

Transport Infrastructure and Other Legislation Amendment Bill 2005

Explanatory Notes for Amendments to be moved during Consideration in detail by The Honourable Paul Lucas MP

Short Title of the Bill

Transport Infrastructure and Other Legislation Amendment Bill 2005

Objectives of the Amendments

It is proposed to make amendments to the Bill during consideration in detail to define "charterer" of an aircraft for chapter 8, part 3A (Liability for, and recovery of, charges and expenses).

Achievement of the Objectives

The *Transport Infrastructure Act 1994* is to be amended to define *charterer* of an aircraft.

Chapter 8, part 3A (Liability for, and recovery of, charges and expenses) determines who is liable for port charges and expenses in relation to ships utilising port facilities, aircraft at airports including goods being transferred to and from ships and aircraft and passengers on the ships and aircraft. Cairns International Airport and Mackay Airport are the only relevant airports.

For an aircraft, the following persons (plus others with regards to goods) are jointly and severally liable for charges:

- (a) the owner of the aircraft; and
- (b) the licensee of the aircraft; and
- (c) the lessee of the aircraft; and
- (d) the charterer of the aircraft; and
- (e) another person who has accepted liability for the charge.

Where damage is caused to port facilities, (a) to (d) are jointly and severally liable for the damage.

Charter means different things to different modes of transport and it is necessary to clarify who is not the charterer of an aircraft.

A person who, as part of the same transaction, hires the aircraft plus the services of the pilot should not be responsible for the charges, expenses or any damage incurred by the aircraft. The charges and expenses should be included as part of the hire conditions. This would be a joint and several liability of the owner, the licensee and the lessee of the aircraft. (In most operations, not all these persons would be parties.) Likewise, any damage caused by the aircraft, should be a joint and several liability of the owner, the licensee and the lessee of the aircraft. The definition of "charterer" excludes this hirer as a charterer of an aircraft.

However, if a person charters an aircraft from another person and pilots the aircraft themselves or makes a separate arrangement for a third person to pilot the aircraft, this is a similar operation to where the owner, the licensee or the lessee of the aircraft, operates the aircraft. In this instance, the charterer of the aircraft should be jointly and severally liable with the owner, the licensee and the lessee of the aircraft.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways of achieving the policy objectives.

Estimated Cost for Government Implementation

Nil.

Consistency with Fundamental Legislative Principles

New sections 280 to 281B, 281D and 281E determine who is liable for port authority charges and damage to port facilities. These sections impact on fundamental legislative principles as their provisions include making a person responsible for the actions of another. Aircraft are often leased or chartered and the owner has little or no control over where the aircraft is operating. Aircraft can quickly exit Australian territorial airspace. This requirement to impose liability on other persons for outstanding charges for the use of airport facilities is an accepted practice. It is part of commercial reality when these persons enter into these arrangements.

By excluding from the definition of charterer of an aircraft, a person who, as part of the same transaction, hires the aircraft plus the services of the pilot, only persons who are involved in the actual operation of the aircraft are jointly and severally liable for charges and expenses and any damage incurred.

Notes on Provisions

Clause 17 amends Schedule 6 (Dictionary) and a further definition is inserted.

The "charterer" of an aircraft excludes a person who, as part of the same transaction, hires the aircraft plus the services of the pilot. By default, a charterer of an aircraft includes a person who charts an aircraft from another person and pilots the aircraft themselves or makes a separate arrangement for a third person to pilot the aircraft.