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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

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**CIVIL AVIATION LEGISLATION AMENDMENT BILL 1997**

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**EXPLANATORY MEMORANDUM**

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## CIVIL AVIATION LEGISLATION AMENDMENT BILL 1997

### OUTLINE

The purpose of the Bill is to amend the mandatory passenger liability insurance régime that is imposed upon the operators of aircraft in Australia. That régime is put in place by Part IVA of the *Civil Aviation (Carriers' Liability) Act 1959* ('Carriers' Liability Act'), and applied to operators carrying passengers on routes wholly within individual States by complementary State legislation.

The Bill is intended to make the administration of the nation-wide scheme simpler. There are three ways in which the Bill will do this:

- by authorising the Civil Aviation Safety Authority ('CASA') to directly administer both the Commonwealth Carriers' Liability Act and the complementary State legislation, rather than under delegation from the Commonwealth and State Ministers responsible for transport;
- by allowing Australian governments to self-insure their risks under the Carriers' Liability Act, instead of requiring them to take out commercial insurance; and
- by imposing conditions upon Air Operator's Certificates ('AOCs') which require that the operators continue to hold the mandatory non-voidable passenger liability insurance required by the Carriers' Liability Act, and empowering CASA to suspend or cancel AOCs for breach of those conditions.

The Bill also makes a number of minor corrections to aviation-related legislation of a formal or typographical nature.

### FINANCIAL IMPACT STATEMENT

It is anticipated that the Bill will somewhat reduce the costs borne by CASA (a primarily budget-funded organisation) in administering the mandatory passenger liability insurance scheme.

## NOTES ON CLAUSES

### Clause 1 - Short Title

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The Bill, when enacted, will be known as the *Civil Aviation Legislation Amendment Act 1997*.

### Clause 2 - Commencement

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While the principal amendments to the Carriers' Liability Act and the *Civil Aviation Act 1988* ('Civil Aviation Act') are to commence when the Bill receives Royal Assent, subclauses 2(2), (3) and (4) provide that some of the provisions of the Bill which make typographical or formal corrections have retrospective effect. This is to ensure that the corrections have effect from the date of commencement of the provisions which are being corrected.

The retrospective correction of typographical errors, contained in Item 2 of Schedule 2 and Schedule 3 of the Bill, has no effect on the rights, duties and obligations of any person.

The retrospective repeal contained in Schedule 4 of the Bill has no effect on the rights, duties and obligations of any person, as the amendments supposedly contained in the provisions being repealed had no effect; the amendments purported to amend legislation which had been repealed previously.

### Clause 3 - Schedule(s)

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This clause provides that the Acts specified in the Schedules to the Bill are amended as set out in the Schedules, and items in the Schedules have effect according to their terms.

**SCHEDULE 1 - AMENDMENT OF THE CIVIL AVIATION  
(CARRIERS' LIABILITY) ACT 1959**

**Clause 1 - Section 7**

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This clause repeals and replaces section 7 of the Carriers' Liability Act. The effect of the replacement is to bind the governments of the Australian Capital Territory, the Northern Territory, and Norfolk Island, in addition to the Commonwealth and State governments. Nevertheless, the Crown is not liable to be prosecuted for offences under the Act.

**Clauses 2 to 4 - Section 41B**

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These clauses insert definitions into the definition section of Part IVA of the Carriers' Liability Act, which are necessary to give effect to the other amendments to the Act. The clauses insert definitions of *CASA*, *Director* and *member* which are in line with definitions in the Civil Aviation Act.

**Clause 5 - Subsection 41C(1)**

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This clause amends subsection 41C(1) of the Carriers' Liability Act to empower CASA, in place of the Minister, to require a carrier to produce satisfactory evidence that the carrier has personal injury liability insurance which satisfies the statutory requirements of Part IVA of the Act. The amendment also removes carriers which are agents of the Crown from the requirement to produce evidence of insurance; such carriers are dealt with under new arrangements put in place by other amendments.

