

AIR TRANSPORT ACT.

Act No. 36, 1964.

Elizabeth II, No. 36, 1964 An Act to prohibit, in certain circumstances, the carriage by aircraft of passengers or goods from one place to another within New South Wales except under the authority of a license granted by the Commissioner for Motor Transport; to amend the State Transport (Co-ordination) Act, 1931-1962, the Air Navigation Act, 1938-1947, and the Transport Act, 1930-1964; and for purposes connected therewith. [Assented to, 16th October, 1964.]

BE

BE it enacted by the Queen's Most Excellent Majesty, by No. 36, 1964
and with the advice and consent of the Legislative
Council and Legislative Assembly of New South Wales in
Parliament assembled, and by the authority of the same, as
follows :—

1. (1) This Act may be cited as the "Air Transport Act, 1964". Short title,
construc-
tion and
citation.

(2) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to other persons or circumstances shall not be affected.

(3) The State Transport (Co-ordination) Act, 1931, as amended by subsequent Acts and by this Act, may be cited as the State Transport (Co-ordination) Act, 1931-1964.

(4) The Air Navigation Act, 1938, as amended by subsequent Acts and by this Act, may be cited as the Air Navigation Act, 1938-1964.

(5) The Transport Act, 1930, as amended by subsequent Acts and by this Act, may be cited as the Transport Act, 1930-1964.

2. (1) In this Act, unless the context or subject matter otherwise indicates or requires— Interpreta-
tion.

"Air Navigation Regulations" means the Air Navigation Regulations made and as in force from time to time under the Air Navigation Act 1920-1963, of the Parliament of the Commonwealth of Australia, or any Act amending that Act.

"Appointed day"—

- (a) where a day is not appointed pursuant to subsection two of this section, means the twenty-sixth day of October, one thousand nine hundred and sixty-four; or

(b)

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(b) where a day is so appointed, means that day, or where more than one day is so appointed, means the later or latest of those days.

“Carry” means carry for reward or for any consideration or in the course of any trade or business and expressions derived therefrom have a corresponding interpretation.

“Commissioner” means the Commissioner for Motor Transport constituted under the Transport (Division of Functions) Further Amendment Act, 1952, as amended by the State Transport (Co-ordination) Amendment Act, 1954.

“Corporation” has the meaning ascribed thereto in section five of the Companies Act, 1961, as amended by subsequent Acts.

“Goods” includes livestock.

“License” means license issued under this Act and includes a renewal of any such license.

“Prescribed” means prescribed by regulations.

“Regulations” means regulations under this Act.

(2) The Governor may, by proclamation published in the Gazette, appoint a day or days for the purposes of paragraph (b) of the definition of “Appointed day” in subsection one of this section, but any day so appointed shall be not earlier—

(a) than the twenty-sixth day of October, one thousand nine hundred and sixty-four; or

(b) where any day has been previously so appointed—
than any such day.

(3) Where two or more days are appointed pursuant to subsection two of this section, the later or latest of those days shall be notified by proclamation published in the Gazette not later than the first or last previous day so appointed, as the case may be.

3. (1) A person shall not, on or after the appointed day, carry by an aircraft from a place in New South Wales to another place in New South Wales any passengers or goods unless—

—
—
Licensing
of persons
and aircraft
for the
carriage
intrastate of
passengers
or goods.

- (a) the aircraft is licensed under this Act;
- (b) that person is the holder of the license; and
- (c) where the license was granted in respect of a route or routes, the route over which the passengers or goods are so carried is such a route.

(2) A person who contravenes any of the provisions of subsection one of this section is guilty of an offence against this Act and is liable for a first offence to a penalty of not less than five hundred pounds nor more than one thousand pounds, for a second offence to a penalty of not less than five thousand pounds nor more than ten thousand pounds, and for a third or subsequent offence to a penalty of not less than ten thousand pounds nor more than twenty thousand pounds.

(3) In respect of an offence against this Act arising under subsection one of this section the following persons shall, in addition to the person by whom the offence was committed, be deemed to have committed the like offence, that is to say :—

- (a) the person who is shown, in the register of Australian aircraft kept under the Air Navigation Regulations or in the certificate of registration issued under those regulations, as the owner of the aircraft which was used in the commission of the offence; and
- (b) where the person committing the offence is a corporation, any director, member of the governing body, or manager, of the corporation or of any related corporation within the meaning of section six of the Companies Act, 1961, as amended by subsequent Acts.

