

EXPLANATORY STATEMENT

Civil Aviation (Carriers' Liability) Regulations 2019

Dedicated aviation liability arrangements are implemented in most countries in recognition of the unique risks associated with aviation, and the complex task of awarding damages under civil liability frameworks.

The *Civil Aviation (Carriers' Liability) Act 1959* (the Act) establishes a damages framework for death, injury or loss for aviation passengers, and loss and damage to baggage and cargo. The Act gives effect to a range of international carriers' liability conventions and establishes a separate liability framework for domestic flights. This structure reflects the responsibility placed on carriers and the high standard of systems and controls needed to ensure the safety of passengers and third parties.

Section 43 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or which are necessary or convenient to be prescribed.

The *Civil Aviation (Carriers' Liability) Regulations 1991* (the 1991 Regulations) specified prescribed liability limits, requirements related to evidence of insurance, requirements related to a contract of insurance, permitted exclusions to an insurer's liability, and requirements for the notification of the lapsing, expiration, cancellation or alteration of a contract of insurance to facilitate audit and enforcement, for the purposes of the Act. These regulations sunset on 1 October 2019.

The *Civil Aviation (Carriers' Liability) Regulations 2019* (the 2019 Regulations) remake the 1991 Regulations in substantially the same form, with liability limits increased to adjust for inflation and to keep settings in line with community expectations, and with the compliance role of the Civil Aviation Safety Authority (CASA) being clarified.

The 2019 Regulations:

- increase the liability caps in line with table below;
- clarify CASA's compliance role; and
- modernise drafting language and structure.

<u>Relevant Provision</u>	<u>Existing Cap</u>	<u>New Cap</u>
Subsection 31(1) of the Act	\$725,000 ¹	\$925,000
Subsection 31(1A) of the Act	260,000 ¹ Special Drawing Rights (SDR ²)	480,000 SDR
Subsection 31(2) of the Act	\$1,600 ³	\$3,000
Subsection 31(3) of the Act	\$160 ³	\$300

¹ Limits as set out in the Act.

² SDR is defined in the International Monetary Agreements Act 1947.

³ Limits as set out in the 1991 Regulations.

Section 1 - Name

This section provides that the title of the Regulations is the *Civil Aviation (Carriers' Liability) Regulations 2019*.

Section 2 - Commencement

This section provides for the Regulations to commence on 1 October 2019.

Section 3 - Authority

This section provides that the *Civil Aviation (Carriers' Liability) Regulations 2019* is made under the *Civil Aviation (Carriers' Liability) Act 1959*.

Section 4 - Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 5 – Definitions

This section provides for definitions for a number of terms with amendments being:

- the definition of the *Act* to mean the *Civil Aviation (Carriers' Liability) Act 1959*; and
- the definition of *terminating event* to be covered under subsection 12(6).

Section 6 – Liability limits relating to passengers

Part IV of the Act sets out for Australian domestic carriers, and international carriers not subject to the international conventions implemented elsewhere in the Act, the limits of liability that apply in respect to the death, injury or loss of passengers and the loss and damage to baggage and cargo.

This section provides that the liability limits relating to passengers on a domestic carrier under Part IV of the Act, by reason of injury or death resulting from an accident is \$925,000.

The section also provides that the liability limits relating to passengers on a carrier other than domestic carrier under Part IV of the Act, by reason of injury or death resulting from an accident is 480,000 SDRs.

Section 7 – Liability limits relating to baggage

This section provides that the liability limits under Part IV of the Act relating to registered baggage of passengers in respect of its destruction, loss or injury is \$3,000.

The section also provides that the liability limits under Part IV of the Act relating to baggage that is not registered baggage of passengers in respect of its destruction, loss or injury is \$300.

Section 8 – Requirements in relation to a contract of insurance

This section provides a requirement in relation to a contract of insurance under paragraph 41C(2)(b) of the Act. An insurer which is a party to a contract of insurance must be:

- (a) authorised under section 12 of the *Insurance Act 1973* to conduct insurance business in Australia; or
- (b) permitted or authorised under the law of a foreign country to carry on insurance business, and CASA is satisfied that the requirements imposed on the insurer under that law are similar to or consistent with arrangements under the *Insurance Act 1973*.

This section also provides in relation to a contract of insurance that under the contract the insurer's liability to indemnify the carrier against personal injury liability is for an amount not less than, in respect of carriage by a carrier to which Part IA applies, 480,000 SDRs.

