



Air Accidents (Commonwealth Government Liability) Act 1963

No. 74, 1963

Compilation No. 9

Compilation date:	17 June 2021
Includes amendments up to:	Act No. 148, 2020
Registered:	21 June 2021

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Air Accidents (Commonwealth Government Liability) Act 1963* that shows the text of the law as amended and in force on 17 June 2021 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide for the payment of damages by the Commonwealth and Authorities of the Commonwealth in respect of the death of, or personal injury to, certain persons travelling as passengers in aircraft

Part I—Preliminary

1 Short title

This Act may be cited as the *Air Accidents (Commonwealth Government Liability) Act 1963*.

2 Commencement

This Act shall come into operation on a date to be fixed by Proclamation.

4 Interpretation

In this Act, unless the contrary intention appears:

aircraft crew member means a person who performs functions as a member of the crew of an aircraft.

commercial transport operations means operations in which an aircraft is used, for hire or reward, for the carriage of passengers or cargo.

Commonwealth authority means an authority of the Commonwealth, and includes a body corporate that is incorporated for a public purpose by a law of a Territory and is declared by the regulations to be a body corporate in relation to which this Act applies.

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damages includes an amount received under a compromise or settlement of a claim for damages, whether legal proceedings had been instituted or not.

passenger, in relation to an aircraft, means any person lawfully entitled to be on board the aircraft other than a person who:

- (a) is employed, as an aircraft pilot or aircraft crew member, by:
 - (i) a Commonwealth authority; or
 - (ii) a corporation;
that operates commercial transport operations; and
- (b) is on board the aircraft for the purpose of performing functions as a pilot, or as another member of the crew, of the aircraft.

5 Operation of Act

This Act applies both within and outside the Commonwealth and extends to all the Territories.

Part II—Carriage in aircraft operated by the Commonwealth or a Commonwealth authority

6 Application of Part

- (1) This Part applies to the carriage of a passenger in an aircraft operated by the Commonwealth or a Commonwealth authority, not being carriage to which Part IV of the *Civil Aviation (Carriers' Liability) Act 1959* applies.
- (2) This Part does not apply in relation to the death of, or injury to, a person in circumstances entitling any dependant of the person, or the person, to pension under the *Veterans' Entitlements Act 1986* (other than Part IV).

7 Application of certain provisions of *Civil Aviation (Carriers' Liability) Act 1959*

Subject to this Part, the following provisions of the *Civil Aviation (Carriers' Liability) Act 1959*, namely, section 28, subsection 32(1), sections 33 and 34, section 35 (other than subsection (2)) and sections 37 to 39 (inclusive) apply to and in relation to carriage to which this Part applies as if those provisions were incorporated in this Part and as if:

- (a) references in those provisions to a carrier or the carrier were references to the Commonwealth or the Commonwealth authority by which the aircraft was being operated, as the case requires;
- (b) references in those provisions to Australia included references to the Territories; and
- (c) the reference in section 33 of that Act to section 31 of that Act were a reference to section 8 of this Act.

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8 Limitation of amount recoverable under this Part

- (1) The maximum liability of the Commonwealth or a Commonwealth authority under this Part in respect of any one person, by reason of his or her death or injury resulting from an accident, is:
 - (a) the amount applicable under subsection 31(1AA) of the *Civil Aviation (Carriers' Liability) Act 1959*, unless paragraph (b) applies; or
 - (b) if, at the date of the accident, a regulation was in force under the *Civil Aviation (Carriers' Liability) Act 1959* prescribing an amount for the purposes of paragraph 31(1)(b) of that Act and that amount is higher than the amount applicable under subsection 31(1AA) of that Act—the amount so prescribed.
- (2) The amount of any damages recoverable but for this subsection by a person from the Commonwealth or a Commonwealth authority by virtue of this Part in respect of a death or injury shall be reduced by any amount received or receivable by that person in consequence of the death or injury by reason of:
 - (a) insurance effected for the benefit of the deceased or injured person or his or her estate by the Commonwealth or the Commonwealth authority; or
 - (b) insurance effected by the deceased or injured person that is referable to an allowance granted by the Commonwealth or the Commonwealth authority for the purpose of enabling him or her to effect such insurance.