**Clause 6 - Sections 41C, 41J and 41K**

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This clause amends sections 41C, 41J and 41K of the Carriers' Liability Act by replacing the term "the Minister" with "CASA". The amendments will empower officers of CASA to directly administer the mandatory passenger liability insurance scheme, rather than as delegates of the Minister.

**Clause 7 - After section 41C**

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This clause inserts a new section 41CA into the Carriers' Liability Act. Section 41CA deals with carriers who are agents of the Crown. CASA is empowered to seek evidence from such carriers that they have financial arrangements in place to discharge any personal liability that may accrue to them under the Carriers' Liability Act. Thus, governments that act as passenger carriers are not required to hold commercial insurance to cover their personal injury liabilities, but must still demonstrate, if required by CASA, that they can discharge their financial obligations under the Act, including being capable of paying compensation of up to \$500,000 per passenger in the event of an accident.

## **Schedule 1**

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If CASA is satisfied that a carrier which is an agent of the Crown has satisfactory compensation arrangements in place, it may give the carrier a written certificate stating that that is the case.

### **Clauses 8 and 9 - Subsection 41E(1); After subsection 41E(1)**

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Clause 8 amends subsection 41E(1) of the Carriers' Liability Act to remove carriers which are agents of the Crown from the scope of the offence provision. However, clause 9 inserts a new subsection 41E(1A) which deals with these carriers. Carriers which are agents of the Crown are still not permitted to carry passengers if they have been required by CASA to provide evidence that they have satisfactory compensation arrangements in place under section 41CA, and they have not provided that evidence.

### **Clause 10 - Section 41L**

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This clause repeals and replaces section 41L of the Carriers' Liability Act. The effect of the replacement is to change the Minister's power of delegation under the Act to a power of delegation vested in the Director of CASA. The new section 41L empowers the Director of CASA to delegate any of CASA's powers under the Act to members or officers of CASA.

### **Clause 11 - At the end of Part IVA**

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This clause inserts new section 41M into Part IVA of the Carriers' Liability Act. The section will ensure that actions or things done by the Minister or his delegates prior to the commencement of Schedule 1 of the Bill remain valid. For example, certificates issued by the Minister under section 41C(7) of the Act remain valid, and injunction actions commenced by the Minister under section 41J remain on foot, despite the Minister's powers being transferred to CASA by the amendments contained in Schedule 1.

### **Clause 12 - At the beginning of Part V**

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This clause inserts a new section 41N into Part V of the Carriers' Liability Act. This section will authorise States to confer functions and powers under their complementary mandatory passenger liability insurance legislation on Commonwealth authorities and officers. Although not essential to allow the comprehensive nation-wide scheme to be administered by CASA (which is empowered under paragraph 9(3)(b) of the Civil Aviation Act to exercise powers under complementary State laws), the provision will allow the Commonwealth Director of Public Prosecutions to prosecute offences against the State laws.

## **Schedule 1**

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The section appears in Part V of the Act so that it is not picked up by those State Carriers' Liability laws which merely apply Parts IV and IVA of the Commonwealth Act as State law.

### **Clause 13 - Modification of regulations**

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Subclause 13(1) states that references to the Minister in regulations made for the purposes of Part IVA of the Act are read as references to CASA. Subclause 13(2) ensures subclause (1) does not restrict those regulations being amended or repealed in the future.

**SCHEDULE 2 - AMENDMENT OF THE CIVIL AVIATION  
ACT 1988**

**Clause 1 - Subsection 18(3) (definition of *permission*)**

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Clause 1 clarifies the meaning of *permission* for the purposes of section 18 of the Civil Aviation Act, by expressly excluding AOCs.

**Clause 2 - Paragraph 28(1)(c)**

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This clause substitutes the reference in paragraph 28(1)(c) of the Civil Aviation Act to "subsection 27AE(1)" to "section 28A". This corrects a typographical error in the paragraph. Under subclause 2(2) of the Bill, this amendment is taken to have commenced on 6 July 1995.

