2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AVIATION LEGISLATION AMENDMENT (INTERNATIONAL AIRLINE LICENCES AND CARRIERS' LIABILITY INSURANCE) BILL 2008

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Infrastructure, Transport, Regional Development and Local Government
the Honourable Anthony Albanese MP)

AVIATION LEGISLATION AMENDMENT (INTERNATIONAL AIRLINE LICENCES AND CARRIERS' LIABILITY INSURANCE) BILL 2008

OUTLINE

The Bill amends the *Air Navigation Act 1920* (Air Navigation Act), the *Civil Aviation Act 1988* (Civil Aviation Act) and the *Civil Aviation (Carriers' Liability) Act 1959* (Carriers' Liability Act) to update and streamline administrative processes contained in two regulatory programs associated with the aviation industry. These regulatory programs are the system of International Airline Licences (IALs), and the system of mandatory insurance for passenger carrying airlines overseen by the Civil Aviation Safety Authority (CASA).

International airline licences (IALs)
The system of international airline licences (IALs) is established under the Air Navigation Act and its accompanying regulations, the *Air Navigation Regulations 1947* (the Air Navigation Regulations). IALs ensure that scheduled international air services are operated in accordance with bilateral air services agreements and arrangements between Australia and our international aviation partners. They also act as a final checking mechanism to ensure that various safety and security approvals are in place prior to the commencement of operations.

The Bill provides solutions to several technical problems associated with the current administrative framework for IALs. For example, once an IAL is issued, it remains in force indefinitely, unless an airline contravenes a provision in the Air Navigation Act, the Air Navigation Regulations or conditions in the licence itself. Under the existing IAL system, many licences remain in force even though the airlines they were issued to have since ceased to exist or operate services to Australia. Also, because they remain in force indefinitely and there are limited powers to vary a licence once it is issued, airlines with an IAL are not affected by the subsequent introduction of new requirements for IALs. This has resulted in inconsistencies between older and newer licences.

The framework is also unnecessarily complicated by the regulatory structure of the IAL scheme. Currently, some aspects of the regulatory structure are contained in the Air Navigation Act, and other aspects are contained in the Air Navigation Regulations. This complicates the ongoing management and auditing of the IAL process.

The Bill therefore moves the entire regulatory framework for IALs into the Air Navigation Regulations. The Bill gives the Air Navigation Regulations the capacity to deal with the granting, variation, suspension and cancellation of IALs by the Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government (the Secretary). Regulations will be drafted to update and rectify the current administrative deficiencies in the IAL system.

Allowing these matters to be dealt with in the Air Navigation Regulations will also allow the Government to further refine the IAL system in the future without the need to again change the Act. As regulations are disallowable instruments, Parliament will maintain oversight.

The Bill provides for all existing IALs to be cancelled after a transition period. Airlines will be required to apply for new IALs, which will be issued with standardised, updated conditions. Airlines will be required to provide information to verify their compliance with

Australian safety, security, insurance and other regulatory approvals in order to be issued with a new licence. Airlines have been consulted and it is not anticipated that any international airline currently operating services to and from Australia would have difficulty complying with these requirements.

It is also intended that the Air Navigation Regulations establish an enhanced compliance framework to improve the Government's ability to review and audit compliance with IAL conditions.

The Bill also amends the Air Navigation Act so that any decision to refuse an IAL application, to grant an IAL subject to a condition, to suspend or cancel an IAL, or to vary or refuse to vary an IAL would be subject to merits review by the Administrative Appeals Tribunal.

In addition, the Bill amends the Air Navigation Act to clarify the relationship between IALs - which are issued to airlines conducting regular, scheduled flights - and charter approvals, which are issued to airlines conducting flights on an 'ad hoc' basis. Currently, it is conceivable that an airline could be found to be in breach of the provision in the Air Navigation Act which stipulates that an international airline shall not operate a scheduled international air service over, into, or out of Australian territory except in accordance with an IAL, even though that airline was operating within the terms of a valid charter approval. The proposed amendment will provide legal certainty to industry.

Further, the Bill will grant the Secretary the power to make a determination exempting specific categories of scheduled international air services from the requirement to hold an IAL. The Secretary already has this power in relation to charter approvals. This will allow the Secretary to exempt airlines from the requirement to have an IAL in order to fly over Australian territory without landing, or to land in Australian territory without taking on, or setting down, passengers or cargo. Currently, the Government does not require an airline to have an IAL for either of these purposes. Determinations will have the ability to override the requirement in Air Navigation Act that an IAL must not be granted unless the service is authorised by an air services agreement, multilateral treaty or similar arrangement. This provision will also provide flexibility for the Government to respond promptly to any broader policy decisions relating to the regulatory framework of the aviation industry. Any determination made by the Secretary would be a legislative instrument, so Parliament will maintain oversight.

The Bill also inserts provisions to clarify the application of IALs to several common commercial aviation arrangements. One example is code share operations, where an international airline markets and sells tickets on a flight operated by another airline and each airline markets the flight as its own. It is proposed that both airlines are required to have an IAL because both airlines are exercising economic rights granted under Australia's air services agreements. For 'wet leased' operations, where an international airline is wholly responsible for marketing and selling tickets for a scheduled international air service, but it hires the aircraft and crew from another airline to operate the flight, only the marketing airline will be required to have an IAL. This is because only the airline marketing the service is exercising economic rights granted under Australia's air services agreements. The operator of the aircraft that is contracted to conduct the service will not be required to have an IAL, although it will remain subject to Australian safety, security and insurance requirements. The

proposed new clauses do not change current practice, and their inclusion is intended to provide greater certainty to industry.

As a transitional measure, the old law governing IALs will continue to apply for a six month period in relation to licences in force immediately before the Bill commences. These are known as pre-commencement licences. The Minister will be able to extend the transition period for an additional two months if need be. At the end of the transition period, all pre-commencement IALs will be cancelled, if they have not already been cancelled under the old law or if they have not been replaced by a new licence.

The Bill repeals a number of definitions that were inserted into the Air Navigation Act in 1995 for the purposes of Part 3 of the Act dealing with the regulation of aviation security. Part 3 was subsequently removed from the Air Navigation Act and placed in the *Aviation Transport Security Act 2004*. The definitions to be repealed either no longer apply to the Air Navigation Act or are of limited value in interpreting remaining provisions. After repealing these definitions, a number of remaining terms including 'air service', 'aircraft operator', 'foreign airline' and 'international air service' will revert to their pre-1995 meaning. In some cases, this will be their commonly understood meaning. The Bill also repeals sections 3AB and 3AC. These sections deal with definitional issues that are no longer relevant to the Act. Lastly, the Bill repeals a number of definitions that are referred to in the Regulations. It is anticipated that definitions of these terms will be inserted into the Regulations, where appropriate.

The Bill makes consequential amendments to the *Adelaide Airport Curfew Act 2000*, the *Aircraft Noise Levy Collection Act 1995* and the Civil Aviation Act to ensure consistency with the proposed amendments to the Air Navigation Act.

