

Air Transport Act 1964 No 36

[1964-36]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
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Contents

Long title	4
1 Name of Act and construction	4
2 Definitions	4
2A Air Transport Council	5
2B Principal functions of Air Transport Council	5
2C Staff of the Air Transport Council	6
3 Licensing of persons for the carriage intrastate of passengers	6
3A Authority for Australian Airlines to operate intrastate air services	7
4 Powers of authorised persons	7
5 Applications for licences	8
6 Consideration by the Minister of applications for licences	8
7 Licences	9
8 Revocation, suspension and variation of licences	9
9 Non-compliance with conditions	10
10 Determinations of application and licence fees	10
11 Evidence of licence	11
11A Delegation	11
12 Penalties and proceedings for offences against Act or regulations	12
13 Regulations	12
14-17 (Repealed)	13
18 Obligations under other laws	13
19 (Repealed)	13

Schedule 1 Provisions relating to the members of the Air Transport Council

..... 13

Schedule 2 Provisions relating to the procedure of the Air Transport Council

..... 16

Air Transport Act 1964 No 36



New South Wales

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 licence granted by the Minister; to amend the *State Transport (Co-ordination) Act 1931*, the *Air Navigation Act 1938* and the *Transport Act 1930*; and for purposes connected therewith.

1 Name of Act and construction

- (1) This Act may be cited as the *Air Transport Act 1964*.
- (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- (3)–(5) (Repealed)

2 Definitions

- (1) In this Act, unless the context or subject matter otherwise indicates or requires:

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

Air Transport Council means the Air Transport Council constituted by section 2A.

Carry means carry for reward or for any consideration or in the course of any trade or business.

Function includes power, authority and duty.

Licence means licence issued under this Act and includes a renewal of any such licence.

Regulations means regulations under this Act.

- (2), (3) (Repealed)

(4) A reference in this Act to the exercise of a function includes, where the function is a duty, a reference to the discharge of that duty.

(5) (Repealed)

2A Air Transport Council

(1) There is constituted by this Act an Air Transport Council.

(2) The Council:

(a) shall have and may exercise the functions conferred or imposed on it by or under this Act or any other law, and

(b) shall, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), be subject to the control and direction of the Minister.

(3) The Council shall consist of 5 members who shall (except in the case of the member referred to in subsection (4) (e)) be appointed by the Minister.

(4) Of the members:

(a) one shall be a person with knowledge of the air industry who shall be Chairperson of the Council,

(b) one shall be a person appointed to represent the Minister,

(c) one shall be a person appointed to represent consumers,

(d) one shall be a person nominated by the Minister for Tourism, and

(e) one shall be the Secretary of the Ministry of Transport.

(5) Schedule 1 has effect with respect to the members of the Council.

(6) Schedule 2 has effect with respect to the procedure of the Council.

2B Principal functions of Air Transport Council

The principal functions of the Air Transport Council are:

(a) to advise the Minister on:

(i) any application for a licence that is referred to the Council by the Minister, and

(ii) any proposal to revoke, vary or suspend a licence or to attach further or new conditions to a licence, being a proposal that is referred to the Council by the Minister,

(b) to determine, with the concurrence of the Minister, application and licence fees under

this Act,

- (c) to exercise such functions as the Minister may delegate to it under this Act, and
- (d) to advise the Minister on such matters relating to air transport services as the Council thinks fit or as may be referred to the Council by the Minister.

2C Staff of the Air Transport Council

- (1) An Executive Officer and such other staff as may be necessary to enable the Air Transport Council to exercise its functions shall be employed under the *Public Service Act 1979*.
- (2) The Council may:
 - (a) with the approval of the Minister, and
 - (b) on such terms and conditions as may be approved by the Public Service Board, arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.
- (3) The Minister may engage persons having suitable qualifications and experience as consultants to the advisory committee.
- (4) The terms and conditions under which consultants are engaged shall be such as are from time to time determined by the Minister.

3 Licensing of persons for the carriage intrastate of passengers

- (1) A person shall not carry by an aircraft from a place in New South Wales to another place in New South Wales any passengers unless:
 - (a) the person is the holder of a licence under this Act, and
 - (b) if the person is operating or providing a regular air transport service, the route over which the passengers are carried is a route in respect of which the licence was granted.
 - (c) (Repealed)
- (1A) For the purposes of subsection (1), a person is operating or providing a regular air transport service while carrying passengers over a particular route if aircraft operated by the person are engaged in a service conducted:
 - (a) in accordance with fixed schedules over that route, or
 - (b) unless otherwise authorised by the Minister, on 5 or more occasions within any period of 28 days over that route.

(1B) In exercising powers under subsection (1A) (b), the Minister shall have regard to such of the matters specified in section 6 (3) as to the Minister seems appropriate and to no other matters.

(2) A person who contravenes subsection (1) is guilty of an offence against this Act.

(3)-(7) (Repealed)

3A Authority for Australian Airlines to operate intrastate air services

Section 19A of the *Australian National Airlines Act 1945* of the Commonwealth is adopted for the purposes of this Act.

