



# **Air Navigation Act 1937**

**Current as at 21 December 2001**

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## Queensland

# Air Navigation Act 1937

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# Air Navigation Act 1937

**An Act to provide for the application of the air navigation regulations and civil aviation regulations of the Commonwealth to and in relation to air navigation within the State, and to provide in relation to liability for certain injury, loss, damage or destruction by aircraft**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Air Navigation Act 1937*.

### 3A Construction of this Act

This Act and every proclamation made under this Act shall be read and construed so as not to exceed the legislative power of the State to the intent that where any enactment hereof or provision of any such proclamation would but for this section have been construed as being in excess of that power it shall nevertheless be a valid enactment or provision to the extent to which it is not in excess of that power.

### 4 Definitions

In this Act—

*aircraft* means any machine or craft that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth's surface, but does not include model aircraft.

*Commonwealth Act* means—

(a) the *Air Navigation Act 1920* (Cwlth); or

(b) the *Civil Aviation Act 1988* (Cwlth).

*in flight* see section 12.

*operator* see section 13.

*regulations* means regulations made under a Commonwealth Act.

## Part 2 Application of regulations

### 5 Application of regulations to air navigation etc. within State

The regulations from time to time in force applicable to and in relation to air navigation within the Territories shall (except so far as those regulations are by virtue of the Commonwealth Act and the regulations applicable to and in relation to air navigation within Queensland and except so far as those regulations are declared by this Act or any regulation or any provision of any regulation included in those regulations is declared by proclamation made by the Governor in Council under this Act to be not applicable to and in relation to air navigation within Queensland) apply, *mutatis mutandis*, to and in relation to air navigation within Queensland as if those regulations as so applied were incorporated in this Act, and for the purposes of this Act those regulations shall be read and construed and take effect accordingly.

### 6 Certain powers and functions vested in Commonwealth authorities

Where, by or under the regulations, any power or function is vested in or exercisable by any person or authority for the purpose of the regulations or any part thereof then, so far as the regulations in their application by virtue of this Act extend, the like power or function under the regulations in

their application by virtue of this Act shall be vested in or exercisable by that person or authority for the purposes of the regulations in such application.

## **7 Certificates, licences etc.**

Any certificate, licence, or registration granted, issued, recognised, or effected—

- (a) by or under the regulations in their application under the Commonwealth Act; or
- (b) by or under the regulations in their application by virtue of the law of any other State;

and any cancellation or suspension of any such certificate, licence, or registration so far as the regulations in their application by virtue of this Act extend shall in Queensland have the same force and effect as if it had been granted, issued, recognised, or effected in pursuance of the regulations in their application by virtue of this Act.

## **8 Fees**

All fees payable under the regulations in their application by virtue of this Act shall be paid to the Commonwealth to meet the cost of the administration of the regulations in such application.

## **9 Purpose of this part**

The purpose of this part is to make in Queensland such provision for and in relation to, and to so regulate and control, air navigation, aircraft, their operation whether in the air or on the ground, the carriage on aircraft of persons or goods, aerodromes, and all other matters and things connected with air navigation, aircraft, their operation whether in the air or on the ground, the carriage on aircraft of persons or goods, and aerodromes, as may be necessary or expedient to secure and maintain at all times the safety of aircraft and of persons or goods carried on aircraft, and in particular, for the purpose of

securing and maintaining safety as aforesaid, to apply to and in relation to air navigation within Queensland by virtue of this part, the regulations to the extent but only to the extent to which the regulations provide for, prescribe, regulate and control—

- (a) conditions of flight of aircraft;
- (b) the registration and marking of aircraft;
- (c) certificates of airworthiness for aircraft, including aircraft engines, airscrews or other components of any aircraft, which certificates may be provided for, prescribed, regulated and controlled for different types of aircraft according to the respective types thereof;
- (d) the manning of aircraft and the qualifications and competence of members of the crew thereof according to the respective capacities in which they act, including certificates of competency and licences in respect of pilots, navigators, radio operators and other members of aircraft crews, which certificates and licences may be provided for, prescribed, regulated and controlled differently as respects aircraft used for different purposes;
- (e) the safety of services for the carriage by air of persons, or goods, or both for hire or reward;
- (f) the log books to be kept and carried on aircraft, including separate such books relating to the aircraft, its journey, its engines or any of them, its airscrews or any of them, its wireless apparatus, any other component thereof, signals and the pilot, the particulars and information to be entered in any such log book, and the persons by whom and the times when any such entries are to be made therein;
- (g) the installation on aircraft of wireless telegraph apparatus and the operation and use of such apparatus;
- (h) the investigation of accidents and forced landings of aircraft;
- (i) the use of aerodromes;



- (j) the suspension or cancellation of certificates or licences issued under the regulations.

## **10 Construction of the regulations in their application by virtue of this Act**

- (1) The regulations shall in their application in Queensland by virtue of this Act be read and construed so as not to exceed the purpose of this Act and in particular so as not to authorise the Governor-General, any Minister of State for the Commonwealth, or any person or authority acting for or on behalf of the Commonwealth or any such Minister to do or omit to do anything exceeding the purpose of this Act to the intent that where any provision of the regulations or any such act or omission exceeds the purpose of this Act such provision, act or omission shall to the extent to such excess be deemed to be not lawfully made, done or, as the case may be, omitted to be done and to be invalid accordingly and not applicable by virtue of this Act to or in relation to air navigation within Queensland.
- (2) The following matters shall in particular, but without limit to the generality of subsection (1), be deemed to exceed the purpose of this Act, that is to say—
  - (a) the enabling of the Commonwealth itself or any person or body authorised or established by the Commonwealth to take part in intrastate trade and commerce by air within Queensland;
  - (b) the prohibiting, preventing, hindering or otherwise limiting in any manner whatsoever the Crown in right of this State, any person or body authorised or established by the Crown in right of this State, or any other person whomsoever or body whatsoever from taking part in intrastate trade and commerce by air within Queensland excepting any such prohibition, prevention, hindrance or limitation which is necessary or expedient to carry out or give effect to, or incidental to the carrying out or giving effect to, the purpose of this Act.

