

Air Transport Act 1964 No 36

[1964-36]



New South Wales

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Contents

| | |
|--|----|
| Long title | 4 |
| 1 Name of Act and construction | 4 |
| 2 Definitions | 4 |
| 2A–2C (Repealed) | 5 |
| 3 Licensing of persons for the carriage intrastate of passengers | 5 |
| 3A (Repealed) | 5 |
| 4 Powers of authorised persons | 6 |
| 4A Deregulated routes | 7 |
| 5 Applications for licences | 7 |
| 6 Consideration of applications for licences | 7 |
| 7 Licences | 8 |
| 8 Revocation, suspension and variation of licences | 9 |
| 9 Non-compliance with conditions | 9 |
| 10 (Repealed) | 9 |
| 10A Review by Administrative Decisions Tribunal | 9 |
| 11 Evidence of licence | 10 |
| 11A Delegation of Director-General’s functions | 10 |
| 12 Penalties and proceedings for offences against Act or regulations | 10 |
| 12A Establishment of State Aviation Working Group | 10 |
| 12B Functions of State Aviation Working Group | 11 |
| 13 Regulations | 11 |
| 14–17 (Repealed) | 12 |
| 18 Obligations under other laws | 12 |

| | |
|---|----|
| 19 Savings, transitional and other provisions..... | 12 |
| Schedule 1 Constitution and procedure of State Aviation Working Group | 12 |
| Schedule 2 Savings, transitional and other provisions | 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- (3)-(5) (Repealed)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:

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

deregulated route means a route that is declared to be a deregulated route by an order in force under section 4A.

Director-General means the Director-General of the Ministry of Transport.

Function includes power, authority and duty.

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

Working Group means the State Aviation Working Group established by section 12A.

- (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-2C (Repealed)

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, whether alone or together with aircraft operated by some other person, are engaged in a service conducted by the person, whether alone or in association with any other such person:

(a) in accordance with fixed schedules over that route, or

(b) unless otherwise authorised by the Director-General, on 5 or more occasions within any period of 28 days over that route.

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

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

(3) This section does not apply to:

(a) the provision of a charter service, being any air transport service that is operated or provided otherwise than as a regular service over a particular route, or

(b) the provision of a regular air transport service over a deregulated route.

(4)-(7) (Repealed)

3A (Repealed)

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.

4A Deregulated routes

- (1) The Minister may, by order published in the Gazette, declare specified routes or classes of routes to be deregulated routes for the purposes of this Act.
- (2) In deciding whether to make such a declaration with respect to particular routes or classes of routes, the Minister must have regard to the following matters:
 - (a) the needs of the public of New South Wales as a whole, and of the public of any area or district, for air transport services along the routes concerned,
 - (b) fostering competition between airlines in relation to the routes concerned,
 - (c) the effect, if any, on the maintenance and development of adequate and reasonable public air transport services within New South Wales, of the operation of aircraft over the routes concerned,
 - (d) the effect, if any, on the economic development of, or on the environment in, any area or district within New South Wales, of the operation of aircraft over the routes concerned.

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 Director-General,
 - (c) (Repealed)
 - (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 Director-General may require.
 - (f), (g) (Repealed)
- (2) An applicant for a licence shall furnish to the Director-General such additional particulars and information as the Director-General may require.

6 Consideration of applications for licences

- (1) The Director-General 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 Director-General 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 Director-General 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) (Repealed)

8 Revocation, suspension and variation of licences

- (1) Where at any time, the Director-General, 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 Director-General 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 Director-General 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 Director-General may revoke, or suspend for such period as the Director-General 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 Director-General 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 (Repealed)

10A Review by Administrative Decisions Tribunal

- (1) An applicant for a licence may apply to the Administrative Decisions Tribunal for a review of any decision made by the Director-General with respect to the application.
- (2) A person whose licence has been varied or revoked by the Director-General may apply to the Administrative Decisions Tribunal for a review of the Director-General's decision to vary or revoke the licence.

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 of Director-General's functions

The Director-General may delegate to any person any of the Director-General's functions under this Act, other than this power of delegation.

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.
- (3) Proceedings for an offence against this Act may be commenced at any time within 2 years after the commission of the offence.
- (4) (Repealed)

12A Establishment of State Aviation Working Group

- (1) There is to be a State Aviation Working Group, whose members are to include:
 - (a) an officer of the Ministry of Transport appointed by the Director-General of that Ministry,

- (b) an officer of the Department of Planning appointed by the Director-General of that Department,
 - (c) an officer of the Department of Tourism, Sport and Recreation appointed by the Director-General of that Department,
 - (d) an officer of the Department of State and Regional Development appointed by the Director-General of that Department,
 - (e) a person appointed by the Minister on the nomination of the Shires Association of New South Wales,
 - (f) a person appointed by the Minister on the nomination of the Regional Aviation Association of Australia,
 - (g) a person appointed by the Minister on the nomination of the Australian Airports Association.
- (2) The member referred to in subsection (1) (a) is the Chairperson of the Working Group.
- (3) Schedule 1 has effect with respect to the constitution and procedure of the Working Group.

