



Aviation Legislation Amendment (International Airline Licences and Carriers' Liability Insurance) Bill 2008

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Law and Bills Digest Section

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Aviation Legislation Amendment (International Airline Licences and Carriers' Liability Insurance) Bill 2008

Date introduced: 24 June 2008

House: House of Representatives

Portfolio: Infrastructure, Transport, Regional Development and Local Government

Commencement: Sections 1 – 3 will commence on the day on which the Act receives Royal Assent. Schedule 1 and Part 1 of Schedule 2 commence on a day fixed by Proclamation, or 6 months after Royal Assent.

Items 51 - 53 of Schedule 2 commence after the commencement of Part 1 of Schedule 2 and after the commencement of Schedule 1 to the *Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008*.

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*.

Should the *Civil Aviation Legislation amendment (1999 Montreal Convention and Other Measures) Act 2008* not commence, the related provisions will also not commence.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To update the regulatory programs for the systems of International Airline Licences and mandatory carriers' airline insurance. The system of International Airline Licences will be changed to replace the current 'self-operating' system with one that enables greater Government control over licence conditions.

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Background

International airline licences

The *Air Navigation Act 1920* (the Air Navigation Act) establishes a system of international airline licences (IALs). IALs ensure that scheduled international air services are operated in accordance with bilateral air service agreements and arrangements between Australian and international aviation partners.¹ Airlines proposing to operate scheduled international air services over, into or out of Australian territory, or those proposing to market seats to and from Australia under code share arrangements with another airline, require an IAL before services can commence.²

The Bill makes a number of amendments to update and modernise the Air Navigation Act and the licensing system. The key amendment would move the regulatory framework for IALs (currently placed within both the Air Navigation Act and the corresponding Regulations) into the Air Navigation Regulations. The purpose of this is to allow ease of making and amending IALs and the IAL system, and eliminate the current problem of limited ability to revoke or amend old licences, even where licence holders have ceased operations in Australia.

The Regulation Impact Statement (RIS) for the Bill discusses three possible options for addressing the issues with IALs. It notes the problem in that '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'. In discussing the options, the proposed option in this Bill is recognised as 'retain(ing) 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'.³ An alternative option considered was a licensing system requiring regular renewal (for instance, on an annual basis with airlines providing updated information for licence renewal), but this option was ultimately not chosen.⁴ Certainly it would seem that a system of regular licence renewal would provide some powers to review and audit compliance with licence conditions, and would therefore immediately address the issue. While the proposed system in the Bill does not address the issue in the same way, it does offer similar powers including a 'monitoring'

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1. Explanatory Memorandum, Aviation Legislation Amendment (International Airline Licences and Carriers' Liability Insurance) Bill 2008, p. 1.
 2. Department of Infrastructure, Transport, Regional Development and Local Government, *International Airline Licences – Guidance Notes*, available at <http://www.infrastructure.gov.au/aviation/international/licences.aspx> [accessed 2 September 2008].
 3. Explanatory Memorandum, p. 7.
 4. *ibid*, p. 6–10.

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power, and was preferred as it 'presents the smallest administrative burden and regulatory costs'⁵ while still providing an appropriate administrative structure for issuing IALs.

Other amendments relating to IALs include:

- delegation of IAL-related responsibilities to the Secretary of the Department, including the granting, amending or revoking of licences, as well as exempting some services from the requirement to hold an IAL. The Secretary would instead have the power to exercise these responsibilities through making regulations or determinations. While this might result in a 'downgrade' of scrutiny for some aspects of the IAL framework, the Explanatory Memorandum⁶ notes that the use of legislative instruments ensures that Parliament will maintain oversight of any powers exercised.
- cancellation of all current IALs made under the current (or previous) legislation. This will require all current IAL holders to apply for new IALs, which will ensure that the entire industry is brought under the new IAL regime and holds updated licences.
- Access to merit review of all decisions relating to IALs by the Administrative Appeals Tribunal (AAT).
- clarification of existing relations between IALs and charter approvals. The Bill also clarifies the application of IALs to some common commercial aviation arrangements. These clarifications are to provide legal certainty, and do not change current practice, and
- technical amendments, including transitional clauses to allow industry to move over to the new IAL regime, updating of the language of the Act, and making consequential amendments to other legislation.

