

NORTHERN TERRITORY OF AUSTRALIA

AVIATION AMENDMENT ACT 1980
No. 40 of 1980
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THE NORTHERN TERRITORY OF AUSTRALIA

No. 40 of 1980

AN ACT

To amend the Aviation Act

[Assented to 27 May 1980]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the Aviation Amendment Act 1980.

2. COMMENCEMENT

This Act shall come into operation on the date on which the Aviation Act 1979 comes into operation.

3. PRINCIPAL ACT

The Aviation Act 1979 is in this Act referred to as the Principal Act.

4. PART HEADING

The Principal Act is amended by inserting before section 1 the following part heading:

"PART I - PRELIMINARY"

5. SUBSTITUTION

Section 3 of the Principal Act is repealed and the following section substituted:

"3. SAVINGS

"A licence granted under the Air Navigation Act 1920 of the Commonwealth and in force immediately before the commencement of this Act, being a licence which permits air transport in the Northern Territory pursuant to Division 1 of Part XIII of the Air Navigation Regulations shall also operate as a licence under, and subject to, this Act until the current term of that licence expires or until notice is given by the Director or the Minister requiring the holder of the licence to make application for a licence under this Act, whichever is the earlier."

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6. DEFINITIONS

Section 4 of the Principal Act is amended by inserting after the definition of "inspector" the following definition:

"'licence' means a licence under this Act;"

7. PART HEADING

The Principal Act is amended by inserting after section 4 the following part heading:

"PART II - ADMINISTRATION".

8. SUBSTITUTION

Sections 7 and 8 of the Principal Act are repealed and the following part heading and sections substituted:

"PART III - AERIAL WORK AND CHARTER OPERATIONS

"7. REQUIREMENT FOR LICENCE

"(1) A person shall not carry on, or hold out that he will carry on -

(a) aerial work operations; or

(b) charter operations,

in the Territory except under and in accordance with a licence under this Part.

Penalty: \$10,000 or imprisonment for 12 months.

"(2) For the purposes of sub-section (1), aerial work operations and charter operations shall be taken to be in the Territory where a flight of an aircraft used for those operations commences in the Territory and ends, or is, at the commencement of the flight, intended to end in the Territory, whether or not the aircraft may or will, in the course of the flight, go outside the Territory or outside Australia, but does not include a flight which is trade, commerce or intercourse between the Territory and a State.

"7A. INTRA-TERRITORY OPERATIONS

"A person shall not, except under and in accordance with a licence under this Part, take on board, or hold out that he will take on board, an aircraft, in the course of aerial work operations or charter operations, persons or cargo at a terminal or intermediate stopping place in the Territory where the journey of the persons or cargo will end or is intended to end at another terminal or intermediate stopping place in the Territory without the aircraft landing, or before the aircraft lands, at a place outside the Territory.

Penalty: \$10,000 or imprisonment for 12 months.

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"8. APPLICATION FOR LICENCE

"(1) A person may apply in writing to the Director for, or for the renewal, variation or transfer of, a licence to carry on -

- (a) aerial work operations; or
- (b) charter operations.

"(2) An application under sub-section (1) shall set out such particulars as may be required by the Director."

9. RESTRICTIONS ON CHARTER OPERATIONS

Section 11 of the Principal Act is amended by omitting "a regular public transport route or a section of such a route" and substituting "a route, or a section of a route, the subject of a licence under Part IV".

10. NEW PART

The Principal Act is amended by inserting after section 12 the following part and part heading:

"PART IV - REGULAR PUBLIC TRANSPORT OPERATIONS

"12A. REQUIREMENT FOR LICENCE

"(1) A person shall not carry on, or hold out that he will carry on, regular public transport operations in the Territory except under and in accordance with a licence under this Part.

"(2) For the purposes of sub-section (1), regular public transport operations shall be taken to be in the Territory where a flight of an aircraft used for those operations commences in the Territory and ends, or is at the commencement of the flight, intended to end in the Territory, whether or not the aircraft may or will, in the course of the flight, go outside the Territory or outside Australia, but does not include a flight which is trade, commerce or intercourse between the Territory and a State.