(4) An allegation in any information—

- (a) that a person on a specified date carried by an aircraft from a place in New South Wales to another place in New South Wales any passengers or goods; or
- (b)

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(b) that a person is a person referred to in subsection three of this section, shall be prima facie evidence of the matters so alleged.

(5) Subsection four of this section shall apply to any matter so alleged although—

(a) evidence in support or rebuttal of the matter alleged or of any other matter is given by a witness; or

(b) the matter alleged is a mixed question of law and fact, but in that case the allegation shall be prima facie evidence of the fact only.

(6) Any pecuniary penalty imposed on an individual pursuant to this section may be recovered as a debt due to Her Majesty in any court of competent jurisdiction but nothing in this subsection affects the operation of the provisions of section eighty-two, ninety-two, ninety-three, ninety-four or ninety-five of the Justices Act, 1902, as amended by subsequent Acts, in respect of any such penalty, or any part of any such penalty, not so recovered, and any amount so recovered under this subsection shall for the purposes of those provisions be deemed to have been paid to any person to whom moneys may be paid or may be caused to be paid under any of those provisions.

(7) The provisions of section 556A of the Crimes Act, 1900, as amended by subsequent Acts, do not apply in respect of any offence against this Act arising under subsection one or three of this section.

Powers of
authorised
persons.

4. (1) A person (in this section referred to as an “authorised person”) authorised in writing to do so by the Commissioner may require any person who appears to that authorised person to be concerned in, or employed in connection with, the conduct of any services for the carriage of passengers or goods by aircraft to answer any question with respect to the use, in connection with those services, of any aircraft for the carriage from one place in New South Wales to another place in New South Wales of any passengers or goods.

(2) Any person who fails to comply with a requirement of an authorised person made under subsection one of this

this section or who answers in a false or misleading manner any question put to him by an authorised person pursuant to that subsection is guilty of an offence against this Act. No. 36, 1964

(3) A person shall not be guilty of an offence under subsection two of this section by reason of his failure to answer any question if he proves to the satisfaction of the court that he did not know and could not with reasonable diligence have ascertained the answer to the question.

(4) A person shall not be excused from answering any question, if required to do so under subsection one of this section, on the ground that the answer might tend to criminate him or make him liable to a penalty, but the answer given by him shall not be admissible against him in any proceedings civil or criminal, except in proceedings for an offence arising under subsection two of this section.

(5) Where any answer to a question referred to in subsection one of this section, or any information whatsoever, is given to an authorised person by the prescribed officer of a corporation, such answer and information shall, for the purposes of any proceedings against the corporation for an offence arising under the provisions of section three of this Act, be binding upon and admissible in evidence against the corporation, unless it is proved that the answer or information was given in relation to a matter in respect of which the prescribed officer had no authority to bind the corporation.

The provisions of this subsection shall be in addition to and not in derogation from any rule of law relating to the binding effect and admissibility in evidence of statements made by any officer or employee of a corporation.

(6) Any person who communicates any information acquired by him in the course of the administration of this Act except in accordance with the instruction in writing of the Minister or for the purpose of proceedings in any court is guilty of an offence against this Act.

(7) In this section "prescribed officer of a corporation" means the managing director, manager or other governing officer, by whatever name called or any member of the governing body of the corporation and, where any officer or employee of the corporation gives any information to an authorised person, whether in answer to a question or not, relating

No. 36, 1964 relating to any part of the operations of the corporation over which such officer or employee exercises any superintendence or control, includes that officer or employee.

Applica-
tions for
licenses.

5. (1) An application for a license shall—
- (a) be made to the Commissioner;
 - (b) be in writing and in a form approved by the Commissioner;
 - (c) be accompanied by a fee of ten shillings or, where another amount is prescribed, that other amount;
 - (d) specify the route or routes, if any, in respect of which the application is made;
 - (e) specify the aircraft in respect of which the application is made;
 - (f) specify whether the application is for a license to carry passengers or goods or both passengers and goods over the route or routes so specified; and
 - (g) specify such particulars and contain such information as the Commissioner may require.

(2) An applicant for a license shall furnish to the Commissioner such additional particulars and information as the Commissioner may require.

Considera-
tion by the
Commis-
sioner of
applica-
tions for
licenses.

6. (1) The Commissioner may grant or refuse any application for a license.

(2) A license may be granted subject to or not subject to conditions, including conditions as to whether the carriage of passengers or goods or of both passengers and goods is authorised by the license.