Airline carriers' liability insurance
The Bill also refines the regulatory processes associated with Australia's system of compulsory non-voidable insurance for passenger-carrying air operators. It improves the ability of CASA to proactively enforce insurance requirements for air carriers and it will also streamline administrative processes.

Under the Carriers' Liability Act, carriers are required to maintain minimum levels of insurance to protect passengers in the event of an accident. The scheme is supplemented by provisions in the Civil Aviation Act, which allow CASA to enforce the requirements as part of their management of safety issues via the Air Operator's Certificate (AOC) process.

Under the new system, the Carriers' Liability Act will not require air carriers to obtain a certificate of compliance from CASA before a flight is operated. Instead, operators will be obliged to provide CASA with a declaration indicating that they have obtained an appropriate contract of insurance. Operators will be obliged to make declarations within a timeframe to be specified in the *Civil Aviation (Carriers' Liability) Regulations 1991* (Carriers' Liability Regulations) or the *Civil Aviation Regulations 1988* (Civil Aviation Regulations), anticipated to be around two weeks. Failure to do so would incur a small administrative penalty. However, failure to make a declaration would not affect an operator's authority to operate passenger services. Operators will continue to be authorised to operate services as long as they have an appropriate contract of insurance.

The Bill will also amend the Civil Aviation Act so that the authority to carry passengers under an AOC will only be valid while operators hold an appropriate contract of insurance. This will also apply to short term approvals for non-scheduled international flights. If an operator allows its insurance to lapse, authorisation to carry passengers will automatically lapse. The authorisation will automatically reactivate as soon as an operator secures appropriate insurance. The effect of this amendment would be that any operator that carries passengers without an appropriate contract of insurance would be subject to a range of administrative actions and criminal penalties under the Civil Aviation Act, in addition to criminal penalties which can currently be imposed under the Carriers' Liability Act.

The Bill will improve carriers' compliance with the insurance requirements. This is achieved by providing CASA with the necessary powers, under the Civil Aviation Act, the Civil Aviation Regulations, the Carriers' Liability Act and the Carriers' Liability Regulations to regularly audit operators. This will allow CASA to ensure that operators have appropriate insurance at all times. If CASA identifies an operator that has carried passengers without appropriate insurance, the carrier will be subject to a range of administrative actions and criminal penalties under the Civil Aviation Act, in addition to criminal penalties that can currently be imposed under the Carriers' Liability Act.

The Bill amends the provisions in the Civil Aviation Act relating to the short term approvals for non-scheduled international flights that are granted by CASA. In the case of these special approvals, the Bill proposes that carriers which do not have a commercial presence in Australia will be required to prove that they have an appropriate contract of insurance before they are granted an approval to operate the service. In such cases, the carrier will not be able to make a declaration after conducting the service, unlike AOC holders. This is due to the increased difficulty of auditing a carrier that does not have commercial presence in Australia.

Due to constitutional limits, the proposed amendments to make an Air Operator's Certificate automatically lapse if an operator allows their insurance to lapse may not apply in relation to intra-State services that are conducted by operators that are not constitutional corporations. There are only a very limited number of cases where passengers might be carried on such operations. Also, such operations will continue to be subject to mandatory insurance requirements and criminal penalties that are currently imposed under the Carriers' Liability Act and complementary State Government legislation.

Similarly, the proposed amendments to make an Air Operator's Certificate automatically lapse if an operator allows their insurance to lapse will not directly apply to a New Zealand operator operating in Australia under an AOC with ANZA privileges. However, these operations will continue to be subject to mandatory insurance requirements and criminal penalties which can currently be imposed under the Carriers' Liability Act. Further, there are existing processes that would allow the Australian and New Zealand Governments to address and resolve any issues arising in this regard on a consultative basis.

Financial impact statement

The financial impact of the Bill on the Commonwealth is expected to be minimal. Any additional costs will be met from existing Departmental resources. The proposed amendments relating to carriers' liability insurance are expected to reduce administrative costs for both airlines and CASA. Earlier proposals relating to the IAL system anticipated a financial impact arising from administrative implications (see Regulation Impact Statement

below); however the proposed administrative process has now been revised and the financial impact is expected to be minimal.

Regulation impact statement

1. ISSUE IDENTIFICATION

International aviation is based on a complex system of bilateral air services agreements between nations. The agreements cover economic, technical and security related arrangements. The Department of Transport and Regional Services (the Department) negotiates Australia's bilateral agreements on behalf of the Australian Government. Each agreement provides that airlines designated by the Government of the other party are entitled to operate certain services to and from Australia, and vice versa. Each agreement also defines the conditions under which the airlines of each party are entitled do business in the territory of the other party.

The bilateral agreements are supported by legislation, the aim of which, among other things, is to ensure that the provisions of the agreements are met by the airlines flying into and out of Australia. For this purpose, International Airline Licenses (IALs) are issued pursuant to s12 of the *Air Navigation Act 1920* and the *Air Navigation Regulations*.

As well as supporting the bilateral system of air services agreements, the IALs serve as a check list for the other regulatory requirements that must be met before an airline can commence international operations. Consequently, airlines must demonstrate that they have obtained the necessary approvals issued by other agencies.
relating to issues such as safety, security and technical arrangements before a IAL can be issued. Airlines applying for an IAL must show:

- Details relating to the company profile, such as proof of the nationality of the interests holding substantial ownership and effective control of the company;
- Proof of an allocation of capacity from the International Air Services Commission (IASC) (for Australian Applicants);
- Evidence of an Air Operators Certificate (AOC) issued by CASA;
- Evidence that appropriate insurance is in place, in the form of a Certificate of Compliance issued by CASA;
- Evidence of a transport security program that has been approved under the Aviation Transport Security Act 2004; and
- Evidence of approval to operate aircraft that do not comply with the *Navigation (Aircraft Noise) Regulations 1984* (if applicable).

Guidelines relating to the requirements for the issue of IALs are currently available on the DOTARS website at: http://www.dotars.gov.au/avnapt/ipb/ias_guidance.aspx

Airlines are required to hold an IAL before they can commence international regular passenger transport air services to and from Australia.

While there is a power to issue, cancel and suspend IALs, under current regulatory arrangements there is no power to review and audit compliance with the licence conditions. Consequently, it is not possible to ensure compliance with license conditions. In addition, as

the power to cancel IALs is limited there are IALs on issue to airlines that are no longer operating to Australia, or no longer in existence.

Also, because the IALs operate indefinitely, existing IALs are not affected by changes in the law or administrative practice relating to IALs in general. For example, there have been changes relating to the requirements an applicant must meet before an IAL is issued, and changes to the conditions attached to IALs. This has resulted in inconsistencies between older and newer licences. At present, there is only a limited power to vary licence conditions once an IAL has been issued.

