

First print



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

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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.

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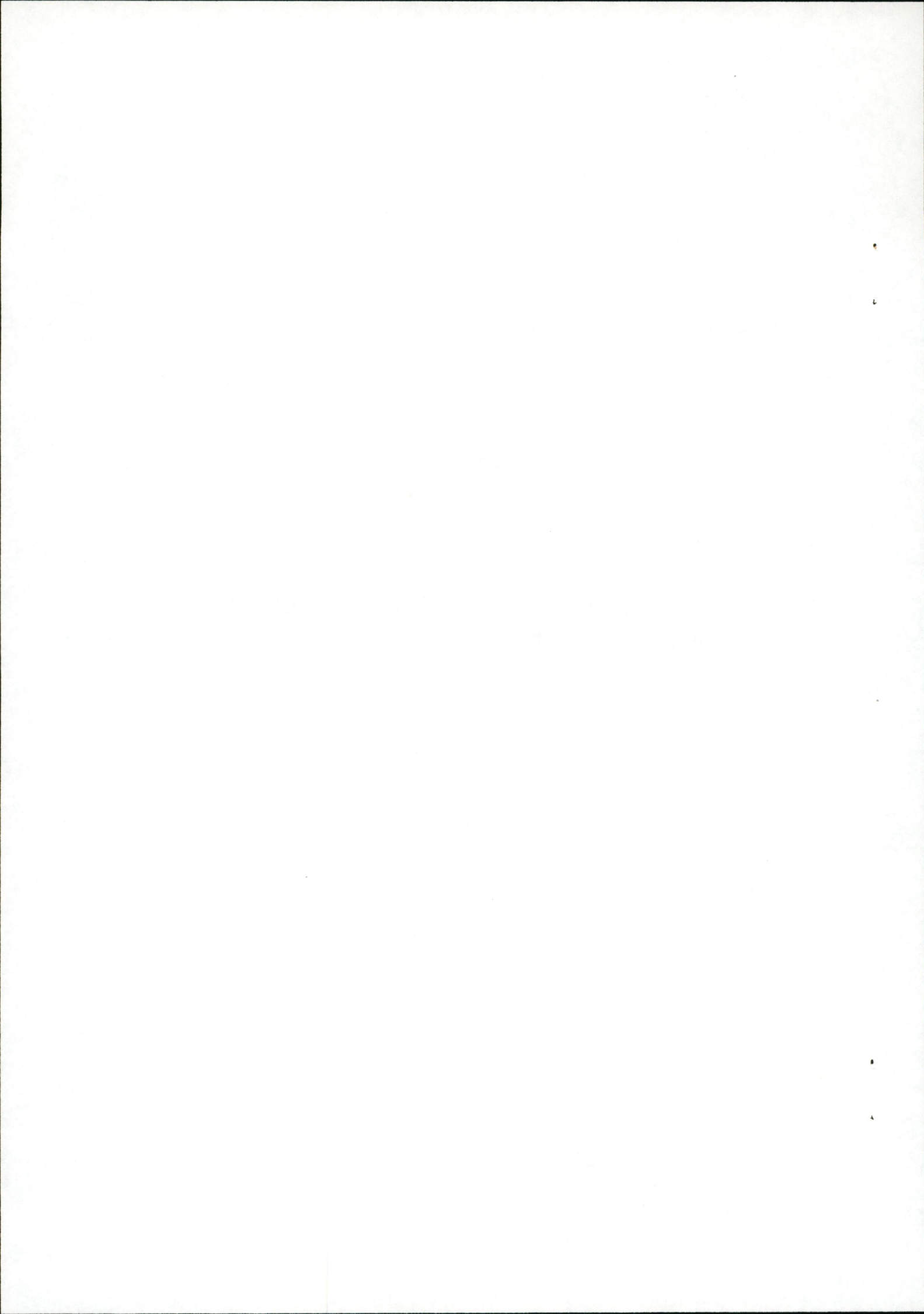


New South Wales

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New South Wales

Civil Aviation (Carriers' Liability) Amendment Bill 1996

No. , 1996

A Bill for

An Act 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; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Civil Aviation (Carriers' Liability) Amendment Act 1996*.