9 Liability under this Part to be in substitution for certain other liabilities

- (1) Subject to the provisions of section 37 of the *Civil Aviation (Carriers' Liability) Act 1959*, in its application by virtue of this Part, the liability of the Commonwealth or a Commonwealth authority under this Part in respect of the death of a passenger, or personal injury to a passenger that has not resulted in his or her death, is in substitution for any other civil liability of the Commonwealth or the Commonwealth authority in respect of that death or injury other than:

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- (a) a liability under Part IA, Part II or Part III of the *Civil Aviation (Carriers' Liability) Act 1959*; or
 - (b) a liability arising otherwise than by reason of the operation of the aircraft by the Commonwealth or the Commonwealth authority.
- (2) Notwithstanding anything contained in Part IA, Part II or Part III of the *Civil Aviation (Carriers' Liability) Act 1959*, but without prejudice to the operation of section 10, any liability of the Commonwealth or a Commonwealth authority under this Part is not excluded by reason of the existence of any liability of the Commonwealth or of that Commonwealth authority under any of those Parts.

10 Liability of Commonwealth etc. independently of this Part

- (1) Where, apart from this section, damages in respect of any death or injury are recoverable from the Commonwealth or a Commonwealth authority by or for the benefit of a person under this Part and such damages are also recoverable from the Commonwealth or a Commonwealth authority by or for the benefit of that person otherwise than under this Part:
- (a) if damages are recovered otherwise than under this Part, damages are not recoverable under this Part; and
 - (b) if damages are recovered under this Part, the amount of damages recoverable otherwise than under this Part shall be reduced by the amount of the damages so recovered.
- (2) In subsection (1), **damages** does not include:
- (a) compensation under the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* or the *Seamen's Compensation Act 1911*; or
 - (b) a pension under the *Veterans' Entitlements Act 1986*.
- (3) Nothing in this section prevents the application of:
- (a) section Part IV of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* or section 10A of the *Seamen's Compensation Act 1911*; or

Part II Carriage in aircraft operated by the Commonwealth or a Commonwealth authority

Section 10

(b) section 74 of the *Veterans' Entitlements Act 1986*;
in relation to damages recovered or recoverable under this Part.

Part III—Carriage in aircraft not operated by the Commonwealth or a Commonwealth authority

11 Application of Part

- (1) Subject to this section, this Part applies to the carriage in an aircraft operated by a person other than the Commonwealth or a Commonwealth authority of a passenger being:
 - (a) a person who is:
 - (i) an employee within the meaning of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* or a person to whom that Act applies as if he or she were such an employee; or
 - (ii) a seaman to whom the *Seamen's Compensation Act 1911* applies, being a seaman employed by the Commonwealth or a Commonwealth authority; and is travelling in the course of his or her employment by the Commonwealth or a Commonwealth authority;
 - (b) a person the cost of whose carriage has been, or is to be, borne by the Commonwealth or a Commonwealth authority; or
 - (c) a person travelling by air for the purposes of the Commonwealth or of a Commonwealth authority in pursuance of arrangements made or authority given by the Commonwealth or the Commonwealth authority.
- (2) This Part does not apply to carriage to which Part IV of the *Civil Aviation (Carriers' Liability) Act 1959* applies or to which any provisions of a State Act for the time being declared by the Minister by notice in the *Gazette* to correspond with the provisions of that Part apply.

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- (3) This Part does not apply in relation to the death of, or injury to, a person in circumstances entitling any dependant of the person, or the person, to pension under the *Veterans' Entitlements Act 1986* (other than Part IV).
- (3A) Subject to this section, this Part applies to the carriage in an aircraft operated by a person other than the Commonwealth or a Commonwealth authority of a passenger, being a person to whom paragraph (1)(a), (b) or (c) would apply if the references in those paragraphs to the Commonwealth were references to the Australian Capital Territory and the references in those paragraphs to a Commonwealth authority were omitted.
- (3B) For the purposes of the application of this Part in accordance with subsection (3A), the succeeding provisions of this Part have effect as if references in those provisions to the Commonwealth (other than references to a Commonwealth authority, or references to the Commonwealth in the expression *whether in the Commonwealth or elsewhere*) were references to the Australian Capital Territory.
- (4) Subject to this section, this Part applies to the carriage in an aircraft operated by a person other than the Commonwealth or a Commonwealth authority of a passenger, being a person to whom paragraph (1)(a), (b) or (c) would apply if the references in those paragraphs to the Commonwealth were references to the Northern Territory and the references in those paragraphs to a Commonwealth authority were omitted.
- (6) For the purposes of the application of this Part in accordance with subsection (4), the succeeding provisions of this Part have effect as if references in those provisions to the Commonwealth (other than references to a Commonwealth authority, or references to the Commonwealth in the expression *whether in the Commonwealth or elsewhere*) were references to the Northern Territory.