2. DESIRED OBJECTIVES

The objectives of the proposal are to ensure that:

- Licensees comply with current IAL conditions;
- IAL conditions can be updated where appropriate;
- Information required from applicants for IALs is checked and updated regularly; and
- Enforcement action can be taken where necessary based on a transparent decision making process.

3. IDENTIFICATION OF OPTIONS

Option 1: Status Quo.

Under this option, the current system of perpetual unregulated licensing would be "self operating". Once an IAL is granted, the government would continue to be dependent on the good will of international airlines to inform it of changes to its operations.

Option 2: Replace the Perpetual Unregulated Licensing System with one providing for regular renewal based on a Return of Particulars by the airlines

Under this option, all existing IALs would be cancelled. New IALs would then be issued and airlines would be required to renew them on a regular basis. This could be achieved by despatching a Return of Particulars (a Return) for completion and return. This would allow for the monitoring of the activities of the airlines in the context of the bilateral agreements in a structured manner.

Following examination of the application for renewal, the licence would be reissued for the relevant period, subject to any necessary conditions.

The Minister's power (provided for in s.13 of the Air Navigation Act) to vary, suspend or cancel IALs in certain circumstances, such as breach of IAL conditions, would also be retained. Guidelines would be developed to assist in the assessment of the applications and to ensure that each application is dealt with in an administratively sound manner.

Option 3: Maintain Perpetual Licensing System, but obtain certification on an annual basis from airlines that the information provided is still current.

This option retains the current system of issuing IALs for an indefinite period, but gives the Secretary a broad power to vary the conditions of an IAL in line with those usually imposed on new IALs.

IAL holders would be required to submit a 'Return of Particulars' at intervals determined by the Secretary, but this would not be more than annually. The Return would contain such information, including copies of relevant documents, as the Secretary reasonably requires. This would allow the Secretary to determine whether the licensee is complying with its existing IAL conditions. In addition, the Secretary could obtain from existing IAL holders information normally required from applicants for new IALs, and could ensure that this information is updated regularly.

All existing IALs would be cancelled and re-issued as appropriate ensuring that redundant IALs are permanently cancelled.

In addition, the Secretary would be granted power to vary the conditions of an IAL to ensure that it is consistent with current practice, in accordance with relevant international agreements. The Minister would be given the discretion to cancel the licence in the event of a failure to complete the Return.

As with Option 2, the Minister's power (provided for in s.13 of the Air Navigation Act) to vary, suspend or cancel IALs in certain circumstances, such as breach of IAL conditions, would also be retained.

Similar to Option 2, this proposal ensures that the Government has a means of measuring the compliance by the airlines with regulatory requirements for ownership, control, corporate presence and insurance.

4. IMPACT ANALYSIS

The problem affects the fundamental integrity of the system for international aviation regulation. IALs are regulatory devices which ensure compliance with bilateral agreements, and ensure that appropriate technical and security standards are in place. Flaws in the process relating to IALs can therefore potentially affect aviation stakeholders.

Consumers
One of the policy reasons which underpins the system of IALs is the need to protect consumers, by ensuring that appropriate arrangements relating to issues such as safety and security are in place.

The IAL process is an important safeguard and verification mechanism. If these safety and security requirements were not met, the impact on consumers could obviously be extremely negative.

The cost for consumers presented by Options 2 and 3 are minimal and almost equal. Due to a marginal increase in the administrative requirements for the holders of an IAL, there is a chance that this cost may be passed on to consumers, however the cost (further detailed below) is relatively minor. This cost is almost the same for all of the options, as the cost of

submitting a return if particulars is almost the same, whether the IAL holder is compelled to submit the return (Option 2), or submits the return as part of another process (Option 3).

Business
International airlines, (IAL holders), are the main businesses affected by the problem and possible solutions. As of 30 October 2005, there were 66 air operators servicing Australia requiring an IAL.

Significantly, there have been 121 IALs issued (as of 30 October 2005) since the system of perpetual IALs was introduced in 1994. This disparity, between the number of IALs issued and the number of airlines operating, is because IALs were issued to airlines who now no longer operate to Australia, or who no longer exist. Some of these IALs have expired (for example, some IALs contain a condition that the airline must maintain services for the IAL to remain valid).

The administrative burden for business arising from each of the options is minimal. IAL's are primarily a verification mechanism, providing a "checklist" of requirements for Airlines. Consequently, Airlines will have already met most of the requirements for an IAL as part of other government processes.

One airline stakeholder has noted that it is common for overseas authorities to require information of this nature to be submitted to government regularly. Because airlines are therefore familiar with the process, the initial implementation costs of either Option 2 or Option 3 will be minimal.

The first year cost to business for **Option 2** is estimated at $8566.80. These cost estimates are for the entire airline industry, not for each airline operator. This figure is based on:

- 66 Airlines operating;
- An estimated 3 hours for a clerical staffer to undertake the necessary training to become familiar with the new requirements;
- As estimated 2 hours for a clerical staffer to complete the license renewal process; and
- A labour cost of $25.96 per hour. This cost is based on a labour cost (per employee) of $51,471 per annum (inclusive of earnings, payroll tax, superannuation, workers compensation, and fringe benefits tax). This figure is based on a study of labour costs in the transport and storage industry, conducted by the Australian Bureau of Statistics for the 2002-2003 year. An hourly rate is based on a 38 hour week, as per the Clerical and Administrative Employees (State) Consolidated Award (NSW).

It is recognised that this estimate does not include additional overheads, such as management and legal costs, but these expenses are not expected to add significantly to what remains a minimal implementation cost.

The first year cost to business for **Option 3** is estimated at $5140.08. This amount is lower than Option 2 because it is assumed that the simpler process associated with Option 3 would make compliance easier. This figure is based on:

- 66 Airlines currently operating;
- An estimated 2 hours for a clerical staffer to undertake the necessary training to become familiar with the new requirements;
- As estimated 1 hour for a clerical staffer to complete the Return of Particulars; and

- A labour cost of $25.96 per hour. This cost is based on a labour cost (per employee) of $51,471 per annum (inclusive of earnings, payroll tax, superannuation, workers compensation, and fringe benefits tax). This figure is based on a study of labour costs in the transport and storage industry, conducted by the Australian Bureau of Statistics for the 2002-2003 year. An hourly rate is based on a 38 hour week, as per the Clerical and Administrative Employees (State) Consolidated Award (NSW).

Like Option 2, it is recognised that this estimate does not include additional overheads such as management and legal costs, but these expenses are not expected to add significantly to what remains a minimal implementation cost.

Under all of the options, fees would not be charged for the issuing of IALs. This would assist in keeping ongoing costs to the business sector to a minimum.

Government
Option 1 would have no additional impact on government.

It is anticipated that administrative oversight of Options 2 and 3 would require approximately 0.5 FTE APS4 ($28,158 per year full cost).

However, Option 3 offers more simplicity from an administrative viewpoint.