2 Commencement

5

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Civil Aviation (Carriers' Liability) Act 1967 No 64

The *Civil Aviation (Carriers' Liability) Act 1967* is amended as set out in Schedule 1.

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Schedule 1 Amendments

(Section 3)

[1] Section 2 Definitions

Omit “-1962” from the definition of *the Commonwealth Act* in section 2 (1).

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[2] Section 2 (1)

Omit “Part IV” from the definition of *the Commonwealth Regulations*.

Insert instead “Part IV or IVA”.

[3] Section 2 (1)

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Insert in alphabetical order:

applied provisions means the provisions of the Commonwealth Act and the Commonwealth Regulations as they apply under this Act as laws of the State.

Commonwealth authority means an authority or officer of the Commonwealth.

15

[4] Section 2 (2)

Omit “sections 5 and 26”. Insert instead “sections 5, 26 and 41B”.

[5] Section 4 Carriage to which Act applies

Omit “not being carriage to which Part IV of the Commonwealth Act applies or to which the Warsaw Convention, the Hague Protocol or the Guadalajara Convention applies”.

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Insert instead:

not being:

- (a) carriage to which Part IV of the Commonwealth Act applies, or
- (b) carriage to which the Warsaw Convention, the Hague Protocol or the Guadalajara Convention applies, or 5
- (c) carriage to which the provisions of another convention, protocol or treaty apply, being provisions that have the force of law under the Commonwealth Act and that are prescribed for the purposes of this paragraph by the regulations under this Act. 10

[6] Section 5 Application of provisions of Parts IV and IVA of the Commonwealth Act 15

Omit "Part IV" wherever occurring.
Insert instead "Parts IV and IVA".

[7] Section 5

Omit "sections 27, 40 and 41".
Insert instead "sections 27, 40, 41 and 41J (8)". 20

[8] Section 5 (d)

Omit "section 31 of".

[9] Sections 6A and 6B

Insert after section 6:

6A Administration of the applied provisions as Commonwealth laws 25

- (1) It is the intention of Parliament that the applied provisions should be administered and enforced as if they were provisions applying as laws of the Commonwealth instead of being provisions applying as laws of the State. 30

-
- (2) To that end:
- (a) Commonwealth authorities have the same powers to enforce the applied provisions as they have to enforce the Commonwealth Act and the Commonwealth Regulations, and 5
 - (b) the laws of the Commonwealth apply to offences against the applied provisions as if they were offences against the Commonwealth Act or the Commonwealth Regulations, and
 - (c) the laws of the State do not apply to offences against the applied provisions. 10
- (3) In the application of provisions of the Commonwealth Act and the Commonwealth Regulations under this Act, any function or power conferred on a Commonwealth authority by or under those provisions may be exercised or performed (in respect of carriage to which this Act applies and matters connected with that carriage) by that Commonwealth authority. 15

6B Alternative arrangements for administration of applied provisions 20

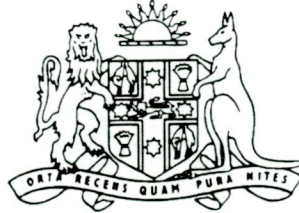
- (1) The regulations may provide that:
- (a) any or all of the provisions of section 6A do not have effect, and
 - (b) any or all of the functions or powers conferred on a Commonwealth authority by or under the applied provisions may be exercised or performed by a person or authority specified in the regulations. 25
- (2) To the extent that, because of regulations referred to in subsection (1), the laws of the Commonwealth do not apply to an offence against the applied provisions, the offence is to be regarded as an indictable offence under the laws of the State, but may, with the consent of the prosecutor and the defendant, be dealt with summarily. 30