Section 9 – Permitted exclusions of insurer's liability

This section outlines permitted exclusion clauses in accordance with paragraph 41D of the Act so that a contract of insurance may exclude an insurer's liability to indemnify the carrier against personal injury in accordance with the regulation.

These clauses include commonly in use international aviation insurance industry exclusion clauses relating to Aviation Radioactive Contamination (known as AVN 38A); Nuclear Risks (AVN 38B); Noise and Pollution and other Perils (AVN 46B); and, War, Hijacking and other Perils (AVN 48B). These clauses are accessible on the International Underwriting Association of London website (<http://www.iuaclasses.co.uk>) on 1 October 2019.

A contract of insurance may exclude liability in respect of an employee of the carrier who is travelling in the course of the employee's duties.

A contract of insurance may also restrict the scope of coverage to "notified types" of aircraft. "Notified types" of aircraft are aircraft which the insurer has notified CASA that it is prepared to indemnify the insured carrier in relation to personal injury liability arising out of the operation of that type, and which are endorsed on the contract of insurance.

Section 10 – Notices under section 41JA of the Act

This section relates to CASA's auditing powers which are conducted by providing a written notice to the carrier in accordance with section 41JA of the Act.

The section provides that carriers be provided 14 days to produce the evidence requested by CASA. However, if CASA has received a notice from an insurer in relation to a carrier under section 12 of the 2019 Regulations (or section 10 of the 1991 Regulations as it continues to apply under section 16 of the 2019 Regulations) it is 3 days from the day the carrier receives the notice. The notice must state that CASA has received the notice under the relevant proposed section.

If CASA reasonably believes that a contract of insurance may have ceased to be in force, or may no longer meet a prescribed requirement mentioned in subsection 41C(2) of the Act, the period that may be set out in a notice given to a carrier under section 41JA of the Act in relation to the contract of insurance is 3 days from the day the carrier receives the notice. The notice must include a statement to the effect that CASA believes that the contract of insurance may have ceased to be in force or may no longer meet the prescribed requirement.

Section 11 – Form in which evidence to be produced under section 41JA of the Act

This section provides the form that CASA may direct that evidence be provided under subsection 41JA of the Act.

Section 12 – Notice of cancellation etc of contract of insurance

This section sets out events which affect the currency of a contract of insurance and about which the insurer must notify CASA. The events are modification and cancellation of a contract of insurance in such a way that the contract no longer satisfies a prescribed requirement.

The insurer must give CASA at least 3 business days notice of the event or no later than one business day after the event has happened.

The insurer must give CASA at least 3 business days notice of the non-renewal of a contract of insurance and any *terminating event*. A *terminating event* is defined as an act of a carrier that results in the contract of insurance ceasing to be in force before the end of the term set out in the contract.

Section 13 – Effect of failure to give notice under section 12

This section provides for a means of ensuring continuation of terms of a contract in certain circumstances, so as to provide an enhanced degree of certainty of indemnity of the carrier and protection for passengers.

Section 14 – Application – Notices under section 41JA of the Act

This section provides for sections 10 and 11 of the 2019 Regulations to apply in relation to notices under section 41JA of the Act on or after 1 October 2019.

Section 15 – Application – Notice of cancellation etc of contract of insurance entered into on or after 1 October 2019

This section provides sections 12 and 13 of the 2019 Regulations apply in relation to a contract of insurance entered into on or after 1 October 2019.

Section 16 – Savings – Notice of cancellation etc of contract of insurance entered into before 1 October 2019

This section provides that despite the repeal of the 1991 Regulations by Schedule 1, regulations 10 and 11 of the 1991 Regulations continue to apply on and after 1 October 2019 in relation to a contract of insurance entered into before 1 October 2019.

Schedule 1 – Repeals

This section provides for the repeal the whole of the *Civil Aviation (Carriers' Liability) Regulations 1991*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Civil Aviation (Carriers' Liability) Regulations 2019

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The primary purpose of this Legislative Instrument is to remake, in substantially the same form, the *Civil Aviation (Carriers' Liability) Regulations 1991* which sunset on 1 October 2019.

This Legislative Instrument also increases liability limits to adjust for inflation and to keep settings in line with community expectations, with other minor changes made to reflect modern drafting conventions.

A recent consultation process reaffirmed key stakeholder support for the instrument.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.