This is because Option 2 requires that each IAL be assessed and (re)issued each year. As stated above, this process is expected to require 0.5 FTE APS4, however the ultimate decision to (re)issue an IAL would need to reside with a senior officer within the Department. Currently, the power to issue an IAL resides with the Secretary, and is delegated to the Deputy Secretary, and SES 2 and SES 1 officers in the Aviation and Airports Business Division.

However, Option 3 only requires a determination that the necessary requirements for an IAL remain in place. There is consequently less paperwork than what is necessary for Option 2. The assessment can be completed within the Aviation Markets Branch of the Department by an EL2 officer. It therefore represents are more efficient administrative solution.

It is not proposed to change the current delegation arrangements for the issue of new IALs. The Secretary will have power to delegate responsibility down to the SES Band 1 level, however EL2 officers will be able to assess Returns provided by existing license holders.

The resources required for the initial implementation of Option 3 will be absorbed by existing Departmental capacities.

5. CONSULTATION

The Department released a discussion paper in September 2005. The paper canvassed a number of legislative proposals relating to the aviation industry, including the current problem in relation to IALs. The paper proposed a solution consistent with Option 3.

The discussion paper was drafted in consultation with the Civil Aviation Safety Authority and the Australian Government Solicitor. It was intended to enable customers to comment on the proposed amendments and to point out any other technical anomalies in the legislation.

The discussion paper has been posted on the Department's website and was sent to 31 government, legal and industry stakeholders (a full list of recipients of the consultation paper is attached at appendix A). Eight responses to the paper were received. Responses were received from government stakeholders, industry groups, as well as a holder of an IAL. None of the responses raised any objections to the proposal. Two of the responses specifically noted their support for the proposal.

The paper proposed that the Minister be granted the discretion to cancel an IAL after "repeated" failures to provide a return of particulars. One response suggested that it may be more appropriate to allow the Minister this discretion after a single failure, if the circumstances warranted such action. The Department has given this matter careful consideration, noting that the Act in its current form does not contemplate the review of decisions relating to the issue and cancellation of IALS. In light of these considerations, the Department agrees that a single failure to provide a return of particulars may, in some circumstances, warrant IAL cancellation. However, it will also be necessary to amend the Act to ensure adequate external review of this decision making process, consistent with modern administrative practice.

6. CONCLUSION AND RECOMMENDED OPTION

So far, the current system of IAL regulation has not resulted in a serious breach of the integrity of the bilateral structure. Such a breach may never happen. By retaining the status quo (Option 1) the time, effort and expense of making appropriate regulatory changes and setting up an efficient administrative system would be avoided.

However, this would leave the international airlines, as private entities with particular competitive concerns, in a situation where they would need to make an assessment on public policy/international law issues. It is arguable that this is neither their role nor their responsibility. In any event, no airline has voluntarily provided information to update their records since their IAL was issued. As a result, there are IALs currently issued to entities that no longer operate into or out of Australia.

The bilateral system remains the way in which international aviation is regulated, and the activities of international airlines in Australian sovereign territory should be reviewed and monitored in a manner that ensures that the integrity of the system is not placed at risk. It is therefore appropriate to focus consideration on Options 2 and 3.

Option 2 provides for the establishment of an orderly and logical system. The new regulatory regime would reflect the post-privatisation international airline industry, provide a more flexible licensing system, and ensure that the government is regularly provided with information in a structured and predictable manner.

Option 3 presents the clearest, most effective and efficient means of achieving the desired objective. It presents the smallest administrative burden and regulatory costs, and will provide certainty and appropriate legal sanctions in the event of non compliance. It is therefore the preferred option.

7. IMPLEMENTATION AND REVIEW

All existing IALs will be cancelled with new IALs to become immediately operative at the time the new system comes into effect.

The first Return of Particulars will be issued 3 months after commencement of the new system when all airlines will be reviewed for compliance purposes. This will ensure that all unused IALs are permanently cancelled, and will enable airlines to update their records. In following years compliance will be assessed strictly and enforcement action taken if required.

The cancellation and reissue of all IALs with consistent terms and conditions is the simplest implementation process. It will ensure that IALs currently issued to airlines no longer operating to and from Australia can be cancelled without need for further investigation.

Appendix A

Consultation - Stakeholder Groups

Air Freight Council of Queensland
AON Consulting P/L
Austcover
Australian Federation of International Freight Forwarders
Australian Logistics Council
Blake Dawson Waldron Lawyers
Board of Airline Representatives of Australia
Department of Infrastructure, Energy & Resources (Tasmanian)
Department of Innovation, Industry and Regional Development (Victoria)
Department of Planning and Infrastructure (Northern Territory)
Department of Planning and Infrastructure (Western Australian)
Department of State Development and Innovation (Queensland)
Department of Transport and Urban Planning (South Australian)
Ebsworth and Ebsworth Lawyers
Freight Export Council of NSW Inc
Jardine Lloyd Thompson P/L
Kenney Aikin Aircraft Insurance Brokers P/L
Ministry of Transport (New South Wales)
Norton White Lawyers
OAMPS Insurance Brokers
Overnight Airfreight Operators Association
Phillips Fox Lawyers
QANTAS Airways P/L
QBE Aviation P/L
QBE Insurance
Regional Airline Association of Australia
South Australian Freight Council Inc
Vero Aviation
Victorian Airfreight Council
Virgin Blue Airlines P/L
Willis Australia P/L

AVIATION LEGISLATION AMENDMENT (INTERNATIONAL AIRLINE LICENCES AND CARRIERS' LIABILITY INSURANCE) BILL 2008

NOTES ON CLAUSES

Clause 1: Short Title

1. This clause is a formal provision specifying the short title of the Bill.

Clause 2: Commencement

2. Clause 2 sets out the commencement dates of the Bill.

2.1 Sections 1 to 3 of the Bill will commence on the day on which the Bill receives the Royal Assent.

2.2 Schedule 1 and Schedule 2, Part 1 to the Bill will commence on a day to be fixed by Proclamation. If Schedule 1 and Schedule 2, Part 1 has not commenced by Proclamation within the 6 month period beginning on the day on which the Bill received the Royal Assent, they will commence automatically on the first day after the end of that 6 month period.

2.3 The commencement of Schedule 2, items 51, 52 and 53 will be the later of: the commencement of Schedule 2, Part 1, or the commencement of Schedule 1 to the *Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008*. However, if the commencement of Schedule 1 to the *Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008* does not occur, Schedule 2, items 51, 53 and 53 will not commence at all.

2.4 Schedule 2, item 54 will commence immediately before the commencement of Schedule 1 to the *Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008.* However, if the commencement of Schedule 1 to the *Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008* does not occur, Schedule 2, item 54 will not commence at all.

Clause 3: Schedule(s)

3. This clause provides that the *Air Navigation Act 1920*; the *Adelaide Airport Curfew Act 2000*, the *Aircraft Noise Levy Collection Act 1995*, the *Civil Aviation Act 1988*, the *Civil Aviation (Carriers' Liability) Act 1959* and the *Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008* are amended as set out in the applicable items in the Schedules to the Bill.