[10] Section 7 Regulations

Insert after section 7 (6):

- (7) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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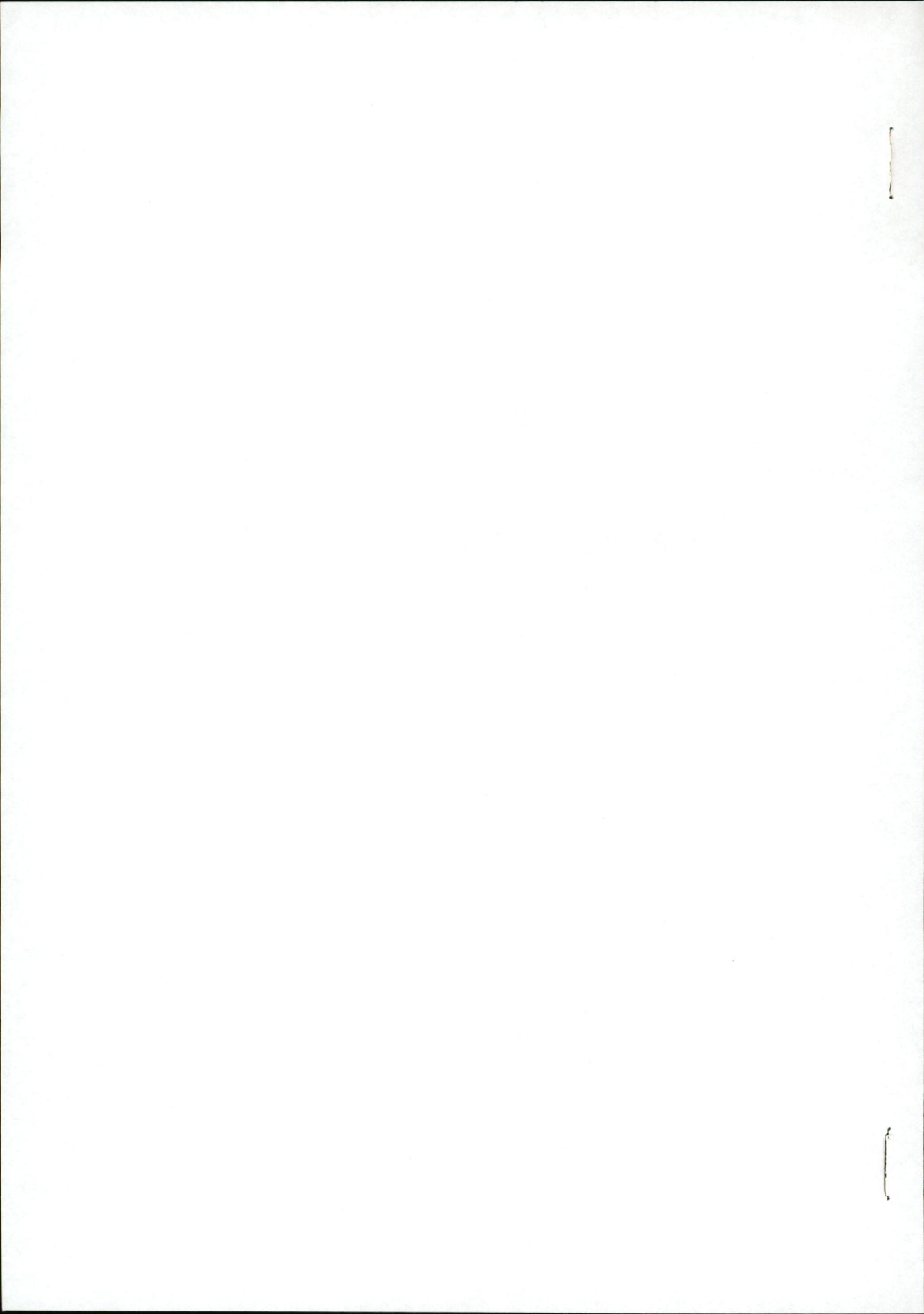