4 Powers of authorised persons

- (1) A person (in this section referred to as an **authorised person**) authorised in writing to do so by the Minister 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 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.
- (2) Any person who fails to comply with a requirement of an authorised person made under subsection (1) or who answers in a false or misleading manner any question put to the person by an authorised person pursuant to that subsection is guilty of an offence against this Act.
- (3) A person shall not be guilty of an offence under subsection (2) by reason of the person's failure to answer any question if the person proves to the satisfaction of the court that the person 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 (1), on the ground that the answer might tend to criminate the person or make the person liable to a penalty, but the answer given by the person shall not be admissible against the person in any proceedings civil or criminal, except in proceedings for an offence arising under subsection (2).
- (5) Where any answer to a question referred to in subclause (1), 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 3, 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 the person 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 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.

5 Applications for licences

- (1) An application for a licence shall:
 - (a) be lodged at the office of the Ministry of Transport,
 - (b) be in writing and in a form approved by the Minister,
 - (c) be accompanied by the application fee determined by the Air Transport Council with the concurrence of the Minister,
 - (d) specify the route or routes, if any, in respect of which the application is made, and
 - (e) specify such particulars and contain such information as the Minister may require.
 - (f), (g) (Repealed)
- (2) An applicant for a licence shall furnish to the Minister such additional particulars and information as the Minister may require.

6 Consideration by the Minister of applications for licences

- (1) The Minister may grant or refuse any application for a licence.
- (2) A licence may be granted subject to or not subject to conditions.
- (3) In deciding whether to grant or refuse a licence and the conditions, if any, subject to which it should be granted, the Minister shall have regard to such of the following matters as 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 licence,

- (b) (Repealed)
- (c) the allocation of routes for public air transport services 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, the applicant's character and suitability and fitness to hold the licence 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 licence applied for,
- (e) (Repealed)
- (f) the effect, if any, on the maintenance and orderly development of adequate and reasonable public air transport services within New South Wales, of the operation of aircraft by the applicant over the route or routes specified in the application,
- (g) the effect, if any, on the economic development of, or on the environment in, any area within New South Wales, of the operation of aircraft by the applicant over the route or routes specified in the application,
- (h) whether the applicant and the applicant's aircraft, pilots and passengers will be adequately insured,
- (i) the ownership of, or the extent of the applicant's rights to operate, the aircraft to be used by the applicant.

7 Licences

- (1) A licence shall be in such form as the Minister may determine and shall specify any route or routes in respect of which it is granted.
- (2) A licence shall commence and expire on such days as are specified in the licence.
- (3) Licence fees determined by the Air Transport Council with the concurrence of the Minister are payable in the prescribed manner and at the prescribed times by the holders of licences in respect of routes over which regular air transport services (within the meaning of section 3 (1A)) operate.

8 Revocation, suspension and variation of licences

- (1) Where at any time, the Minister, having regard to such of the matters specified in section 6 (3) as seem appropriate and to no other matters, is of opinion that it is desirable to do so, the Minister may by notice in writing served on the holder of a licence:

- (a) revoke or vary, as on and from a date specified in the notice, or suspend for a period or periods so specified, the licence or any of the particulars or conditions thereof, or
 - (b) attach to the licence, as on and from a date so specified, any further or new condition.
- (2) A notice under subsection (1):
- (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 licence at the address last notified to the Minister by the holder of the licence or, in the case of a corporation, in the manner mentioned in section 109X or 601CX of the *Corporations Act 2001* of the Commonwealth.
- (3) Without limiting the generality of subsection (1), the Minister may revoke, or suspend for such period as the Minister thinks fit, a licence 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 licence.
- (4) The Minister may exercise any of the powers conferred by subsection (1) or (3) notwithstanding that at the time the power is exercised the licence is suspended.

9 Non-compliance with conditions

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

10 Determinations of application and licence fees

- (1) A determination by the Air Transport Council (with the concurrence of the Minister) of an application fee or licence fee for the purposes of this Act shall be by order published in the Gazette.
- (2) An order shall take effect on and from the date of publication of the order or a later date specified in the order.
- (3) An application fee or licence fee may be determined by reference to specified factors or so as:
 - (a) to apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) to apply differently according to different factors of a specified kind, or
 - (c) to provide for a maximum or a minimum fee,or so as to do any combination of those things.

11 Evidence of licence

- (1) 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 licence, or that particulars or conditions are, or were, on a specified day, particulars or conditions contained in or attached to a licence, or that any particulars are not, or were not, on a specified day, contained in a licence, 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.
- (2) The Minister may give a certificate stating:
 - (a) that a specified person was or was not authorised under section 3 (1A) (b) to operate aircraft over a specified route on a specified day or during a specified period, and
 - (b) where the person was so authorised, the terms of the authorisation.
- (3) A certificate purporting to have been given pursuant to subsection (2) 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 have signed the certificate.