12 Liability of Commonwealth etc. for death or injury

Subject to this Part, where this Part applies to the carriage of a person, the Commonwealth, or, if the person is employed by a

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Commonwealth authority or a Commonwealth authority has borne, or is to bear, the cost of his or her carriage or has arranged for or authorized his or her carriage, that Commonwealth authority, is liable for damage sustained by reason of the death of that person or any personal injury suffered by that person resulting from an accident that took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

13 Application of certain provisions of *Civil Aviation (Carriers' Liability) Act 1959*

Subject to this Part, the following provisions of the *Civil Aviation (Carriers' Liability) Act 1959*, namely, sections 34, 35 (other than subsections (2) and (10)), 38 and 39, apply to and in relation to carriage to which this Part applies as if those provisions were incorporated in this Part and as if:

- (a) references in those provisions to a carrier were references to the Commonwealth or a Commonwealth authority; and
- (b) references in those provisions to Australia included references to the Territories.

14 Limitation of amount recoverable under this Part

- (1) The maximum liability of the Commonwealth or a Commonwealth authority under this Part in respect of any one person, by reason of his or her death or injury resulting from an accident, is:
 - (a) the amount applicable under subsection 31(1AA) of the *Civil Aviation (Carriers' Liability) Act 1959*, unless paragraph (b) applies; or
 - (b) if, at the date of the accident, a regulation was in force under the *Civil Aviation (Carriers' Liability) Act 1959* prescribing an amount for the purposes of paragraph 31(1)(b) of that Act and that amount is higher than the amount applicable under subsection 31(1AA) of that Act—the amount so prescribed.
- (2) The amount of any damages recoverable but for this subsection by a person from the Commonwealth or a Commonwealth authority

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by virtue of this Part in respect of a death or injury shall be reduced by:

- (a) the amount of any damages or compensation paid or payable in respect of the death or injury to or for the benefit of that person by, or recovered or recoverable by or for the benefit of that person from, the carrier, an employee or agent of the carrier or any other person other than the Commonwealth or the Commonwealth authority, as the case may be; and
- (b) any amount received or receivable by that person in consequence of the death or injury by reason of:
 - (i) insurance effected for the benefit of the deceased or injured person or his or her estate by the carrier or by the Commonwealth or the Commonwealth authority; or
 - (ii) insurance effected by the deceased or injured person that is referable to an allowance granted by the Commonwealth or the Commonwealth authority for the purpose of enabling him or her to effect such insurance.

15 Liability of Commonwealth etc. independently of this Part

- (1) Where, apart from this section, damages in respect of any death or injury are recoverable from the Commonwealth or a Commonwealth authority by or for the benefit of a person under this Part and such damages are also recoverable from the Commonwealth or a Commonwealth authority by or for the benefit of that person otherwise than under this Part:
 - (a) if damages are recovered otherwise than under this Part, damages are not recoverable under this Part; and
 - (b) if damages are recovered under this Part, the amount of damages recoverable otherwise than under this Part shall be reduced by the amount of the damages so recovered.
- (2) In subsection (1), **damages** does not include:
 - (a) compensation under the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* or the *Seamen's Compensation Act 1911*; or
 - (b) a pension under the *Veterans' Entitlements Act 1986*.

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- (3) Nothing in this section prevents the application of:
- (a) Part IV of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* or section 10A of the *Seamen's Compensation Act 1911*; or
 - (b) section 74 of the *Veterans' Entitlements Act 1986*;
- in relation to damages recovered or recoverable under this Part.

16 Damages not recoverable under this Part in certain circumstances

- (1) Damages under this Part in respect of a death or injury are not recoverable from the Commonwealth or a Commonwealth authority by or for the benefit of a person where that person, or a person lawfully acting or entitled to act on behalf of that person:
- (a) has failed to take any action that he or she could reasonably have been expected to take, if this Part had not been enacted, to recover damages in respect of the death or injury from any other person who was, or may have been, liable to pay damages in respect of the death or injury;
 - (b) has, without the consent in writing of the Commonwealth or the Commonwealth authority, as the case may be, entered into a compromise, settlement or agreement whereby a person other than the Commonwealth or the Commonwealth authority has been discharged in whole or in part from liability in respect of the death or injury to which he or she was, or might have been, subject; or
 - (c) has refused to comply with a request under subsection (2).
- (2) The Commonwealth or a Commonwealth authority may, in writing, request a person who appears to be entitled to recover damages in respect of a death or injury to which this Part applies against a person other than the Commonwealth or the Commonwealth authority, or a person lawfully acting or entitled to act on behalf of such a person, to take or continue proceedings (whether in the Commonwealth or elsewhere) to recover those damages and, where proceedings are so taken or continued, the proceedings shall be conducted on behalf of the first-mentioned

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person at the expense of the Commonwealth or the Commonwealth authority.

- (3) The Commonwealth or a Commonwealth authority may, at any time, by notice in writing, revoke a request made under subsection (2), and, in that event, is not liable for any costs or expenses incurred in respect of the continuance of the proceedings after the revocation.