**Clause 3 - Paragraph 28BA(1)(a)**

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This clause adds a reference to section 28BI to paragraph 28BA(1)(a) of the Civil Aviation Act. The effect of the addition is to impose a further condition on AOCs that section 28BI of the Act be complied with. Section 28BI deals with holding passenger liability insurance under Part IVA of the Carriers' Liability Act, see clause 11 of this schedule below. Failure by the holder of an AOC to comply with section 28BI can result in an AOC being cancelled or suspended by CASA under subsection 28BA(3).

**Clause 4 - Subsection 28BA(2)**

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This clause repeals and replaces subsection 28BA(2) of the Civil Aviation Act. The effect of the replacement is to divide the content of subsection 28BA(2) into two subsections. The object is merely to clarify whether breach of a condition of an AOC results in that AOC continuing to authorise operations to which that condition relates. The distinction is between conditions imposed by paragraph 28BA(1)(a) and the other paragraphs of subsection 28BA(1), and the two new subsections clarify the distinction.

**Clauses 5 to 10**

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The purpose of these amendments to subsections 28BC(1) and (2) of the Civil Aviation Act is to make it clear that CASA is empowered to suspend or cancel the AOC of an operator where the operator has failed to comply with subsections 41E(1) or (1A) of the Carriers' Liability Act, that is, has carried passengers without having an acceptable contract of insurance to cover those passengers.

Clauses 5, 6, 8 and 9 are purely mechanical, splitting away the power to suspend and cancel AOCs from the powers to impose or vary conditions of AOCs in paragraphs 28BC(1)(a), (1)(b), (2)(a) and (2)(b). The power to suspend and



cancel AOCs is then reformulated in subsections 28BC(1A), (1B), (1C), (2A), (2B) and (2C) (inserted by clauses 7 and 10).

The subsections inserted by clauses 7 and 10 maintain CASA's power to cancel or suspend an AOC to ensure that an aircraft's operation, maintenance and airworthiness are of standard that CASA considers necessary in the interests of the safety of air navigation. In addition, CASA is empowered to cancel or suspend an AOC where the operator has failed to comply with subsections 41E(1) or (1A) of the Carriers' Liability Act, including those sections as they apply as laws of a State. However, because of Constitutional restrictions on Commonwealth legislative powers, CASA is only entitled to cancel or suspend an AOC for breach of a *State* law where the holder of the AOC is a trading or foreign corporation, or a corporation formed in a Territory.

#### **Clause 11 - At the end of Subdivision E of Division 3 of Part III**

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This clause adds a section 28BI to Subdivision E of Division 3 of Part III of the Civil Aviation Act (which subdivision deals with conditions imposed on AOCs).

Section 28BI stipulates that the holder of an AOC must not engage in an air transport operation to which Part IVA of the Carriers' Liability Act applies unless the holder complies with subsection 41E(1) or 41E(1A) of the Act. Thus, the holder of an AOC must have an insurance certificate issued by CASA under the Carriers' Liability Act before it can carry passengers; the insurance certificate is only issued by CASA if the holder of the AOC has passenger liability insurance or other personal injury compensation arrangements which satisfy Part IVA of the Carriers' Liability Act.

**SCHEDULE 3 - AMENDMENT OF THE CIVIL AVIATION  
LEGISLATION AMENDMENT ACT 1995**

**Clause 1 - Item 7 of Schedule 3**

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This clause merely deletes the word “a” from an inappropriate place in Item 7 of Schedule 3 of the *Civil Aviation Legislation Amendment Act 1995*, which item amended subsection 4(1) of the *Aviation Fuel Revenues (Special Appropriation) Act 1988*. This amendment has retrospective effect to 6 July 1995.

**SCHEDULE 4 - AMENDMENT OF THE COMPETITION  
POLICY REFORM ACT 1995**

**Clause 1 - Schedule 3 (amendments of the *Civil Aviation Act 1988* and  
heading to the amendments)**

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This clause repeals all amendments to the Civil Aviation Act contained in Schedule 3 of the *Competition and Policy Reform Act 1995*. This repeal is purely to “clean up” the latter Act; the amendments purported to amend provisions of the Civil Aviation Act which had been repealed some months earlier, and hence were of no effect. This amendment has retrospective effect to 6 November 1995.

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