- Schedule 1 implements changes to the system of international airline licences; and
- Schedule 2 implements changes to the system of mandatory carriers' liability.

Schedule 1 – International Airline Licences

Part 1 - Main amendments – *Air Navigation Act 1920*

***Item 1* – Subsection 3(1) (definition of *aircraft operator* or *operator*)**

1. Item 1 repeals a definition that was inserted in 1995 to deal with aviation security matters. These matters are now dealt with under the *Aviation Transport Security Act 2004*. As a result of this amendment, the terms 'aircraft operator' or 'operator' will have their ordinary meaning.

***Item 2* – Subsection 3(1) (definition of *airport*)**

2. Item 2 repeals a definition that is no longer required in the Act.

***Item 3* – Subsection 3(1) (definition of *air service*)**

3. Item 3 repeals a definition that was inserted in 1995 to deal with aviation security matters. These matters are now dealt with under the *Aviation Transport Security Act 2004*. As a result of this amendment, and the repeal of the definition of 'international air service' in item 6, references to 'scheduled international air service' will have their commonly understood meaning throughout the Act, not just in sections 11 and 12. The term 'air service' will also have its ordinary meaning in the definition of 'foreign airline'.

***Item 4* – Subsection 3(1) (definition of *baggage*)**

4. Item 4 repeals a definition that is no longer required in the Act.

***Item 5* – Subsection 3(1) (definition of *charter operation*)**

5. Item 5 is a consequential amendment. The definition of 'charter operation' will not be used in the Act once the definition of 'air service' is repealed by item 3.

***Item 6* – Subsection 3(1) (definition of *international air service*)**

6. Item 6 repeals a definition that was inserted in 1995 to deal with aviation security matters. These matters are now dealt with under the *Aviation Transport Security Act 2004*. As a result of this amendment, and the repeal of the definition of 'air service' in item 3, references to 'scheduled international air service' will have their ordinary meaning throughout the Act, not just in sections 11 and 12. The term 'international air service' will also have its ordinary meaning in the definition of 'international airline'.

***Item 7* – Subsection 3(1) (definition of *non-scheduled flight*)**

7. Item 7 replaces the word 'issued' with the word 'granted' to ensure consistency in the Act. Currently, the Act refers to international airline licences being 'issued' in some places and 'granted' in other places.

Item 8* – Subsection 3(1) (definition of *regular public transport operation)

8. Item 8 is a consequential amendment to repeal the definition of 'regular public transport operation'. The definition will not be required in the Act once the definition of 'air service' is repealed by item 3.

***Item 9* – Subsection 3(1) (definition of *thing*)**

9. Item 9 repeals a definition that was inserted in 1995 to deal with aviation security matters. These matters are now dealt with under the *Aviation Transport Security Act 2004*.

***Item 10* – Subsection 3(1) (definition of *threaten*)**

10. Item 10 repeals a definition that is no longer required in the Act.

***Item 11* – Subsection 3AB and 3AC (repeal the subsections)**

11. Item 11 repeals two subsections that define when aircraft flights start and end. They were inserted in 1995 to deal with aviation security matters. These matters are now dealt with under the *Aviation Transport Security Act 2004*.

***Item 12* – Subsection 11(1) (omit "(1)")**

12. Item 12 is a consequential amendment that reflects the repeal of subsection 11(2) in item 14, making the "(1)" redundant.

***Item 13* – Subsection 11(1)**

13. Item 13 replaces the word 'conducted' with the word 'operated' to ensure consistency in the Act. Currently, the Act refers to scheduled international air services being 'conducted' in some places and 'operated' in other places.

***Item 14* – Subsection 11(2) (repeal the subsection)**

14. Item 14 repeals subsection 11(2), which excludes from application with respect to section 11 the definition of 'air service' and 'international air service'. As these definitions are being repealed by items 3 and 6, the exclusion is no longer required. These terms will have their ordinary meaning throughout the Act, not just in sections 11 and 12.

***Item 15* – Subsection 12(1)**

15. Item 15 is a consequential amendment to reflect the repeal of subsections (1B), (2) and (3) in item 19 and the substitution of new subsections (2) and (3) by that same item.

16. Item 15 also inserts a new heading to section 12 to clarify the effect of the section, and replaces the word 'shall' with the word 'must' to modernise the language in the Act.

***Item 16* – Subsection 12(1)**

17. Item 16 replaces the word 'issued' with the word 'granted' to ensure consistency in the Act. Currently, the Act refers to international airline licences being 'issued' in some places and 'granted' in other places

***Item 17* – Subsection 12(1A)**

18. Item 17 amends the Act so that the offence for operating a scheduled international air service without an international airline licence applies to the 'international airline', not the 'operator of the aircraft'. The purpose of this amendment is to ensure consistency in the Act. Section 12 requires an international airline to have an international airline licence to operate scheduled international air services to and from Australia. It is therefore appropriate that an international airline should be subject to the offence for breaching this condition.

19. The amendment also clarifies the operation of section 12 in the context of 'wet leasing' arrangements. The requirements for 'wet leasing' operations are set out at new paragraph 12(4)(b) inserted by item 19.

20. Section 17 of the Act already creates a separate offence where the operator of an aircraft arrives in, or departs from, Australian territory without an international airline licence, or other appropriate approval.

***Item 18 – Subsection* 12(1AA)**

21. Item 18 is a consequential amendment stemming from item 17, which ensures that the existing 'reasonable excuse' defence is still available to perpetrators of an offence under subsection 12(1A), as amended by item 17.

***Item 19* – Subsection 12(1B), (2) and (3)**

22. Item 19 repeals subsection 12(1B) which exempts airlines from the offence under subsection 12(1) if they operate a scheduled international air service in accordance with an appropriate agreement with an international airline licence holder that has been approved by the Secretary. These arrangements will instead be able to be exempted via a determination made under new subsection 12(3), as outlined in paragraph 26.

23. Item 19 also repeals existing subsection 12(2), which places a restriction on who an international airline licence may be granted to. This restriction is inserted into new subsection 13(4) by item 20.

24. Item 19 also repeals existing subsection 12(3), which excludes from application with respect to section 12 the definition of 'air service' and 'international air service'. As these definitions are being repealed by items 3 and 6, the exclusion is no longer required. These terms will have their commonly understood meaning throughout the Act, not just in sections 11 and 12.

25. Item 19 also inserts a new subsection 12(2) to provide certainty to aircraft operators that they will not commit an offence under subsection 12(1) for operating a scheduled international air service if they are operating within the terms of a valid permission granted under section 15B to operate charter services.