(3) In deciding whether to grant or refuse a license and the conditions, if any, subject to which it should be granted, the Commissioner shall have regard to such of the following matters as to him seem appropriate and to no other matters :—

- (a) the needs, in relation to air transport services, of the public of New South Wales as a whole and of the public of any area or district to be served by the route or routes, or by any of the routes, specified in the application for the license;

(b)

- (b) the extent, if any, to which the needs of the public of New South Wales as a whole or of the public of any area or district to be served by the route or routes, or by any of the routes, specified in the application for the license are already, or are likely to be, served by public air transport services ;
- (c) the allocation of routes for public air transport services between persons holding or applying for licenses under this Act so as to foster as far as possible the existence of more than one airline operating in New South Wales capable of providing adequate and reasonable public air transport services within New South Wales and so as to discourage the development of any monopoly of public air transport services within New South Wales ;
- (d) where the applicant is an individual, his character and suitability and fitness to hold the license applied for and, where the applicant is a corporation, the character of the persons responsible for the management or conduct of the corporation and the suitability and fitness of the corporation to hold the license applied for ;
- (e) the extent to which the area or district to be served by the route or routes, or any of the routes, specified in the application for the license are already, or are likely to be, served by forms of public transport other than public air transport and the effect that the public air transport services proposed to be conducted by the applicant for the license over that route or those routes may have upon those other forms of transport.

7. (1) A license shall be in such form as the Commissioner may determine, shall specify the aircraft in respect of which it is issued and may specify the route or routes in respect of which the license is granted. Licenses.

(2) A license shall expire on the anniversary of the day upon which it was granted or upon such earlier day as may be specified therein.

8.

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Revocation,
suspension
and varia-
tion of
licenses.

8. (1) Where at any time, the Commissioner, having regard to such of the matters specified in paragraphs (a), (b), (c), (d) and (e) of subsection three of section six of this Act as to him seem appropriate and to no other matters, is of opinion that it is desirable to do so, he may by notice in writing served on the holder of a license—

- (a) revoke or vary, as on and from a date specified in the notice, or suspend for a period or periods so specified, the license or any of the particulars or conditions thereof; or
- (b) attach to the license, as on and from a date so specified, any further or new condition.

(2) A notice under subsection one of this section—

- (a) shall have effect according to its tenor; and
- (b) may be served, in the case of an individual, personally or by sending it by post to the holder of the license at the address last notified to the Commissioner by the holder of the license or, in the case of a corporation, in the manner mentioned in subsection one of section three hundred and sixty-two of the Companies Act, 1961, as amended by subsequent Acts.

(3) Without limiting the generality of subsection one of this section, the Commissioner may revoke, or suspend for such period as he thinks fit, a license if the holder fails to comply with any of the provisions of this Act or of the regulations or with any of the conditions attached to the license.

(4) The Commissioner may exercise any of the powers conferred on him by subsection one or three of this section notwithstanding that at the time the power is exercised the license is suspended.

Non-
compliance
with
conditions.

9. A person who neglects or fails to comply with any condition attached to a license of which he is the holder is guilty of an offence against this Act.

10.

10. On and from the appointed day, any license or permit in respect of an aircraft and in force under the State Transport (Co-ordination) Act, 1931, as amended by subsequent Acts, shall cease to have any force or effect.

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Certain licenses and permits under the State Transport (Co-ordination) Act, 1931, to cease to have effect.

11. A certificate purporting to be signed by the officer for the time being in charge of the records kept under this Act stating that a person is or is not, or was or was not on any day or during any period, the holder of a license, or that any particulars or conditions are, or were, on a specified day, particulars or conditions contained in or attached to a license, or that any particulars are not, or were not, on a specified day, contained in a license, shall in all courts and before all persons be prima facie evidence of the matters stated in the certificate without proof of the signature or official character of the person purporting to sign the certificate.

Evidence of license.

12. (1) Except where otherwise provided, a person guilty of an offence against this Act is liable to a penalty not exceeding five hundred pounds, or to imprisonment for a period not exceeding twelve months, or to both such penalty and imprisonment.

Penalties and proceedings for offences against Act or regulations.

(2) All proceedings for offences against this Act or the regulations shall be disposed of summarily before a stipendiary magistrate.

(3) An information for an offence against this Act may be laid at any time within two years after the commission of the offence.

(4) An information for an offence against this Act shall not be laid except with the consent in writing of the Attorney-General.

13. (1) The Governor may make regulations not inconsistent with this Act for or with respect to—

Regulations.

- (a) prescribing the fees to accompany applications for licenses;
- (b) generally prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2)

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No. 36, 1964 (2) The regulations may impose a penalty not exceeding one hundred pounds for any breach thereof.