17 Action against Commonwealth etc. under this Part not to be heard if other proceedings pending

An action against the Commonwealth or a Commonwealth authority for damages under this Part in respect of a death or injury shall not be heard or determined if an action against a person other than the Commonwealth or the Commonwealth authority for damages in respect of that death or injury is pending in any court, whether in the Commonwealth or elsewhere.

Part IV—Regulations

18 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Air Accidents (Commonwealth Liability) Act 1963	74, 1963	31 Oct 1963	18 Mar 1971 (s 2 and gaz 1971, p 2003)	
Statute Law Revision (Decimal Currency) Act 1966	93, 1966	29 Oct 1966	s 7: never commenced (s 2(2))	—
as amended by				
Air Accidents (Commonwealth Liability) Act 1970	56, 1970	25 June 1970	s 3: 25 June 1970 (s 2(2))	—
Air Accidents (Commonwealth Liability) Act 1970	56, 1970	25 June 1970	s 4 and 5: 18 Mar 1971 (s 2(1))	—
Air Accidents (Commonwealth Liability) Act 1971	50, 1971	25 May 1971	1 Sept 1971 (s 2)	—
Air Accidents (Australian Government Liability) Act 1973	134, 1973	13 Nov 1973	13 Nov 1973 (s 2)	—
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	s 9, 10, Sch 1 and 2: 31 Dec 1973 (s 2)	s 9(1) and 10
Air Accidents (Commonwealth Government Liability) Amendment Act 1976	127, 1976	24 Nov 1976	24 Nov 1976 (s 2)	s 5
Administrative Changes (Consequential Provisions) Act 1978	36, 1978	12 June 1978	Sch 2: 12 June 1978 (s 2)	—

Air Accidents (Commonwealth Government Liability) Act 1963

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Compilation No. 9

Compilation date: 17/06/2021

Registered: 21/06/2021

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Air Accidents (Commonwealth Government Liability) Amendment Act 1978	69, 1978	22 June 1978	1 July 1978 (s 2)	—
Air Accidents (Commonwealth Government Liability) Amendment Act 1982	70, 1982	6 Sept 1982	24 Sept 1982 (s 2)	s 5(2) and 8(2)
Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986	28, 1986	19 May 1986	Sch: 22 May 1986 (s 2(1) and gaz 1986, No S225)	—
Commonwealth Employees' Rehabilitation and Compensation Act 1988	75, 1988	24 June 1988	Sch: 1 Dec 1988 (s 2(2) and gaz 1988, No S196)	—
Social Security Legislation Amendment Act 1988	133, 1988	22 Dec 1988	Sch 4: 22 Dec 1988 (s 2(2))	—
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 4 (items 32–43): 4 July 2008 (s 2(1) item 64)	—
Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008	79, 2008	12 July 2008	Sch 1 (items 11–13): 24 Jan 2009 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 3 (item 20): 25 Mar 2015 (s 2(1) item 10)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Update (A.C.T. Self-Government (Consequential Provisions) Regulations) Act 2017	13, 2017	22 Feb 2017	Sch 1 (item 2): 22 Mar 2017 (s 2(1) item 2)	—
Aviation Legislation Amendment (Liability and Insurance) Act 2020	148, 2020	17 Dec 2020	Sch 1 (items 1, 2, 25): 17 June 2021 (s 2(1) item 1)	Sch 1 (item 25)

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part I	
s 1	am No 134, 1973; No 216, 1973 rs No 69, 1978
s 3	rep No 216, 1973
s 4	am No 134, 1973; No 70, 1982
s 5	am No 216, 1973
Part II	
s 6	am No 70, 1982; No 28, 1986
s 7	am No 134, 1973; No 216, 1973; No 70, 1982
s 8	am No 56, 1970; No 127, 1976; No 70, 1982; No 73, 2008; No 148, 2020
s 9	am No 134, 1973; No 70, 1982; No 73, 2008; No 79, 2008
s 10	am No 50, 1971; No 134, 1973; No 216, 1973; No 70, 1982; No 28, 1986; No 75, 1988
Part III	
s 11	am No 50, 1971; No 216, 1973; No 36, 1978; No 69, 1978; No 70, 1982; No 28, 1986; No 75, 1988; No 73, 2008; No 13, 2017
s 12	am No 73, 2008
s 13	am No 134, 1973; No 216, 1973; No 70, 1982
s 14	am No 56, 1970; No 127, 1976; No 70, 1982; No 73, 2008; No 5, 2015; No 148, 2020
s 15	am No 50, 1971; No 134, 1973; No 216, 1973; No 70, 1982; No 28, 1986; No 75, 1988; No 133, 1988
s 16	am No 70, 1982; No 73, 2008