26. Item 19 also inserts a new subsection 12(3) to allow the Secretary to make determinations that exempt certain categories of aircraft from the requirement to have an international airline licence. It is anticipated that a determination will be made exempting airlines from the requirement to have an international airline licence to fly over Australian territory without landing, or to land in Australian territory without taking on, or setting down, passengers or cargo for reward or hire. It is also anticipated that this provision will be used to exempt airlines currently covered by existing subsection 12(1B), which exempts airlines from the requirement to have an international airline licence if they operate a scheduled international air service in accordance with an appropriate agreement with an international airline licence holder. This is intended to simplify the Act by listing all exemptions from the requirement to have an international airline licence in the one instrument.

27. Item 19 also inserts a new subsection 12(4) to clarify the requirements for international airline licences in the context of several common commercial aviation arrangements. Nothing in this subsection is intended to exempt airlines or operators of aircraft from the need to comply with other safety, security and other regulatory approvals required under Australian law.

28. Paragraph 12(4)(a) is intended to clarify that, where an international airline markets and sells tickets on a flight operated by another airline and each airline markets the flight as its own (commonly referred to as 'code-sharing'), both airlines are required to have an international airline licence. This is because both airlines are exercising economic rights granted under Australia's air services agreements and arrangements.

29. Paragraph 12(4)(b) is intended to clarify that, where an international airline is wholly responsible for marketing and selling tickets for a scheduled international air service, but it hires the aircraft and crew from another airline to operate the flight (commonly referred to as 'wet leasing' or 'damp leasing'), only the marketing airline will be required to have an international airline licence. This is because only the airline marketing the service is exercising economic rights granted under Australia's air services agreements and arrangements. The operator of the aircraft that is contracted to conduct the service will not be required to have an international airline licence.

***Item 20* – Section 13**

30. Item 20 repeals existing section 13, which deals with the suspension or cancellation of international airline licences. It is intended that these matters will be dealt with in the *Air Navigation Regulations 1947* (the Regulations).

31. Item 20 inserts new subsections 13(1) and (2) which enables the Regulations to deal with all matters relating to the granting, suspension, variation, surrender or cancellation of international airline licences dealing with scheduled international air services operated over, into or out of Australian Territory. These powers will be exercised by the Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government (the Secretary).

32. The Regulations will provide for all existing licences to be cancelled after a transition period. The Department will then issue new licences with standardised, updated conditions. Airlines will be required to provide information to verify their compliance with Australian safety, security, insurance and other regulatory approvals in order to be issued with a new licence. It is not planned to create any offences or penalties under the Regulations. Airlines have been consulted on this process and it is not anticipated that any international airline currently operating services to and from Australia would have difficulty complying with these requirements.

33. The Regulations will also establish an enhanced compliance framework to improve the Government's ability to review and audit compliance with international airline licence conditions. It is anticipated that airlines will be required to provide declarations at regular intervals that they are complying with the conditions of their international airline licence. The Secretary will have the power to request information from airlines from time to time to verify their compliance with licence conditions. If an airline fails to provide information or to make a declaration, the Secretary will have the power to cancel their international airline licence.

34. Item 20 also inserts new subsection 13(3), which restricts the granting of international airline licences to international airlines that are not Australian. The clause requires the international airlines' country to be either a party to the Air Transit Agreement or party to an air services agreement or arrangement with Australia. This restriction is currently contained in existing subsection 12(2), and has been moved to the new subsection 13(4)

so that all conditions for granting an international airline licence are dealt with under section 13. The word 'shall' is replaced with the word 'must' to modernise the language and the clause is broken into subsections (a) and (b) to assist the reader.

35. Item 20 also inserts subsection 13(4), which provides that the Secretary's power under the new subsection 12(3) to make a determination exempting international airlines from the requirement to have an international airline licence will not be limited by the restriction on granting international airline licences contained in the new subsection 13(4).

***Item 21* – Section 18**

36. Item 21 inserts a requirement for any declarations that are issued by the Secretary under the new subsection 12(3) to be included in the Aeronautical Information Publications.

***Item 22* – Paragraph 23A(1)(a)**

37. Item 22 amends the Act so that any decision by the Secretary in relation to an international airline licence will be subject to merits review by the Administrative Appeals Tribunal.

Part 2 - Consequential Amendments

Item 23 – Adelaide Airport Curfew Act 2000

38. Item 23 is a consequential amendment to the *Adelaide Airport Curfew Act 2000* to reflect the fact that international airline licences will now be granted under the Regulations.

Item 24 – Aircraft Noise Levy Collection Act 1995

39. Item 24 is a consequential amendment to the *Aircraft Noise Levy Collection Act 1995* to ensure the language in that Act is consistent with the Air Navigation Act.

Item 25 – Civil Aviation Act 1988

40. Item 25 is a consequential amendment to the *Civil Aviation Act 1988* to ensure the language in that Act is consistent with the Air Navigation Act.

Part 3 – Application and transitional provisions

***Item 26* – Pre-commencement licences**

41. Item 26 sets out transitional measures for existing ('pre-commencement') international airline licences, providing that the old law governing international airline licences will continue to apply for a six month period in relation to licences in force immediately before the Bill commences. The Minister will be able to extend this for a period of two months in relation to particular licences if need be. Existing licences are automatically cancelled upon the granting of a replacement licence, and, if they have not already been cancelled or surrendered under the old law, all currently existing licences will be cancelled automatically at the end of the transition period.

***Item 26* – Constitutional safety net – acquisition of property**

42. Item 27 clarifies that the Federal Court of Australia has jurisdiction in the case of a constitutional dispute relating to the acquisition of property.

Schedule 2 – Carriers' Liability Insurance

Part 1 – Main Amendments

Division 1 - Amendments - *Civil Aviation Act 1988*

***Items 1, 2 and 3* – Subsection 3(1)**

1. Items 1, 2 and 3 insert several definitions into the Act.

2. Item 1 inserts a definition of 'commercial presence'.

3. Item 2 takes the existing definition of 'constitutional corporation' from Part III, section 32AN and inserts it into the definitions in subsection 3(1). As a result, the definition will apply throughout the Act, not just to Part III.

4. Item 3 takes the existing definition of 'safety rules' from subsection 18(3) and inserts it into the definitions in subsection 3(1). As a result, the definition will apply throughout the Act, not just to section 18. The new definition is also expanded to expressly include Civil Aviation Orders that relate to safety, including rules about the competence of persons to do anything that would be covered by the permission or Air Operator's Certificate (AOC).

***Item 4* – After paragraph 9(3)(b)**

5. Item 4 amends the Civil Aviation Safety Authority's (CASA) functions to enable it to take action under the *Civil Aviation Act 1988* and associated Regulations to audit and enforce insurance requirements.

***Item 5* – Section 18**

6. Item 5 repeals section 18, which states that CASA can only refuse to grant a permission to operate a short-term, non-scheduled flight, or to vary or impose conditions on a permission, on safety grounds. Repealing this section allows the Act to be amended to grant CASA a limited number of circumstances in which it can refuse permission to a carrier on insurance grounds. These circumstances are set out in items 7, 10 and 14.