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New South Wales

Civil Aviation (Carriers' Liability) Amendment Act 1996 No 70

Act No 70, 1996

An Act 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; and for other purposes. [Assented to 27 September 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Civil Aviation (Carriers' Liability) Amendment Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Civil Aviation (Carriers' Liability) Act 1967 No 64

The *Civil Aviation (Carriers' Liability) Act 1967* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 2 Definitions

Omit "-1962" from the definition of *the Commonwealth Act* in section 2 (1).

[2] Section 2 (1)

Omit "Part IV" from the definition of *the Commonwealth Regulations*.

Insert instead "Part IV or IVA".

[3] Section 2 (1)

Insert in alphabetical order:

applied provisions means the provisions of the Commonwealth Act and the Commonwealth Regulations as they apply under this Act as laws of the State.

Commonwealth authority means an authority or officer of the Commonwealth.

[4] Section 2 (2)

Omit "sections 5 and 26". Insert instead "sections 5, 26 and 41B".

[5] Section 4 Carriage to which Act applies

Omit "not being carriage to which Part IV of the Commonwealth Act applies or to which the Warsaw Convention, the Hague Protocol or the Guadalajara Convention applies".

Insert instead:

not being:

- (a) carriage to which Part IV of the Commonwealth Act applies, or
- (b) carriage to which the Warsaw Convention, the Hague Protocol or the Guadalajara Convention applies, or
- (c) carriage to which the provisions of another convention, protocol or treaty apply, being provisions that have the force of law under the Commonwealth Act and that are prescribed for the purposes of this paragraph by the regulations under this Act.

[6] Section 5 Application of provisions of Parts IV and IVA of the Commonwealth Act

Omit "Part IV" wherever occurring.
Insert instead "Parts IV and IVA".

[7] Section 5

Omit "sections 27, 40 and 41".
Insert instead "sections 27, 40, 41 and 41J (8)".

[8] Section 5 (d)

Omit "section 31 of".

[9] Sections 6A and 6B

Insert after section 6:

6A Administration of the applied provisions as Commonwealth laws

- (1) It is the intention of Parliament that the applied provisions should be administered and enforced as if they were provisions applying as laws of the Commonwealth instead of being provisions applying as laws of the State.

- (2) To that end:
 - (a) Commonwealth authorities have the same powers to enforce the applied provisions as they have to enforce the Commonwealth Act and the Commonwealth Regulations, and
 - (b) the laws of the Commonwealth apply to offences against the applied provisions as if they were offences against the Commonwealth Act or the Commonwealth Regulations, and
 - (c) the laws of the State do not apply to offences against the applied provisions.
- (3) In the application of provisions of the Commonwealth Act and the Commonwealth Regulations under this Act, any function or power conferred on a Commonwealth authority by or under those provisions may be exercised or performed (in respect of carriage to which this Act applies and matters connected with that carriage) by that Commonwealth authority.

6B Alternative arrangements for administration of applied provisions

- (1) The regulations may provide that:
 - (a) any or all of the provisions of section 6A do not have effect, and
 - (b) any or all of the functions or powers conferred on a Commonwealth authority by or under the applied provisions may be exercised or performed by a person or authority specified in the regulations.
- (2) To the extent that, because of regulations referred to in subsection (1), the laws of the Commonwealth do not apply to an offence against the applied provisions, the offence is to be regarded as an indictable offence under the laws of the State, but may, with the consent of the prosecutor and the defendant, be dealt with summarily.

[10] Section 7 Regulations

Insert after section 7 (6):

- (7) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[Minister's second reading speech made in—
Legislative Assembly on 27 June 1996
Legislative Council on 24 September 1996]

BY AUTHORITY