with the regulations.

25 Application provisions

- (1) The amendments of the *Air Accidents (Commonwealth Government Liability) Act 1963* made by this Part apply in relation to an accident that takes place on or after the commencement of this item.
- (2) The amendments made by items 3 to 12 apply in relation to an accident that takes place on or after the commencement of this item.
- (3) The amendments made by items 13 to 22 apply in relation to the destruction or loss of, or injury to, baggage, where the occurrence that caused the destruction, loss, or injury takes place on or after the commencement of this item.
- (4) The amendments of section 41C of the *Civil Aviation (Carriers' Liability) Act 1959* made by this Part apply in relation to a passenger-carrying operation engaged in, or proposed to be engaged in, on or after the commencement of this item.

Part 2—Insurance exclusions

Civil Aviation (Carriers' Liability) Act 1959

26 Section 41D

Before “Except as prescribed by the regulations”, insert “(1)”.

27 At the end of section 41D

Add:

Regulations may provide for Secretary to determine exclusions

- (2) Without limiting the regulations that may be made for the purposes of subsection (1), the regulations may confer a power on the Secretary of the Department to make a determination, by legislative instrument, in relation to exclusions of liability.
- (3) If the regulations make provision as mentioned in subsection (2), the regulations may also provide for the Secretary of the Department to delegate that power to a SES employee, or an acting SES employee, in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

Part 3—Servants and agents

Civil Aviation (Carriers' Liability) Act 1959

28 Subsection 33(1)

Omit “limits of liability, if any, which the carrier would be entitled to invoke under section 31”, substitute “conditions of liability, and the limits of liability, that the carrier would be entitled to invoke under this Part”.

29 Subsection 33(2)

Omit “the last preceding subsection”, substitute “subsection (1)”.

30 Subsection 33(3)

Omit “the next succeeding section”, substitute “section 34”.

31 Application provision

The amendments of section 33 of the *Civil Aviation (Carriers' Liability) Act 1959* made by this Part apply in relation to actions brought on or after the commencement of this item.

[Minister's second reading speech made in—
House of Representatives on 13 May 2020
Senate on 10 December 2020]

(26/20)