Airline carriers' liability insurance

Airline carriers carrying passengers to or from Australia, or within Australia, are required to hold passenger liability insurance. The insurance ensures that compensation will be paid in respect of death or personal injury suffered by passengers on the carrier's aircraft.⁷

The *Civil Aviation (Carriers' Liability Act) 1959* (the Carriers' Liability Act) establishes the requirement for insurance, 'supplemented by provisions in the Civil Aviation Act, which allow (the Civil Aviation Safety Authority (CASA)) to enforce the requirements as

5. *ibid*, p. 10.

6. Explanatory Memorandum, p. 1 and 2.

7. Department of Infrastructure, Transport, Regional Development and Local Government, *International Airline Licences – Guidance Notes*, available at <http://www.infrastructure.gov.au/aviation/international/licences.aspx> [accessed 2 September 2008].

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part of their management of safety issues via the Air Operator's Certificate (AOC) process'.⁸

Currently, carriers are required to have appropriate insurance and a current Certificate of Compliance from CASA to be able to carry passengers on a commercial flight. CASA issues the Certificates upon application by the carriers, once satisfied that appropriate insurance is held by that carrier.

The Bill attempts to cut down on the administrative burden of that system, by absolving CASA of the requirement to issue the Certificates of Compliance. Instead, the Bill creates an obligation on operators to provide CASA with a declaration indicating that they hold the appropriate insurance cover required under the Carriers' Liability Act. The Bill imposes a small administrative penalty for failure to comply. Additionally, the amendments provide that any lapse in insurance cover will result in an automatic lapse of AOCs, which contains the operators' authorisation to carry passengers. Operating without insurance (and therefore without an AOC) results in administrative action and possible criminal penalties under the Civil Aviation Act.⁹

The Explanatory Memorandum notes that due to constitutional limits, this amendment may not apply in relation to intra-State services conducted by operators that are not constitutional corporations.¹⁰ However, existing insurance requirements and criminal penalties are provided in the Carriers' Liability Act, and State legislation.

Other amendments contained within the Bill are:

- increased capabilities for CASA to conduct regular audits of operators, in an attempt to improve compliance with the insurance requirements, and
- tightened restrictions on non-Australian carriers who make non-scheduled international flights in Australia, by requiring them to prove they hold carriers' insurance before they are granted approval to operate the service.

8. Explanatory Memorandum, p. 3.

9. Under the section 27 of the CAA, an operator must not conduct commercial activities (as prescribed in regulation 206 of the Civil Aviation Regulations) without an AOC. Additionally, the amendments to the CAA will allow CASA to enforce section 41E of the Carriers' Liability Act makes carrying passengers without appropriate insurance an offence, punishable by up to 2 years imprisonment.

10. Explanatory memorandum, p. 4.

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Consultation

The Explanatory Memorandum states that consultation occurred on the amendments with thirty-one different stakeholder groups.¹¹ In his second reading speech, the Minister stated that:

These two regulatory proposals have been the subject of significant industry consultation. When a discussion paper was released some three years ago in 2005, no objections to the proposal were raised.¹²

Financial implications

The Explanatory Memorandum states that ‘the financial impact of the Bill on the Commonwealth is expected to be minimal’,¹³ with any additional costs to be met from existing departmental resources.

Main provisions

Schedule 1 – International airline licences

Schedule 1 of the Bill makes proposed amendments to the Air Navigation Act relating to IALs. **Items 1 – 18** make technical amendments to update the language of the Act.

Items 19 and 20 repeal current subsections 12(1B), (2) and (3) and section 13 of the Air Navigation Act and replace them with new (sub)sections dealing with IALs. **Proposed new section 13** allows for Air Navigation Regulations to provide for the granting, imposition of conditions, variation, suspension, cancellation and surrender of international airline licences. These powers are exercisable by (or to) the Secretary of the Department. The proposed amendments to section 12 allow the Secretary to make determinations exempting some aircraft from the requirement to have IALs, and to automatically exclude chartered services from the requirement for an IAL.

Item 22 inserts an amendment to section 23 of the Air Navigation Act to enable the AAT to review decisions relating to IALs.

