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# **Damage by Aircraft Act 1999**

**No. 107, 1999 as amended**

**Compilation start date:** 31 March 2013

**Includes amendments up to:** Act No. 191, 2012

Prepared by the Office of Parliamentary Counsel, Canberra

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## **About this compilation**

### **The compiled Act**

This is a compilation of the *Damage by Aircraft Act 1999* as amended and in force on 31 March 2013. It includes any amendment affecting the compiled Act to that date.

This compilation was prepared on 31 March 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending Acts and instruments and the amendment history of each amended provision.

### **Uncommenced provisions and amendments**

If a provision of the compiled Act is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

### **Application, saving and transitional provisions for amendments**

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is set out in the endnotes.

### **Modifications**

If a provision of the compiled Act is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

### **Provisions ceasing to have effect**

If a provision of the compiled Act has expired or otherwise ceased to have effect in accordance with a provision of the Act, details of the provision are set out in the endnotes.

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# **An Act relating to liability for certain injury, loss, damage or destruction by aircraft, and for related purposes**

## **1 Short title**

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

## **2 Commencement**

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

## **3 Object of Act**

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

## **4 Definitions**

In this Act, unless the contrary intention appears:

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

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

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

- (a) in the possession or under the control of the Commonwealth or an authority of the Commonwealth; or

- (b) being used wholly or principally for a purpose of the Commonwealth.

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

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

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

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

- (1) For the purposes of this Act, 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 becomes again attached to the earth's surface.
- (2) For the purposes of this Act, 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 the purposes of this Act, 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.

### **6 Meaning of *operator***

- (1) Subject to subsection (2), if a person uses an aircraft, the person is, for the purposes of this Act, taken to be the operator of the aircraft.
- (2) If a person authorises the use of an aircraft but retains control of its navigation, then, for the purposes of this Act:
  - (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 its navigation is taken to be the operator of the aircraft.

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

If an employee of a person (the *employer*) uses an aircraft in the course of his or her employment (whether or not the employee is authorised to do so), then, for the purposes of this Act:

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

## **8 Act binds the Crown**

This Act binds the Crown in each of its capacities.

## **9 Application of Act**

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

## **10 Liability for injury, loss etc.**

- (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 dropped or fell from an aircraft in flight; or
  - (d) something that is a result of an impact of a kind mentioned in paragraph (a), (b) or (c).
- (1A) However, this section does not apply in relation to a person who suffers mental injury caused by a thing covered by paragraph (1)(a), (b), (c) or (d) unless the person, or property owned by the person, suffers other personal injury, material loss, damage or destruction caused by such a thing.
- (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.
- (2A) Subsection (2) does not apply to a person if, immediately before the impact happened:

- (a) the person was the owner of the aircraft; and
  - (b) the person did not have an active role in the operation of the aircraft; and
  - (c) either:
    - (i) there was a lease or other arrangement in force (whether or not with the owner) under which another person had the exclusive right to use the aircraft; or
    - (ii) another person had the exclusive right to use the aircraft and there was an agreement in force under which the owner provided financial accommodation in connection with 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 injury, loss, damage or destruction had been caused by the wilful act, negligence or default of the defendant or defendants.

### **11A Contributory negligence**

- (1) If, in an action under section 11, a defendant proves that the injury, loss, damage or destruction was caused by, or contributed to by,

the negligence of the person (the *sufferer*) in respect of whom the injury, loss, damage or destruction was suffered, the damages recoverable must be assessed in accordance with this section.

- (2) The court must determine the damages that would have been recoverable if there had been no negligence on the part of the sufferer.
- (3) The damages determined under subsection (2) must be reduced to the extent the court thinks just and equitable having regard to the share of the sufferer in the responsibility for the injury, loss, damage or destruction.
- (4) If any case to which subsection (1) applies is tried with a jury, the jury must determine the damages referred to in subsection (2) and the amount of the reduction under subsection (3).

### **11B Right of contribution**

If, because of an action under section 11, an amount of damages is paid by a person in respect of an injury, loss, damage or destruction, that person may, in an action in a court of competent jurisdiction in Australian territory, recover by way of contribution, from either or both of the following:

- (a) any other person jointly and severally liable under section 10 in respect of the injury, loss, damage or destruction;
- (b) any other person who caused, or contributed to, the injury, loss, damage or destruction;

such part of the amount paid as the court considers just and equitable.

### **12 Regulations**

The Governor-General may make regulations prescribing all matters:

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

## Endnote 1—Legislation history

**Endnotes****Endnote 1—Legislation history**

This endnote sets out details of the legislation history of the *Damage by Aircraft Act 1999*.

<b>Act</b>	<b>Number and year</b>	<b>Assent date</b>	<b>Commencement date</b>	<b>Application, saving and transitional provisions</b>
Damage by Aircraft Act 1999	107, 1999	31 Aug 1999	8 Nov 2000 ( <i>see Gazette</i> 2000, S574)	
Insurance and Aviation Liability Legislation Amendment Act 2002	96, 2002	10 Nov 2002	Schedule 1 (items 1–4): 23 July 1998 ( <i>see s. 2</i> ) Remainder: Royal Assent	—
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Schedule 6 (items 37, 38): Royal Assent	—
Aviation Legislation Amendment (Liability and Insurance) Act 2012	191, 2012	11 Dec 2012	Schedule 1 (items 5, 6, 7(3), (4)): 31 Mar 2013 ( <i>see F2013L00210</i> )	Sch. 1: (item 7(3), (4))

## Endnotes

### Endnote 2—Amendment history

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#### **Endnote 2—Amendment history**

This endnote sets out the amendment history of the *Damage by Aircraft Act 1999*.

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
s. 10 .....	am. No. 96, 2002; No. 191, 2012
s. 11A .....	ad. No. 191, 2012
s. 11B .....	ad. No. 191, 2012
s. 13 .....	rep. No. 136, 2012
Schedule 1 .....	rep. No. 136, 2012

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Endnote 3—Application, saving and transitional provisions

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**Endnote 3—Application, saving and transitional provisions**

This endnote sets out applications, saving and transitional provisions for amendments of the *Damage by Aircraft Act 1999*.

**Aviation Legislation Amendment (Liability and Insurance) Act 2012  
(No. 191, 2012)**

**Schedule 1**

**7 Application provisions**

- (3) The amendment made by item 5 applies in relation to mental injury suffered on or after the commencement of that item.
- (4) The amendment made by item 6 applies in relation to injury, loss, damage or destruction suffered on or after the commencement of that item.

## Endnotes

### Endnote 4—Uncommenced amendments

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#### **Endnote 4—Uncommenced amendments**

This endnote sets out amendments of the *Damage by Aircraft Act 1999* that have not yet commenced.

There are no uncommenced amendments.

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Endnote 5—Misdescribed amendments

**Endnote 5—Misdescribed amendments**

This endnote sets out amendments of the *Damage by Aircraft Act 1999* that have been misdescribed.

There are no misdescribed amendments.