



Air Navigation (Charges) Amendment Act 1984

No. 107 of 1984

An Act to amend the *Air Navigation (Charges) Act 1952*

[Assented to 17 October 1984]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

1. (1) This Act may be cited as the *Air Navigation (Charges) Amendment Act 1984*.

(2) The *Air Navigation (Charges) Act 1952*¹ is in this Act referred to as the Principal Act.

Commencement

2. (1) Sections 1 and 2, sub-section 7 (1) and sections 8 and 9 shall come into operation on the day on which this Act receives the Royal Assent.

(2) Paragraphs 4 (1) (b), (c) and (d) and sub-sections 4 (2) and (3) and 7 (2) shall come into operation on 1 January 1985.

(3) The remaining provisions of this Act shall come into operation on a day, or on respective days, to be fixed by Proclamation.

Interpretation

3. Section 2 of the Principal Act is amended by omitting sub-sections (3) and (4).

Air navigation charges

4. (1) Section 5 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “Schedules” and substituting “regulations”;
- (b) by omitting from sub-section (2) “45” and substituting “28”;
- (c) by omitting from sub-section (2) “1%” and substituting “1.5% or such other amount as is prescribed”; and
- (d) by adding at the end of sub-section (2) “and to be compounded”.

(2) The amendment of sub-section 5 (2) of the Principal Act made by paragraph (1) (b) does not apply in relation to a charge under the Principal Act that became due and payable before 1 January 1985.

(3) Sub-section 5 (2) of the Principal Act as amended by paragraphs (1) (c) and (d) extends to any amount remaining unpaid on 1 January 1985 payable in respect of a charge that became due and payable under the Principal Act at any time before that date.

5. After section 5 of the Principal Act the following sections are inserted:

Remissions and refunds of charges and penalties

“5A. The Minister, the Secretary or an officer of the Department authorized by the Secretary to act under this section may, in the prescribed circumstances, authorize such remission or refund of the whole or part of any charge due and payable under this Act, or of the whole or part of an amount payable by way of penalty under sub-section 5 (2), as that person thinks just in all the circumstances.

Statutory liens

“5B. (1) In this section and sections 5C, 5D, 5E, 5F, 5G and 5H—

‘aircraft’ means an aircraft included in a prescribed class of aircraft;

‘authorized officer’ means an officer of the Department authorized by the Secretary in writing to act under the provision in which the expression occurs;

‘charge’ means a charge payable under this Act;

‘outstanding amount’, in relation to an aircraft in respect of which a statutory lien is in effect, in relation to a particular time, means—

- (a) the amount of any charge payable in respect of the aircraft that, at that time, has been unpaid for 28 days after it became payable and is unpaid at that time; or

- (b) the amount of any penalty that is unpaid at that time, to the extent that any such amount has not been remitted under this Act;

‘payable’, in relation to a charge, means due and payable;

‘penalty’ means an amount payable by way of penalty under sub-section 5 (2) in relation to a charge;

'Register' means the Register maintained in pursuance of this section;

'Registrar' means the person by whom the Register is maintained;

'statutory lien' means a lien vested in the Commonwealth under this section.

"(2) Where a statutory lien is vested in the Commonwealth under this section, the lien shall not be taken by implication to have any effect otherwise than as provided by this section.

"(3) There shall be a Register of Statutory Liens, which shall be maintained, and shall be open to public inspection, as prescribed.

"(4) Subject to section 5C, where—

- (a) on the 29th day after the day on which a charge became payable in respect of an aircraft, the charge is not paid; and**
- (b) on that 29th day, a statutory lien is not in effect in respect of the aircraft,**

then, if an authorized officer so directs at any time, the Registrar shall make an entry in the Register in the manner prescribed and, upon the making of the entry, there is vested in the Commonwealth in respect of the aircraft a statutory lien that covers that charge, any penalty that is or becomes payable in respect of that charge and any further outstanding amounts in respect of the aircraft.

"(5) Where a statutory lien has been registered in respect of an aircraft, the following sub-sections apply, notwithstanding any encumbrance in respect of the aircraft and any sale or disposition of, or dealing in, the aircraft or an interest in the aircraft, and whether or not the Commonwealth has possession of the aircraft at any time.