Penalty: \$10,000 or imprisonment for 12 months.

"12B. INTRA-TERRITORY OPERATIONS

"A person shall not, except under and in accordance with a licence under this Part, take on board, or hold out that he will take on board, an aircraft, in the course of a regular public transport operation, a person or an item of cargo at a terminal or intermediate stopping place in the Territory for the purpose of carriage of the person or item to another terminal or intermediate stopping place in the Territory unless the person or item is itself in the course of trade, commerce or intercourse between the Territory and a State.

Penalty: \$10,000 or imprisonment for 12 months.

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"12C. LICENCES

"(1) The Minister may -

- (a) grant, renew, vary or transfer; or
- (b) enter into an agreement relating to the grant, renewal, variation or transfer of,

a licence under this Part.

"(2) Where the Minister grants, renews or transfers a licence under this Part or enters into an agreement under this Part in relation to the grant, renewal or transfer of a licence, the licence or agreement may contain a provision that the licensee or the person who becomes the licensee shall have the exclusive right to carry on regular public transport operations over a route or a section of a route during the term or a part of the term of the licence.

"12D. APPLICATION FOR LICENCE

"(1) A person may apply in writing to the Minister for, or for the renewal, variation or transfer of, a licence to carry on regular public transport operations.

"(2) An application under sub-section (1), shall set out such particulars as may be required by the Minister.

"12E. CONSIDERATION OF APPLICATION

"(1) The Minister shall consider an application made under section 12D and may, in his discretion -

- (a) refuse the application;
- (b) approve the application; or
- (c) allow the applicant to amend it, and approve it as amended.

"(2) For the purposes of sub-section (1), the Minister may require the applicant to furnish him with such further information as he thinks fit.

"12F. CONDITIONS OF LICENCE

"(1) Where the Minister grants, renews or transfers a licence under this Part or enters into an agreement under this Part in relation to the grant, renewal or transfer of a licence, he may do so subject to such conditions as he thinks fit.

"(2) It is an implied condition of a licence or an agreement under this Part that -

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- (a) the provisions of any regulation relating to the keeping of records or the furnishing of information applicable to the aircraft and its operations be complied with;
- (b) the provisions of any law, including a law of the Commonwealth, applicable to the aircraft and its operation be complied with;
- (c) the provisions and requirements of any industrial award or agreement applying to persons engaged in the operation or servicing of the aircraft be complied with; and
- (d) subject to paragraph (b), any direction of the Minister relating to the use of airports or landing grounds be complied with.

"(3) Without limiting the generality of sub-sections (1) and (2), a licence under this Part may be granted, renewed or transferred, and an agreement under this Part may contain a provision that a licence, when granted, renewed or transferred, will contain a provision that it is, subject to conditions that -

- (a) the aircraft be operated only upon specified routes or in a specified area;
- (b) specified or agreed frequency and capacity be observed; and
- (c) specified or agreed fares and freight rates be charged.

"12G. CONTINUANCE OF LICENCE

Where the Minister -

- (a) refuses to renew a licence; or
- (b) upon renewal of a licence, imposes, otherwise than by agreement, conditions different from those in effect immediately prior to the renewal,

the licence continues in force without change, other than changes that have been agreed, but subject to sections 14 and 17, for 6 months after the date on which it expired or was renewed.

"12H. EXEMPTION

"The Minister may, if he considers that the particular circumstances of the case so warrant, exempt a person who holds a licence to carry on charter operations and who proposes to operate a service which would involve the carrying on of regular public transport operations from the necessity of obtaining a licence under Part IV in relation to that service, and may approve the operation of the service for such period and subject to such conditions as the Minister considers necessary.

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"PART V - GENERAL".

