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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Damage by Aircraft Bill 1999**

**No.     , 1999**

*(Transport and Regional Services)*

**A Bill for an Act relating to liability for certain  
injury, loss, damage or destruction by aircraft, and  
for related purposes**



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## Contents

1	Short title .....	1
2	Commencement .....	1
3	Object of Act.....	2
4	Definitions .....	2
5	Meaning of <i>in flight</i> .....	2
6	Meaning of <i>operator</i> .....	3
7	Use of an aircraft by employees.....	3
8	Act binds the Crown .....	3
9	Application of Act .....	3
10	Liability for injury, loss etc.....	4
11	Recovery of damages without proof of intention, negligence etc. ....	5
12	Regulations .....	6
13	Schedule(s) .....	6
<b>Schedule 1—Repeal of Act</b>		<b>7</b>
<i>Civil Aviation (Damage by Aircraft) Act 1958</i>		<i>7</i>



1     **A Bill for an Act relating to liability for certain**  
2     **injury, loss, damage or destruction by aircraft, and**  
3     **for related purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

6             This Act may be cited as the *Damage by Aircraft Act 1999*.

7     **2 Commencement**

8             (1) Subject to this section, this Act commences on a day to be fixed by  
9             Proclamation.

## Section 3

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- 1                   (2) The day fixed under subsection (1) must not be a day that occurs  
2                   before the day on which Australia's denunciation of the  
3                   Convention on Damage caused by Foreign Aircraft to third Parties  
4                   on the Surface takes effect.

### 5                   **3 Object of Act**

6                   The main object of this Act is to facilitate the recovery of damages  
7                   for certain injury, loss, damage or destruction caused by aircraft, or  
8                   by people, animals or things that are dropped, or that fall, from  
9                   aircraft that are in flight.

### 10                  **4 Definitions**

11                  In this Act, unless the contrary intention appears:

12                  **aircraft** has the same meaning as in the *Civil Aviation Act 1988*,  
13                  but does not include model aircraft.

14                  **Australian territory** has the same meaning as in the *Air Navigation*  
15                  *Act 1920*.

16                  **Commonwealth aircraft** means an aircraft, other than a Defence  
17                  Force aircraft, that is:

- 18                   (a) in the possession or under the control of the Commonwealth  
19                   or an authority of the Commonwealth; or  
20                   (b) being used wholly or principally for a purpose of the  
21                   Commonwealth.

22                  **Defence Force aircraft** means aircraft of any part of the Defence  
23                  Force, including any aircraft commanded by a member of that  
24                  Force in the course of duties as such a member.

25                  **in flight** has the meaning given by section 5.

26                  **operator** has the meaning given by section 6.

### 27                  **5 Meaning of *in flight***

- 28                   (1) For the purposes of this Act, an aircraft that is lighter than air is  
29                   taken to be ***in flight*** from the moment when it becomes detached

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

## 11 **6 Meaning of operator**

- 12 (1) Subject to subsection (2), if a person uses an aircraft, the person is,  
13 for the purposes of this Act, taken to be the operator of the aircraft.
- 14 (2) If a person authorises the use of an aircraft but retains control of its  
15 navigation, then, for the purposes of this Act:
- 16 (a) the person who is authorised to use the aircraft is not taken to  
17 be the operator of the aircraft; and
- 18 (b) the person who retains control of its navigation is taken to be  
19 the operator of the aircraft.

## 20 **7 Use of an aircraft by employees**

- 21 If an employee of a person (the *employer*) uses an aircraft in the  
22 course of his or her employment (whether or not the employee is  
23 authorised to do so), then, for the purposes of this Act:
- 24 (a) the employee is not taken to use the aircraft; and
- 25 (b) the employer is taken to use the aircraft.

## 26 **8 Act binds the Crown**

27 This Act binds the Crown in each of its capacities.

## 28 **9 Application of Act**

- 29 (1) This Act extends to each external Territory.

## Section 10

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- 1           (2) This Act does not apply in relation to a Defence Force aircraft.
- 2           (3) This Act applies to acts, omissions, matters and things within
- 3           Australian territory.
- 4           (4) Subject to subsection (2), this Act applies in relation to the
- 5           following:
- 6           (a) Commonwealth aircraft;
- 7           (b) aircraft owned by a foreign corporation or a trading or
- 8           financial corporation (within the meaning of paragraph
- 9           51(xx) of the Constitution);
- 10          (c) aircraft (including foreign aircraft) engaged in:
- 11           (i) international air navigation; or
- 12           (ii) air navigation in relation to trade and commerce with
- 13           other countries and among the States; or
- 14           (iii) air navigation conducted by a foreign corporation or a
- 15           trading or financial corporation (within the meaning of
- 16           paragraph 51(xx) of the Constitution); or
- 17           (iv) air navigation to or from, or within, the Territories; or
- 18           (v) landing at, or taking off from, a place acquired by the
- 19           Commonwealth for public purposes.

### 10 Liability for injury, loss etc.

- 20           (1) This section applies if a person or property on, in or under land or
- 21           water suffers personal injury, loss of life, material loss, damage or
- 22           destruction caused by:
- 23           (a) an impact with an aircraft that is in flight, or that was in flight
- 24           immediately before the impact happened; or
- 25           (b) an impact with part of an aircraft that was damaged or
- 26           destroyed while in flight; or
- 27           (c) an impact with a person, animal or thing that dropped or fell
- 28           from an aircraft in flight; or
- 29           (d) something that is a result of an impact of a kind mentioned in
- 30           paragraph (a), (b) or (c).
- 31



- (2) If this section applies, 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 so 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 navigation—the person entitled to control the navigation of the aircraft.
- (3) Paragraph (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 a result of a collision or interference between 2 or more aircraft in flight; or
  - (b) 2 or more aircraft jointly cause any such injury, loss, damage or destruction;this section applies in relation to each of the aircraft.

## **11 Recovery of damages without proof of intention, negligence etc.**

Damages in respect of an injury, loss, damage or destruction of the kind to which section 10 applies are recoverable in an action in a court of competent jurisdiction in Australian territory against all or any of the persons who are jointly and severally liable under that section in respect of the injury, loss, damage or destruction without proof of intention, negligence or other cause of action, as if the

## Section 12

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1 injury, loss, damage or destruction had been caused by the wilful  
2 act, negligence or default of the defendant or defendants.

### 3 **12 Regulations**

4 The Governor-General may make regulations prescribing all  
5 matters:

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

### 9 **13 Schedule(s)**

10 Each Act that is specified in a Schedule to this Act is amended or  
11 repealed as set out in the applicable items in the Schedule  
12 concerned, and any other item in a Schedule to this Act has effect  
13 according to its terms.

1  
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## **Schedule 1—Repeal of Act**

3

### ***Civil Aviation (Damage by Aircraft) Act 1958***

4

#### **1 The whole of the Act**

5

Repeal the Act.