12B Functions of State Aviation Working Group

The Working Group has the following functions in relation to the provision of air transport services within New South Wales:

- (a) to advise the Director-General (and, through the Director-General, the Minister) on matters relating to the regulation of those services, including the policies and strategies to be adopted in relation to those services,
- (b) to provide information concerning the regulation of those services to persons having an interest in the provision of those services, including both State and local government agencies,
- (c) to seek the views of persons having an interest in the provision of those services in relation to the regulation of those services.

13 Regulations

- (1) The Governor may make regulations not inconsistent with this Act for or with respect to:
- (a) the provision to the Director-General, by persons involved in the operation or provision of air transport services within New South Wales, of statistical information concerning the operation or provision of those services, and
 - (a1) (Repealed)

- (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 Savings, transitional and other provisions

Schedule 2 has effect.

Schedule 1 Constitution and procedure of State Aviation Working Group

(Section 12A)

Part 1 General

1 Definitions

In this Schedule:

Chairperson means the Chairperson of the Working Group.

member means any member of the Working Group.

Ministerial appointee means a person who is appointed by the Minister as a member of the Working Group.

Part 2 Constitution

2 Terms of office of Ministerial appointees

Subject to this Schedule and the regulations, a Ministerial appointee holds office for such period (not exceeding 2 years) as is specified in his or her instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Ministerial appointees to be part-time members

Ministerial appointees hold office as part-time members.

4 Remuneration of Ministerial appointees

A Ministerial appointee 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 appointee.

5 Vacancy in office of Ministerial appointee

(1) The office of a Ministerial appointee becomes vacant if the appointee:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause or by the Governor under Chapter 5 of the *Public Sector Employment and Management Act 2002*, or
- (e) is absent from 3 consecutive meetings of the Working Group of which reasonable notice has been given to the appointee personally or by post, except on leave granted by the Director-General or unless the appointee is excused by the Director-General for having been absent from those meetings, or
- (f) 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, or
- (g) becomes a mentally incapacitated person, or
- (h) 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.

(2) The Minister may remove a Ministerial appointee from office at any time.

6 Filling of vacancy in office of Ministerial appointee

If the office of a Ministerial appointee becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

7 Disclosure of pecuniary interests

(1) If:

- (a) a member has a direct or indirect pecuniary interest or other interest in a matter being considered or about to be considered at a meeting of the Working Group, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, 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 Working Group.

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

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

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1).

(3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Working Group otherwise determines:

- (a) be present during any deliberation of the Working Group with respect to the matter, or
- (b) take part in any decision of the Working Group with respect to the matter.

(4) For the purposes of the making of a determination by the Working Group under subclause (3), a member who has a direct or indirect pecuniary interest or other interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Working Group for the purpose of making the determination, or
- (b) take part in the making by the Working Group of the determination.

- (5) Subclauses (1) and (3) do not apply to an interest that the member has as:
 - (a) a member of any local government agency, or
 - (b) an office bearer of any statutory body, or
 - (c) a member of the Public Service or an employee of a statutory body.
- (6) A contravention of this clause does not invalidate any decision of the Working Group.
- (7) This clause applies to a member of a committee of the Working Group and the committee in the same way as it applies to a member of the Working Group and the Working Group.

8 Effect of certain other Acts

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a Ministerial appointee.
- (2) If by or under any 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,

the provision does not operate to disqualify the person from holding that office and also the office of a Ministerial appointee or from accepting and retaining any remuneration payable to the person under this Act as a Ministerial appointee.

Part 3 Procedure

9 General procedure

The procedure for the calling of meetings of the Working Group and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Working Group.

10 Quorum

The quorum for a meeting of the Working Group is 4 members, of whom one is to be the Chairperson.

11 Presiding member

- (1) At any meeting of the Working Group, the Chairperson is to preside.
- (2) The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a meeting of the Working Group at which a quorum is present is the decision of the Working Group.

13 Transaction of business outside meetings or by telephone

- (1) The Working Group may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Working Group for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Working Group.
- (2) The Working Group may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Working Group.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Working Group.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

14 Minutes

The Working Group must keep minutes of proceedings at its meetings.

15 First meeting

The Minister may call the first meeting of the Working Group in such manner as the Minister thinks fit.

Schedule 2 Savings, transitional and other provisions

(Section 19)

Part 1 Preliminary

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent

on the enactment of the following Acts:

Air Transport Amendment Act 2006

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

Part 2 Provisions consequent on *Air Transport Amendment Act 2006*

2 Abolition of Air Transport Council

- (1) The Air Transport Council is abolished.
- (2) No compensation is payable to any member of the Air Transport Council who is removed from office under this clause.

3 Fees for applications and licences

- (1) Fees that had been paid under section 7 of this Act before its amendment by the *Air Transport Amendment Act 2006* do not have to be repaid.
- (2) Fees that had been payable under section 7 of this Act before its amendment by the *Air Transport Amendment Act 2006*, but had not been paid, do not have to be paid.

4 Appeals to Administrative Decisions Tribunal

Section 10A, as inserted by the *Air Transport Amendment Act 2006*, does not apply to any decision made before the commencement of that section.