7. Repealing section 18 also clarifies the existing practice that CASA can refuse to grant permission for an aircraft to carry dangerous goods under section 23 of the Act if a person has not provided appropriate documentation to demonstrate compliance with the applicable Regulations on dangerous goods.

***Item 6* – Subsections 25(2) and (3)**

8. Item 6 amends the Act to clarify that a permission to operate a non-scheduled flight is only valid while an aircraft complies with all the conditions of the permission.

9. Item 6 also inserts two headings to assist the reader.

***Item 7* – At the end of section 25**

10. Item 7 amends the Act so that CASA must be satisfied that a carrier complies with, or is capable of complying with, Australia's mandatory insurance requirements before it grants permission to operate a non-scheduled flight under section 25 of the Act to a person who does not have a commercial presence in Australia.

11. In order to satisfy CASA that they comply with insurance requirements, it is anticipated that an applicant without a commercial presence in Australia would be required to provide CASA with proof that they have an acceptable contract of insurance before they are granted permission to conduct operations under section 25. These matters will be specified in the Regulations.

12. A person with a commercial presence in Australia will not be required to provide evidence that they comply with insurance requirements to be granted permission under section 25. However, the permission will be subject to the condition that they have an appropriate contract of insurance.

13. The stricter proof requirements imposed on applicants without a commercial presence in Australia is due to the increased difficulty of auditing a carrier that does not have a commercial presence in Australia.

14. All applicants are required to satisfy CASA that they comply with safety standards before they are granted permission to operate services.

15. Item 7 inserts new subsection 25(6) which states that CASA can only specify or vary a condition on a permission for safety reasons.

16. Item 7 also inserts a new subsection 25(7) which states that CASA can only suspend or cancel a permission for safety reasons or if the mandatory insurance requirements are breached.

***Item 8* – Subsection 26(1)**

17. Item 8 amends the Act to clarify that a permission to operate a non-scheduled flight is only valid while an aircraft complies with all the conditions of the permission.

18. Item 8 also inserts a heading to assist the reader.

***Item 9* – Paragraph 26(2)(c)**

19. Item 9 amends the Act to clarify that a permission to operate a non-scheduled international flight is only valid while an aircraft complies with all the conditions of the permission.

20. Item 9 also replaces the word ‘given’ with the word ‘granted’ to ensure consistency with other provisions in the Act.

***Item 10* – At the end of section 26**

21. Item 10 amends the Act so that CASA must be satisfied that a carrier complies with, or is capable of complying with, Australia’s mandatory insurance requirements before it grants permission to operate a non-scheduled international flight under section 26 of the Act to a person who does not have a commercial presence in Australia.

22. In order to satisfy CASA that they comply with insurance requirements, it is anticipated that an applicant without a commercial presence in Australia would be required to provide CASA with proof that they have an acceptable contract of insurance before they are granted permission to operate services under section 26. These matters will be specified in the Regulations.

23. A person with a commercial presence in Australia will not be required to provide evidence that they comply with insurance requirements to be granted permission under section 26. However, the permission will be subject to the condition that they have an appropriate contract of insurance.

24. The stricter proof requirements imposed on applicants without a commercial presence in Australia is due to the increased difficulty of auditing a carrier that does not have a commercial presence in Australia.

25. All applicants are required to satisfy CASA that they comply with safety standards before they are granted permission to operate services.

26. Item 10 inserts a new subsection 26(5) which states that CASA can only specify or vary a condition on a permission for safety reasons.

27. Item 10 also inserts a new subsection 26(6) which states that CASA can only suspend or cancel a permission for safety reasons or if the mandatory insurance requirements are breached.

***Item 11* – Paragraph 27AC(1)(c)**

28. Item 11 expands the information CASA may require from an applicant for an AOC to specifically include information relating to insurance.

29. Item 11 also allows the Regulations to specify additional types of information that CASA may require from an applicant.

***Item 12* – Section 27AF**

30. Item 12 is a consequential amendment to reflect that item 13 will insert a new subsection 27AF(2).

***Item 13* – At the end of section 27AF**

31. Item 13 inserts a new subsection 27AF(2) that sets out the constitutional limits to CASA's ability to take action against a carrier for insurance related matters under the Civil Aviation Act. CASA's power to refuse to consider an application for an AOC on insurance grounds may not apply in relation to intra-State services that are conducted by operators that are not constitutional corporations. There are only a very limited number of cases where passengers might be carried in such operations. Also, such operations will continue to be subject to mandatory insurance requirements and criminal penalties that are currently imposed under the Carriers' Liability Act and complementary State Government legislation.

***Items 14, 15, 16 and 17* – Subsections 27A(2), (4), (5) and (6)**

32. Item 14 Amends the Act so that CASA must be satisfied that a carrier complies with, or is capable of complying with, Australia's mandatory insurance requirements before it grants a short term permission to operate a foreign registered aircraft on regulated domestic flights without an AOC under section 27A of the Act to a person who does not have a commercial presence in Australia.

33. In order to satisfy CASA that they comply with insurance requirements, it is anticipated that an applicant without a commercial presence in Australia would be required to provide CASA with proof that they have an acceptable contract of insurance before they are granted permission to conduct operations under section 27A. These matters will be specified in the Regulations.

34. A person with a commercial presence in Australia will not be required to provide evidence that they comply with insurance requirements to be granted permission under section 27A. However, item 15 makes the permission subject to the condition that they have an appropriate contract of insurance.

35. The stricter proof requirements imposed on applicants without a commercial presence in Australia is due to the increased difficulty of auditing a carrier that does not have a commercial presence in Australia.

36. All applicants are required to satisfy CASA that they comply with safety standards before they are granted permission to operate services.

37. Item 16 amends existing subsection 27A(5) to clarify that CASA can only vary or impose conditions on a permission under section 27A for safety reasons.

38. Item 17 expands the existing power to cancel a permission granted under section 27A for safety reasons to also allow CASA to cancel a permission if the mandatory insurance requirements are breached.

***Item 18* – Paragraph 28(1)(a)**

39. Item 18 is a consequential amendment which simplifies the paragraph by referring to the new definition of 'safety rules' inserted by item 3.

***Items 19, 20 and 21* – Paragraph 28BA(1)(a), after paragraph 28BA(1)(aa) and Subsection 28BA(2A)**

40. Items 19, 20 and 21 amend the Civil Aviation Act so that the authority to carry passengers under an AOC will only be valid while operators hold an appropriate contract of insurance. If an operator allows its insurance to lapse, authorisation to carry passengers will automatically lapse. The authorisation will automatically reactivate as soon as an operator secures appropriate insurance. The effect of this amendment would be that any operator that carries passengers without an appropriate contract of insurance would be subject to a range of administrative actions and criminal penalties under the Civil Aviation Act, in addition to criminal penalties which are currently imposed under the Carriers' Liability Act.

***Item 22* – at the end of subsection 28BC(1B)**

41. Item 22 clarifies that an operator will not breach the requirement to have an appropriate contract of insurance unless the operator conducts passenger carrying operations.