**11 Power of Governor to declare that provision of the regulations shall not apply in Queensland by virtue of this Act**

- (1) Without limiting the provisions of sections 9 and 10, the Governor may, by proclamation, declare that any regulation or any provision of any regulation included in the regulations shall not apply by virtue of this Act to and in relation to air navigation within Queensland.
- (1A) Any regulation or any provision of any regulation included in the regulations which is so proclaimed shall, on and from the date of the publication in the gazette of such proclamation or, if a later date is specified in such proclamation, then on and from such later date, cease to have any application whatsoever in Queensland by virtue of this Act.
- (2) Any such proclamation may be rescinded by the Governor by a later proclamation and, on and from the date of the publication in the gazette of such later proclamation, any regulation or provision of a regulation included in the regulations which was declared in the rescinded proclamation shall, if still in force under the Commonwealth Act, again apply by virtue of this Act to and in relation to air navigation in Queensland.
- (3) Every proclamation made under this section shall be published in the gazette and shall upon such publication be judicially noticed.
- (4) Every such proclamation shall be laid before Parliament if then sitting for the dispatch of business, and if not then so sitting, within 14 days after Parliament next sits for the dispatch of business.
- (5) If Parliament, within the next 14 sitting days after any such proclamation has been so laid before it, resolves that such proclamation ought to be annulled, the same shall after the date of such resolution be of no effect, but without prejudice to the validity of anything done in the meantime under such proclamation or to the making of any new proclamation under this section.

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## Part 3 Recovery of certain damages

### 12 Meaning of *in flight*

- (1) For this part, an aircraft that is lighter than air is taken to be *in flight* from the moment when it becomes detached from the earth's surface until the moment when it again becomes attached to the earth's surface.
- (2) For this part, a power-driven aircraft that is heavier than air is taken to be *in flight* from the moment when power is applied for the purpose of take-off until the moment when its landing run ends.
- (3) For this part, an aircraft that is heavier than air but is not power-driven is taken to be *in flight* from the moment when it becomes airborne (whether or not it is then attached to any other aircraft or machine) until the moment when its landing run ends.

### 13 Meaning of *operator*

- (1) For this part, a person who uses an aircraft is taken to be the operator of the aircraft.
- (2) However, if a person authorises the use of an aircraft but retains control of its navigation—
  - (a) the person who is authorised to use the aircraft is not taken to be the operator of the aircraft; and
  - (b) the person who retains control of the aircraft's navigation is taken to be the operator of the aircraft.

### 14 Part binds all persons

This part binds all persons, including the State, and, in so far as the legislative power of the State permits, the Commonwealth and the other States.

## **15 Use of an aircraft by employees**

If a person's employee uses an aircraft in the course of the employee's employment, whether or not the employee is authorised to do so—

- (a) the employee is not taken to use the aircraft; and
- (b) the person is taken to use the aircraft.

## **16 Liability for injury, loss, damage or destruction**

(1) This section applies if a person or property on, in or under land or water suffers personal injury, loss of life, material loss, damage or destruction caused by—

- (a) an impact with an aircraft that is in flight, or that was in flight immediately before the impact happened; or
- (b) an impact with part of an aircraft that was damaged or destroyed while in flight; or
- (c) an impact with a person, animal or thing that fell from an aircraft in flight; or
- (d) something that results from an impact of a kind mentioned in paragraph (a), (b) or (c).

(2) The following people are jointly and severally liable in respect of the injury, loss, damage or destruction—

- (a) the operator of the aircraft immediately before the impact happened;
- (b) the owner of the aircraft immediately before the impact happened;
- (c) if the operator of the aircraft immediately before the impact happened was authorised to use the aircraft but did not have the exclusive right to use it for a period of more than 14 consecutive days—the person who authorised the use of the aircraft;
- (d) if the operator of the aircraft immediately before the impact happened was using the aircraft without the authority of the person entitled to control its

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navigation—the person entitled to control the navigation of the aircraft.

- (3) Subsection (2)(d) does not apply if the person entitled to control the navigation of the aircraft had taken all reasonable steps to prevent the unauthorised use of the aircraft.
- (4) If—
  - (a) an injury, loss, damage or destruction of the kind mentioned in subsection (1) is the result of a collision or interference between 2 or more aircraft in flight; or
  - (b) 2 or more aircraft jointly cause an injury, loss, damage or destruction of that kind;

this section applies in relation to each of the aircraft.

## **17 Recovery of damages without proof of intention, negligence or other cause of action**

- (1) Damages for an injury, loss, damage or destruction of the kind mentioned in section 16(1) are recoverable in an action in a court of competent jurisdiction against all or any of the persons (the *defendants*) who are jointly and severally liable under that section.
- (2) The damages are recoverable without proof of intention, negligence or other cause of action, as if the injury, loss, damage or destruction had been caused by the wilful act, negligence or default of the defendant.

## **Part 4 Miscellaneous**

### **18 Regulation-making power**

The Governor in Council may make regulations under this Act.