(3) All regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

(4) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before that House disallowing any regulation or part thereof, the regulation or part thereof shall thereupon cease to have effect.

Amendment of Act No. 32, 1931. **14.** (1) The State Transport (Co-ordination) Act, 1931, as amended by subsequent Acts, is amended—

Sec. 3.
(Interpretation.)

- (a) (i) by omitting from subsection one of section three the definition of “Air Navigation Regulations”;
- (ii) by omitting from the definition of “Motor vehicle” in the same subsection the words “and also includes aircraft”;

Sec. 14.
(Licenses.)

- (b) by omitting from paragraph (d) of subsection two of section fourteen the words “, or in the case of an aircraft, particulars of the certificate of registration and the certificate of airworthiness issued under the Air Navigation Regulations”;

Sec. 15.
(Effect of license.)

- (c) (i) by omitting from subsection one of section fifteen the words “other than an aircraft”;
- (ii) by omitting subsection two of the same section;
- (iii) by omitting from subsection three of the same section the words “or subsection two”;

Sec. 16.
(Registration of license.)

- (d) (i) by omitting from subsection one of section sixteen the words “other than an aircraft”;
- (ii)

- (ii) by omitting from subsection two of the same section the words "other than an aircraft";
 - (iii) by omitting subsection three of the same section;
 - (e) by omitting from paragraph (g) of subsection three of section seventeen the words "Provided that the certificate of registration and the certificate of airworthiness of an aircraft issued under the Air Navigation Regulations or a registration of any motor vehicle other than aircraft" and by inserting in lieu thereof the words "Provided that a registration of any motor vehicle";
 - (f) by omitting from subsection three of section twenty-one the words "other than an aircraft".
- (2) The amendments made by subsection one of this section shall commence upon the appointed day.

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Sec. 17.
(Certain conditions of license.)

Sec. 21.
(Cancellation of license.)

15. (1) The Air Navigation Act, 1938, as amended by subsequent Acts, is amended by omitting from section four the words "State Transport (Co-ordination) Act, 1931-1947," wherever occurring and by inserting in lieu thereof the words "Air Transport Act, 1964,".

Amendment of Act No. 9, 1938.

Sec. 4.
(Application of Commonwealth Air Navigation Regulations to air navigation within New South Wales.)

(2) The amendment made by subsection one of this section shall commence upon the appointed day.

16. The Transport Act, 1930, as amended by subsequent Acts, is amended—

Amendment of Act No. 18, 1930.

(a) by inserting at the end of subsection one of section two hundred and two the following new paragraph :—

Sec. 202.
(Road Transport and Traffic Fund.)

(f) all fees charged under the Air Transport Act, 1964;

(b) by inserting at the end of subsection two of the same section the following new paragraph :—

(i) all administrative and other expenses of the Commissioner in respect of the Air Transport Act, 1964.

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Offences
under State
Transport
(Co-ordina-
tion) Act,
1931, not
affected
by this Act.

17. Nothing in this Act affects—

- (a) the liability of any person for an offence against the State Transport (Co-ordination) Act, 1931, as amended by subsequent Acts, committed by him **before** the appointed day; or
- (b) any prosecution for or penalty in respect of any such offence,

and any such prosecution may be instituted, continued or enforced, and any such penalty may be imposed and enforced, as if the amendments made by this Act to the State Transport (Co-ordination) Act, 1931, as amended by subsequent Acts, had not been made.

Obligations
under other
laws.

18. Nothing in this Act relieves a person of any obligation to hold or effect any license or registration which he is otherwise by law required to hold or effect.

Repeal of
certain
provisions
of this Act
as from
future day.

19. On and from a day to be appointed by the Governor for the purposes of this section and notified by proclamation published in the Gazette, this Act is amended—

Sec. 3.
(Licensing
of persons
and air-
craft for
the carriage
intrastate of
passengers
or goods.)

- (a) (i) by omitting from subsection two of section three the words “and is liable for a first offence to a penalty of not less than five hundred pounds nor more than one thousand pounds, for a second offence to a penalty of not less than five thousand pounds nor more than ten thousand pounds, and for a third or subsequent offence to a penalty of not less than ten thousand pounds nor more than twenty thousand pounds”;
- (ii) by omitting subsections three, four, five, six and seven of the same section;

Sec. 12.
(Penalties
and
proceedings
for offences
against Act
or regula-
tions.)

- (b) by omitting from subsection one of section twelve the words “Except where otherwise provided, a” and by inserting in lieu thereof the word “A”.