11. NEW SECTION

Section 14 of the Principal Act is repealed and the following section substituted:

"14. CANCELLATION, SUSPENSION, &c., BY DIRECTOR OR MINISTER

"(1) Subject to this section -

- (a) the Director may, by notice in writing served on the holder of a licence under Part III; and
- (b) the Minister may, by notice in writing served on the holder of a licence under Part IV,

vary, suspend or cancel the licence where the Director or Minister, as the case may be, is satisfied -

- (c) that the licensee has contravened, or failed to comply with, a provision of this Act relating to a licence held by the licensee;
- (d) that a licence was granted to the licensee on the basis of particulars or information that was false or misleading in a material particular, or that there has been a material change of circumstances since the licence was granted; or
- (e) that the licensee has contravened, or failed to comply with, a condition of a licence held by the licensee.

"(2) Before taking action under this section to vary, suspend or cancel a licence, the Director or the Minister, as the case may be, shall -

(a) give notice in writing to the licensee -

- (i) containing full particulars of the facts or circumstances constituting the grounds for variation, suspension or cancellation of the licence under this section;
- (ii) specifying the action that the Director or the Minister, as the case may be, proposes to take; and
- (iii) where the Director or the Minister, as the case may be, proposes to vary or suspend the licence, specifying the terms and conditions of the proposed variation or suspension; and

(b) give to the licensee an opportunity to show cause why the licence should not be varied, suspended or cancelled."

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12. REPEAL OF SECTION 16

Section 16 of the Principal Act is repealed.

13. CANCELLATION, SUSPENSION, &c., BY COURT

(1) Section 17(1) of the Principal Act is amended by inserting after "Director" the words ", in respect of licences under Part III or the Minister in respect of licences under Part IV,".

(2) Section 17 of the Principal Act is amended by omitting sub-sections (2) and (3).

14. NEW SECTIONS

After section 17 of the Principal Act, the following sections are inserted:

"17A. LIABILITY OF OWNER, HIRER AND PILOTS FOR OFFENCES

"(1) Where an aircraft is used, or it is held out that an aircraft will be used, in or for the purposes of contravention of section 7, 7A, 12A or 12B, the owner, the hirer, if any, the pilot and the co-pilot, if any, of the aircraft are each guilty of an offence, punishable upon conviction by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 12 months, or both.

"(2) Subject to sub-section (3), in a prosecution for an offence established by sub-section (1), it is a defence if the defendant establishes -

- (a) that the contravention in respect of which the proceeding was instituted was due to a mistake, to reliance on information supplied by another person, to the act or default of another person, to an accident or to some other cause beyond his control; and
- (b) that he took reasonable precautions and exercised due diligence to avoid the contravention.

"(3) If a defence provided by sub-section (2) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave of the Court, entitled to rely on that defence unless he has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in his possession.

"(4) Where, in any proceedings against a person under this section, it appears to the Court that the person acted reasonably and, having regard to all the circumstances of the case, ought fairly to be excused, the Court may relieve the person either wholly or partly from liability to any penalty on such terms as the Court thinks fit.

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"17B. INJUNCTIONS

"(1) The Court may, on the application of the Minister, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute -

- (a) a contravention of a provision of this Act;
- (b) attempting to contravene such a provision;
- (c) aiding, abetting, counselling or procuring a person to contravene such a provision;
- (d) inducing, or attempting to induce, a person, whether by threats, promises or otherwise, to contravene such a provision;
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (f) conspiring with others to contravene such a provision.

"(2) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under sub-section (1).

"(3) The Court may rescind or vary an injunction granted under sub-section (1) or (2)."

15. REVIEW

Section 18 of the Principal Act is amended -

- (a) by omitting paragraphs (a) and (b) from sub-section (1); and
- (b) by inserting after sub-section (3) the following sub-section:

"(4) A decision of the Minister made pursuant to this section shall, where necessary, be substituted for a decision of the Director made pursuant to section 12(1)(a) or (b)."

16. CONFIDENTIALITY

Section 21 of the Principal Act is amended by omitting sub-section (3).

