

[Act 1996 No 70]



New South Wales

Civil Aviation (Carriers' Liability) Amendment Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Civil Aviation (Carriers' Liability) Act 1967* in relation to the application within the State of the *Civil Aviation (Carriers' Liability) Act 1959* of the Commonwealth. The Commonwealth Act does not apply of its own force to intrastate operations.

At present, Part IV of the Commonwealth Act is applied by the State Act. The Bill will apply Part IVA of the Commonwealth Act, which was inserted into that Act by the *Transport Legislation Amendment Act (No. 2) 1995* (No 89 of 1995) of the Commonwealth. The new Part IVA requires carriers to be insured against liability to passengers for death or personal injury.

The Bill also anticipates certain future amendments to the Commonwealth Act, so that if the operation of Part IV of the Commonwealth Act is limited by reference to an international treaty or other instrument, the corresponding limitation will operate in the State sphere, provided a regulation is made prescribing the treaty or other instrument.

The Bill contains other amendments of a minor, consequential or ancillary nature.

Outline of provisions

Clause 1 specifies the name (also called the short title) of the proposed Act.

Clause 2 provides for the proposed Act to commence by proclamation.

Clause 3 is a formal provision giving effect to the Schedule of amendments.

Schedule 1 Amendments

Schedule 1 [1] removes an obsolete reference to a year in the definition of *the Commonwealth Act*.

Schedule 1 [2] is consequential on the application of Part IVA of the Commonwealth Act within the State.

Schedule 1 [3] inserts new definitions that are used in the proposed new sections 6A and 6B being inserted by Schedule 1 [9].

Schedule 1 [4] is a technical amendment that ensures that definitions used in the new Part IVA of the Commonwealth Act apply in the interpretation of the State Act.

Schedule 1 [5] removes the need for future complementary State legislation merely to include a specific reference to an international treaty or other instrument that limits the operation of Part IV of the Commonwealth Act. The same limitation will apply in the provisions as they apply within the State, provided the treaty or other instrument is prescribed by regulation under the State Act.

Schedule 1 [6] is the provision that applies Part IVA of the Commonwealth Act within the State.

Schedule 1 [7] excludes section 41J(8) in Part IVA of the Commonwealth Act from applying within the State. That provision is presently inappropriate in this context, as it invests the Federal Court with jurisdiction where the Commonwealth Minister applies for an injunction.

Schedule 1 [8] removes an unnecessarily restrictive reference to provisions of the Commonwealth Act, where regulations are referred to. The amendment is consequential on the application of Part IVA of the Commonwealth Act.

Schedule 1 [9] recognises that the applied provisions will be effectively treated as part of the aviation regime administered by the Commonwealth. Proposed section 6A provides that Commonwealth authorities can administer and enforce the applied provisions as if they were Commonwealth legislation. Proposed section 6B contemplates that the applied provisions can, if regulations so provide, be administered and enforced at State level. This would be appropriate if legislative or other arrangements are not in place at any time to administer and enforce the applied provisions at Commonwealth level.

Schedule 1 [10] provides a general regulation-making power.