"(6) For the purposes of priorities amongst creditors and the purposes of the distribution of the proceeds of a sale made under sub-section (9), the statutory lien has effect as a security interest in respect of the aircraft ranking in priority—

- (a) after any security interest (other than a floating charge) in respect of the aircraft created before the time of registration of the statutory lien, to the extent that that security interest covers a debt incurred before that time; and**
- (b) before any security interest not falling within, or to the extent that it does not fall within, paragraph (a).**

"(7) If an outstanding amount covered by the statutory lien is unpaid at the end of the period of 6 months after the day on which it became an outstanding amount or the day on which the lien was registered, whichever is the later, an authorized officer may, having regard to all the circumstances, including the steps, if any, taken by any person to pay the whole or part of the outstanding amounts covered by the statutory lien, cancel the certificate of registration of the aircraft in the register of Australian aircraft, and, if the certificate is cancelled, the aircraft shall not be re-registered until the statutory lien ceases to have effect.

“(8) If an outstanding amount covered by the statutory lien is unpaid at the end of the period of 9 months after the day on which it became an outstanding amount or the day on which the lien was registered, whichever is the later, an authorized officer, or a person authorized in writing by such an officer to do so, may at any time, subject to sub-section 5F (1), seize the aircraft, and—

- (a) shall take reasonable steps to give notice of the seizure to—
 - (i) such persons as, in the opinion of an authorized officer, have a security interest in the aircraft;
 - (ii) each person who is any of the following, namely, an owner, operator, lessee, hirer, charterer or pilot in command, of the aircraft; and
 - (iii) such other persons as are prescribed; and
- (b) may retain possession of the aircraft until all outstanding amounts covered by the statutory lien are paid.

“(9) If an outstanding amount covered by the statutory lien is unpaid at the end of the period of 9 months after the day on which it became an outstanding amount or the day on which the lien was registered, whichever is the later, the Minister or the Secretary may at any time, whether or not the aircraft has been seized under sub-section (8)—

- (a) sell the aircraft in accordance with the regulations, whether by public auction or private contract;
- (b) make and execute all such instruments and documents as are necessary for effecting the sale; and
- (c) give full and effective title to the aircraft free of all encumbrances, leases and contracts of hire.

“(10) For the purposes of sub-sections (7), (8) and (9), any payment received or recovered by the Commonwealth in discharge of outstanding amounts covered by the statutory lien shall be deemed to be applied successively in the discharge of those amounts in the order in which those amounts became payable.

“(11) The proceeds of a sale under sub-section (9) shall be dealt with as prescribed.

“(12) Upon—

- (a) the payment of all outstanding amounts covered by the statutory lien; or
- (b) the sale of the aircraft under sub-section (9),

the statutory lien ceases to have effect, and the Registrar shall make an entry in the Register in the manner prescribed.

Certificates

“5C. (1) Upon a request made in writing in respect of an aircraft by a prescribed person, an authorized officer shall issue a certificate on the prescribed form, stating whether or not, as at a specified date and time, any

charge is payable and unpaid in respect of the aircraft and, in respect of any such charge, the amount of the charge and the date upon which it became payable.

“(2) Where a certificate has been issued under sub-section (1) in respect of an aircraft, any statutory lien in respect of the aircraft, whether imposed before or after the time to which the certificate relates, does not cover any charge in respect of the aircraft that was payable and unpaid as at that time but was not specified in the certificate or any penalty relating to any such charge.

Notice relating to statutory lien

“5D. (1) As soon as practicable after an entry is made in the Register under sub-section 5B (4) or (12) or action is taken under sub-section 5B (7), the Registrar shall publish in the *Gazette* notice of that fact, containing such particulars as are prescribed and shall take reasonable steps to serve copies of the notice on such persons as are prescribed.

“(2) Any failure to comply with sub-section (1) has no effect on the operation of sub-section 5B (4) or (12), as the case may be.

Dismantling, &c., aircraft under lien

“5E. (1) A person who, knowing that a statutory lien is in effect in respect of an aircraft, detaches any part or equipment from the aircraft without the prior approval of an authorized officer is guilty of an indictable offence punishable by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both.

“(2) A court of summary jurisdiction may hear and determine proceedings in respect of an offence referred to in sub-section (1) if the court is satisfied that it is proper to do so and the prosecutor and the defendant consent.

“(3) Where, in accordance with sub-section (2), a court of summary jurisdiction convicts a person of an offence referred to in that sub-section, the penalty that the court may impose is a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both.