***Item 23* – Subsection 28BC(1C)**

42. Item 23 is a consequential amendment which simplifies the subsection by referring to the new definition of 'constitutional corporation' inserted by item 5.

***Item 24* – At the end of subsection 28BC(2B)**

43. Item 24 clarifies that an operator will not breach the requirement to have an appropriate contract of insurance unless the operator conducts passenger carrying operations.

***Item 25* – Subsection 28BC(2C)**

44. Item 25 is a consequential amendment which simplifies the subsection by referring to the new definition of 'constitutional corporation' inserted by item 2.

***Item 26* – Section 28BI**

45. Item 26 amends the Act so that the requirement to have an acceptable contract of insurance applies in relation to specific operations under the AOC.

46. Item 26 also inserts a note to assist readers.

***Item 27* – Section 32AN (definition of *constitutional corporation*)**

47. Item 27 repeals the definition of 'constitutional corporation' from section 32AN. This definition is then inserted into the definitions in subsection 3(1) by item 2 so that the definition will apply throughout the Act, not just to Part III.

***Item 28* – After paragraph 98(3)(b)**

48. Item 28 inserts a new subsection 98(3)(ba) into the Act which explicitly provides for Regulations to be made dealing with permissions granted under sections 25, 26 or 27A.

49. Item 28 also inserts a new subsection 98(3)(bb) which provides for Regulations to be made dealing with all matters relating to acceptable contracts of insurance or adequate financial arrangements.

Civil Aviation (Carriers' Liability Act) 1959

***Item 29* – After subsection 26(1)**

50. Item 29 amends the *Civil Aviation (Carriers' Liability Act) 1959* (Carriers' Liability Act) to ensure that the requirement to have an acceptable contract of insurance will continue to apply to an operator, even if that operator's AOC has been automatically suspended by force of law due to the operator's failure to have an acceptable contract of insurance.

***Item 30* – Before section 41A**

51. Item 30 inserts a Division heading to assist readers.

***Items 31, 32, 33, 34, 35* – Section 41B, subsections 41C(1), 41C(3), 41C(7) and Section 41CA**

52. Items 31, 32, 33, 34, 35 amend several clauses and definitions so that air carriers will no longer need a certificate of compliance from CASA in order to meet the requirements of the Carriers' Liability Act. Instead, carriers will be permitted to operate services as long as they have a contract of insurance in place that complies with Australia's compulsory insurance standards.

53. Item 31 makes a number of technical amendments to the definitions in 41B.

54. Item 32 repeals the requirement in existing subsection 41C(1) for carriers to produce evidence they are complying with insurance requirements. This matter is dealt with in

new section 41JA inserted by item 41. A definition of 'acceptable contract of insurance' is inserted in its place.

55. Item 33 clarifies that an operator will not breach the requirement to have an appropriate contract of insurance that meets the prescribed requirements unless the operator conducts passenger carrying operations.

56. Item 34 repeals the existing requirement on CASA to issue a written certificate to a carrier stating that CASA is satisfied the carrier has an acceptable contract of insurance. Item 34 then inserts a new subsection 41C(7) which defines an 'adequate financial arrangement'.

57. The items also insert a number of headings into the Act to assist the reader.

***Item 36* – Before section 41E**

58. Item 36 inserts a Division heading to assist readers.

***Item 37* – Subsections 41E(1) and (1A)**

59. Item 37 amends the Act so that a person is authorised to engage in, or offer to engage in, passenger carrying operations if they have an appropriate contract of insurance. They will no longer need a certificate of compliance from CASA to authorise the operation.

60. The Crown, or a person who is an agent of the Crown, will be authorised to engage in, or offer to engage in, passenger carrying operations if they have acceptable financial arrangements instead of an appropriate contract of insurance.

***Item 38* – Subsection 41E(2)**

61. Consistent with the amendment to subsection 41E(1) in item 37, item 38 extends the prohibition on offering to carry passengers in connection with an operation in respect of which an acceptable contract of insurance (or adequate financial arrangement) is not in place to a person making such an offer, but who may not be the carrier.

***Item 39* – At the end of section 41E**

62. Item 39 amends the Act so that the Crown, or a person who is an agent of the Crown, will be authorised to engage in, or offer to engage in, passenger carrying operations if they have acceptable financial arrangements in place covering their liability under the Act. They will no longer need a certificate of compliance from CASA to authorise the operation.

***Item 40* – Subsection 41J(1) (definition of *prohibited carriage*)**

63. Item 40 amends the definition of 'prohibited carriage' to recognise that the Crown may make adequate financial arrangements instead of having an acceptable contract of insurance.

***Item 41* – After section 41J**

64. Item 41 inserts a new Division 3 and section 41JA which sets out CASA's power to require a carrier to produce evidence that it has an acceptable contract of insurance covering specified passenger-carrying services. This power is extended to require the Crown or its agent to produce evidence of adequate financial arrangements.

***Item 42* – Paragraph 41K(a)**

65. Item 42 is a consequential amendment to reflect that item 41 moves the power to require carriers to provide evidence of adequate insurance from subsection 41C(1) to new section 41JA.

***Item 43* – Paragraph 41K(c)**

66. Item 43 is consequential amendment to reflect that the manner and form in which notices may be given will be set out in new section 41JA, not subsection 41C(1).

***Item 44* – Before section 41L**

67. Item 44 inserts a new Division heading to assist readers.

***Item 45* – Subsection 41L(1)**

68. Item 45 omits the reference to 'member' because this definition was repealed in 2003 and the remaining reference in paragraph 41L(1)(a) is no longer required in the Act.

***Item 46* – Subsection 41L(2)**

69. Item 46 is a consequential amendment to reflect that the paragraph divisions in subsection 41L(1) are omitted by item 45.

***Item 47* – At the end of section 41L**

70. Item 47 clarifies the meaning of 'director'.

Division 2 – Application and savings provisions

Items 48, 49 and 50

71. Items 48, 49 and 50 ensure that the amended provisions of the Act will apply in respect of any passenger operations conducted or offered at the time of, or after, commencement. The amendments will not apply to a carrier's actions retrospectively. However, once the Bill commences, the amended provisions will apply to all AOCs and permissions granted under sections 25, 26 and 27A, including those that were granted before the Bill commenced.

72. Item 49(2) provides that the repeal of section 18 of the Civil Aviation Act by item 5 will not apply before the Bill commences with respect to permissions to carry dangerous goods granted under section 23 of the Act.

Part 2 –Amendments conditional on the *Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008*

Items 51, 52, 53 and 54

73. Items 51, 52, 53 and 54 make a number of consequential amendments to the Bill to ensure its consistency with the *Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008* (1999 Montreal Convention Act). The amendments include consequential amendments to provide for the 1999 Montreal Convention Act commencing before this Bill, and additional consequential amendments in case the 1999 Montreal Convention Act commences after this Bill.