11. *ibid*, p. 11.

12. The Hon. Anthony Albanese MP, Minister for Infrastructure, Transport, Regional Development and Local Government, Aviation Legislation Amendment (International Airline Licences and Carriers' Liability Insurance) Bill 2008, *Second reading speech*, 26 June 2008, p. 3.

13. Explanatory Memorandum, p. 4.

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Items 23 – 25 of the Bill make consequential amendments to the *Adelaide Airport Curfew Act 2000*, the *Aircraft Noise Levy Collection Act 1995* and the *Civil Aviation Act 1988* to reflect the changes to the Air Navigation Act in the Bill.

Item 26 contains a transitional provision, providing that the old law governing IALs will continue to apply for at least six months after commencement. The transitional period is to allow licence holders to apply for replacement licences under the new licensing system.

Item 27 clarifies that, should a constitutional dispute regarding acquisition of property occur by virtue of the provisions in **item 26** (relating to the surrender or cancellation of old IALs), the matter should be heard in the Federal Court.

Schedule 2 – Carriers' liability insurance

Schedule 2, items 1 - 28 make amendments to the *Civil Aviation Act 1988* (the CAA).

Item 4 amends section 9 of the CAA, which sets out the functions of CASA. The proposed amendment provides CASA with the power to enforce requirements under the CAA, and audit and enforce insurance and financial arrangement requirements under Part IVA the Carriers' Liability Act. The existing requirements under the Carriers' Liability Act include a 2 year prison term for non-compliance with the insurance provisions (section 41E).

Item 5 repeals section 18 of the CAA, which restricts the circumstances under which CASA can refuse to grant or vary permission to operate short-term, non-scheduled flights. Repealing the section gives CASA greater powers to refuse permission under the CAA. This is necessary for the exercise of new powers provided in **items 7, 10 and 14**.

Items 7, 10, and 14 – 17 apply to carriers with a non-commercial presence in Australia. The provisions require those carriers to prove that they have appropriate insurance before operating non-scheduled domestic flights (**item 7**), non-scheduled international flights (**item 10**), or foreign registered aircraft on domestic flights without an AOC (**items 14 - 17**), within Australia. CASA may refuse permission to operate such flights if proof of appropriate insurance is not provided prior to that flight operating.

Items 19 – 26 amend the CAA to ensure that the authority to carry passengers under an AOC will only be valid while operators hold the appropriate insurance.

In particular, **item 26** amends section 28BI to include a statement that AOC holders must, at all times, comply with the applicable insurance provision in relation to that type of operation.

Items 19 – 21 insert provisions which refer back to the **amended section 28BI (item 26)**, stating that section 28BI applies to an AOC (**item 20**), and that a breach of that will mean that the AOC does not authorise any flight or operation to which the condition relates

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while the breach continues (**item 21**). These amendments essentially provide for the automatic lapse of authorisation to carry passengers, in the event of an insurance lapse.

The items also make technical and consequential amendments to update references to 'constitutional corporations' (to which the amendments will ultimately apply). Consequently, all operators that fall within the scope of these provisions (with some State-based exceptions, as discussed previously) will automatically be subject to a range of administrative actions and criminal penalties under the CAA if they allow their insurance to lapse.

Items 29 – 50 amend the *Civil Aviation (Carriers' Liability) Act 1959*. **Item 29** ensures that the requirement under the Carriers' Liability Act to have an acceptable contract of insurance applies even where an operator has had its licence suspended by force of law.

Items 31 – 35 and **37 – 39** amend a number of provisions in the Carriers' Liability Act to remove the requirement for a certificate of compliance from CASA. Instead, carriers (including Government carriers – **items 37 – 39** dealing with officers of the Crown) will be permitted to operate so long as they hold an 'acceptable contract of insurance'. An acceptable contract of insurance is defined as an *adequate financial arrangement*, that is, one that covers the carrier for personal injury liability in respect of each passenger carried, or to be carried, by the carrier (**item 34**).

To make up for the removal of CASA certificate of compliance system, **items 41 – 43** create an auditing power for CASA, enabling CASA to require evidence from carriers to prove they hold acceptable contracts of insurance.

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