11A Delegation

- (1) The Minister may, by instrument in writing, delegate to the Air Transport Council the exercise of such of the functions (other than this power of delegation) conferred or imposed on the Minister by or under this Act as may be specified in the instrument of delegation and may, by such an instrument, revoke wholly or in part any such delegation.
- (2) A function, the exercise of which has been delegated under this section, may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation by the Air Transport Council.
- (3) A delegation under this section may be made subject to such conditions or limitations as to the exercise of any function delegated, or as to time or circumstance, as may be specified in the instrument of delegation.
- (4) Notwithstanding any delegation under this section, the Minister may continue to exercise all or any of the functions delegated.
- (5) Any act or thing done or suffered by the Air Transport Council while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done or suffered by the Minister and shall be deemed to have been done or suffered by the Minister.

- (6) An instrument purporting to be executed by the Air Transport Council in its capacity as the delegate of the Minister under this section shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Minister and, until the contrary is proved, shall be deemed to be an instrument executed by the Air Transport Council in that capacity.

12 Penalties and proceedings for offences against Act or regulations

- (1) A person who is guilty of an offence against this Act is liable to a penalty not exceeding 50 penalty units or to imprisonment for a period not exceeding 12 months or to both that penalty and imprisonment.
- (2) All proceedings for offences against this Act or the regulations shall be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.
- (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) (Repealed)

13 Regulations

- (1) The Governor may make regulations not inconsistent with this Act for or with respect to:
- (a) the determination and payment of application fees and licence fees,
 - (a1) prescribing the procedure for the calling of, or for the conduct of business at, meetings of the Air Transport Council, and
 - (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) The regulations may impose a penalty not exceeding 2 penalty units for any breach thereof.
- (3) (Repealed)
- (4) A regulation may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

14-17 (Repealed)

18 Obligations under other laws

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

19 (Repealed)

Schedule 1 Provisions relating to the members of the Air Transport Council

(Section 2A (5))

1 (Repealed)

2 Deputies

- (1) A member of the Council may, from time to time, appoint a person to be a deputy of the member, and the member or the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
 - (a) shall, if available, act in the place of the member, and
 - (b) while so acting shall be deemed to be a member of the Council and shall have and may exercise the functions of the member.

3 Term of office

Subject to this Schedule, an appointed member of the Council shall hold office for such period as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

4 Remuneration

A member of the Council is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

5 Filling of vacancy in office of member

If the office of any member of the Council becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

6 Casual vacancies

- (1) A member of the Council shall be deemed to have vacated office if the member:

- (a) dies,
- (b) absents himself or herself from 4 consecutive meetings of the Council of which reasonable notice has been served on the member, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings,
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the *Mental Health Act 1958*, a forensic patient within the meaning of the *Mental Health Act 1983* or a protected person within the meaning of the *Protected Estates Act 1983*,
- (e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable,
- (f) resigns the office by instrument in writing addressed to the Minister, or
- (g) (Repealed)
- (h) is removed from office by the Minister under subclause (2) or (3).

(2) The Minister may remove a member of the Council from office.

(3) Without affecting the generality of subclause (2), the Minister may remove a member of the Council from office if the member contravenes the provisions of clause 7.

7 Disclosure of pecuniary interests

(1) A member of the Council who has a direct pecuniary interest:

- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Council, or
- (b) in a thing being done or about to be done by the Council,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

(2) A disclosure by a member of the Council at a meeting of the Council that the member:

- (a) is a member, or is in the employment, of a specified company or other body,
- (b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

- (3) The Council shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Council from time to time.
- (4) After a member of the Council has, or is deemed to have, disclosed the nature of an interest in any matter or thing, the member shall not, unless the Minister otherwise determines:
- (a) be present during any deliberation of the Council, or take part in any decision of the Council, with respect to that matter, or
 - (b) exercise any functions under this Act with respect to that thing,
- as the case requires.
- (5) Notwithstanding that a member of the Council contravenes the provisions of this clause, that contravention does not invalidate any decision of the Council or the exercise of any function under this Act.
- (6) Nothing in this clause applies to or in respect of an interest of a member of the Council in a matter or thing which arises only because the member:
- (a) is a member of or associated with any institution, organisation or body, and
 - (b) was appointed by virtue of that membership or association.
- (7) A reference in this clause to a meeting of the Council includes a reference to a meeting of a committee or subcommittee of the Council.

8 Effect of certain other Acts

- (1) If by or under any other Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,
- that provision shall not operate to disqualify the person from holding that office and also the office of a member of the Council or from accepting and retaining any

remuneration payable to the person under this Act as such a member.

- (2) The office of a member of the Council shall, for the purposes of any Act, be deemed not to be an office or place of profit under the Crown.

Schedule 2 Provisions relating to the procedure of the Air Transport Council

(Section 2A (6))

1 General procedure

The procedure for the calling of meetings of the Council and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Council.

2 Quorum

The quorum for a meeting of the Council is 3 members.

3 Presiding member

- (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present shall preside at a meeting of the Council.
- (2) The person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

4 Voting

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present shall be the decision of the Council.

5 Minutes

The Council shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Council.

6 Authentication of documents

Any document requiring authentication by the Council is sufficiently authenticated if it is signed by the Chairperson or by any member who is authorised by the Chairperson in that behalf.

7 First meeting of the Council

The Minister shall call the first meeting of the Council in such manner as the Minister thinks fit.