“(4) Sub-section (1) does not apply to an act done as required by or under the Air Navigation Regulations.

Seizure of aircraft

“5F. (1) A person is not entitled to seize an aircraft under sub-section 5B (8) if, upon being requested by the owner, operator or pilot in command of the aircraft to produce the authority by virtue of which the person is authorized to act under that sub-section, the person fails to do so.

“(2) A person shall not, without reasonable excuse, obstruct or hinder a person exercising powers under sub-section 5B (8).

Penalty: \$1,000 or imprisonment for 6 months, or both.

Protection against actions

“5G. An action does not lie against the Commonwealth, or against an officer, employee or agent of the Commonwealth acting in the course of the person’s employment or agency, as the case may be, for or in respect of—

- (a) loss of, or damage to, an aircraft during its seizure in accordance with sub-section 5B (8); or
- (b) loss of, or damage to, an aircraft so seized while it is in the custody, possession or control of the Commonwealth or of an officer, employee or agent of the Commonwealth,

other than loss or damage wilfully or negligently caused by such an officer, employee or agent.

Insurance of aircraft

“5H. (1) Where an aircraft is to be seized in accordance with sub-section 5B (8), the Commonwealth shall insure the aircraft, and keep it insured, against the loss of, or any damage to, the aircraft during its seizure or while it is in the custody, possession or control of the Commonwealth or of an officer, employee or agent of the Commonwealth.

“(2) Insurance effected under sub-section (1) shall be for the benefit of the person or persons prescribed.

“(3) Where an amount of a premium of insurance effected under sub-section (1) is paid by the Commonwealth, an equivalent amount becomes a debt due to the Commonwealth by the person by whom amounts covered by the statutory lien in respect of the aircraft are payable, and, until paid, shall, for the purposes of section 5B, be deemed to be an outstanding amount covered by the lien.

Review of decisions

“5J. (1) In this section and in section 5K—

‘decision’ has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

‘reviewable decision’ means a decision made under sub-section 5B (7).

“(2) A person affected by a reviewable decision may, by notice in writing given to the Secretary within the period of 28 days after the day on which the decision first comes to the notice of the person, or within such further period as the Secretary (either before or after the expiration of that period), by notice in writing served on the person, allows, request the Secretary to reconsider the decision.

“(3) There shall be set out in the request the grounds upon which reconsideration of the decision is sought.

“(4) Within 28 days after the receipt of the request, the Secretary shall reconsider the decision and affirm or revoke the decision or vary the decision in such manner as the Secretary thinks fit.

“(5) Where the Secretary affirms, revokes or varies a decision, the Secretary shall, by notice in writing served on the person who made the request, inform the person of the result of the reconsideration of the decision, and give the reasons for affirming, revoking or varying the decision, as the case may be.

“(6) Applications may be made to the Administrative Appeals Tribunal for review of reviewable decisions that have been affirmed or varied under sub-section (4).

Statements to accompany notices

“5K. (1) Where the person who makes a reviewable decision gives to the person or persons whose interests are affected by the decision notification in writing of the making of the decision, that notice shall include a statement to the effect that a person affected by the decision—

- (a) may request the Secretary to reconsider the decision; and
- (b) may, subject to the *Administrative Appeals Tribunal Act 1975*, if the person is dissatisfied with a decision made by the Secretary under sub-section 5J (4) affirming or varying the reviewable decision, make application to the Administrative Appeals Tribunal for review of the reviewable decision.

“(2) Where the Secretary makes a decision under sub-section 5J (4) affirming or varying a reviewable decision, the notice given under sub-section 5J (5) shall include a statement to the effect that a person affected by the decision so affirmed or varied may, subject to the *Administrative Appeals Tribunal Act 1975*, make application to the Administrative Appeals Tribunal for review of the reviewable decision.

“(3) Any failure to comply with the requirements of sub-section (1) or (2) in relation to a decision does not affect the validity of the decision.”

6. Section 6 of the Principal Act is repealed and the following section is substituted:

Regulations

“6. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters—

- (a) permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

“(2) Without limiting the generality of sub-section (1), the regulations may make provision for and in relation to—

- (a) the supply to specified officers of the Department, in specified circumstances, of records kept under regulation 49K of the Air Navigation Regulations in respect of an aircraft in respect of which a statutory lien is in effect under section 5B;
- (b) enabling specified classes of documents to be *prima facie* evidence of movements of aircraft for the purpose of establishing liability to charges under this Act;

- (c) review by the Administrative Appeals Tribunal of specified decisions made under the regulations; and
- (d) the imposition of fines, not exceeding \$1,000, in respect of offences against the regulations.”.

Schedule 1

7. (1) Schedule 1 to the Principal Act is amended by inserting the following paragraph after paragraph 8:

“8A. The Minister, the Secretary or an officer of the Department authorized by the Secretary to act under this paragraph may authorize such remission or refund of the whole or part of an amount payable or paid by way of penalty under sub-section 5 (2) in respect of a charge payable or paid under this Schedule as that person thinks just in all the circumstances.”.

(2) The Table of Flights in paragraph 9 of Schedule 1 to the Principal Act is amended as set out in the Schedule to this Act.

Schedule 2

8. Schedule 2 to the Principal Act is amended by adding at the end of paragraph 10 the following sub-paragraph:

“(4) A reference in this paragraph to a charge payable or paid, or a charge payable, under this Schedule includes a reference to an amount payable or paid, or an amount payable, by way of penalty under sub-section 5 (2) in respect of any such charge.”.

Schedule 3

9. Schedule 3 to the Principal Act is amended by adding at the end of paragraph 6 the following sub-paragraph:

“(3) A reference in this paragraph to a charge payable under this Schedule includes a reference to an amount payable by way of penalty under sub-section 5 (2) in respect of any such charge.”.

Repeal of Schedules

10. The Schedules to the Principal Act are repealed.

Transitional

11. (1) The power to make regulations under the Principal Act as amended by this Act includes the power to make transitional provisions consequential upon the repeal of the Schedules to that Act by section 10 and upon the prescribing of charges for the purposes of sub-section 5 (2) of that Act as so amended.

(2) Section 5B of the Principal Act as amended by this Act extends to charges and penalties that became payable before the date of commencement of that section, but—

- (a) action shall not be taken under sub-section (4) of that section before the end of the period of 28 days commencing on that date;

- (b) action shall not be taken under sub-section (7) of that section before the end of the period of 6 months and 28 days commencing on that date; and
- (c) action shall not be taken under sub-section (8) or (9) of that section before the end of the period of 9 months and 28 days commencing on that date.

(3) Regulations in force under the Principal Act immediately before the date of commencement of section 6 continue in force on and after that date as if they were made under the Principal Act as amended by this Act.

SCHEDULE

Sub-section 7 (2)

AMENDMENTS OF PARAGRAPH 9 OF SCHEDULE 1 TO THE PRINCIPAL ACT

PART I

Amendments of Part I of Table of Flights

- 1. After item 22 insert the following item:
"22A Sydney-Hamilton Island 6"
- 2. After item 56 insert the following item:
"56A Brisbane-Hamilton Island 2"
- 3. After item 67 insert the following item:
"67A Brisbane-Norfolk Island 2"
- 4. After item 80 insert the following item:
"80A Melbourne-Hamilton Island 10"
- 5. After item 134 insert the following item:
"134A Alice Springs-Hamilton Island 4"
- 6. After item 142 insert the following item:
"142A Cairns-Hamilton Island 2"
- 7. At the end of the Part add the following item:
"174 Winton-Mount Isa 2"

PART II

Amendments of Part II of Table of Flights

- 1. After item 6 insert the following item:
"6A Alice Springs-Townsville 5"
- 2. After item 13 insert the following item:
"13A Brisbane-Launceston 9"
- 3. After item 58 insert the following item:
"58A Perth-Alice Springs 6"
- 4. After item 61 insert the following item:
"61A Perth-Townsville 11"

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SCHEDULE—continued

PART III

Amendment of Part III of Table of Flights

At the end of the Part add the following items:

"10	Adelaide	8 9 10 10
11	Port Hedland	10 8 6 10".

NOTE

1. No. 101, 1952, as amended. For previous amendments, see No. 87, 1957; No. 49, 1960; No. 78, 1962; No. 97, 1963; No. 95, 1964; Nos. 107 and 125, 1965; No. 48, 1966; No. 79, 1967; No. 84, 1968; No. 75, 1969; No. 105, 1970; No. 100, 1972; No. 179, 1973; No. 114, 1974; Nos. 5 and 124, 1976; No. 176, 1978; No. 142, 1979; No. 138, 1980; No. 123, 1981; and Nos. 77 and 80, 1982.