

EXPOSURE DRAFT



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Civil Aviation (Carriers' Liability) Regulations 2019

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2019

David Hurley
Governor-General

By His Excellency's Command

Michael McCormack [**DRAFT ONLY—NOT FOR SIGNATURE**]
Deputy Prime Minister and Minister for Infrastructure, Transport and Regional
Development

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Part 1—Preliminary

1 Name

This instrument is the *Civil Aviation (Carriers' Liability) Regulations 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 October 2019.	1 October 2019

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Civil Aviation (Carriers' Liability) Act 1959*.

4 Schedules

Each instrument that is specified in Schedule 1 to this instrument is amended or repealed as set out in the applicable items in Schedule 1, and any other item in that Schedule has effect according to its terms.

5 Definitions [1991 Regulation 3]

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) acceptable contract of insurance (see section 41B of the Act);
- (b) contract of insurance (see section 41B of the Act);
- (c) SDR.

In this instrument:

Act means the *Civil Aviation (Carriers' Liability) Act 1959*.

terminating event: see subsection 12(6).

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Part 2 Liability limits

Section 6

Part 2—Liability limits

6 Liability limits relating to passengers *[1991 Regulation 4 and Schedule]*

- (1) For the purposes of subsection 31(1) of the Act, the amount prescribed is \$925,000.
- (2) For the purposes of subsection 31(1A) of the Act, the number of SDRs prescribed is 480,000.

7 Liability limits relating to baggage *[1991 Regulation 4 and Schedule]*

- (1) For the purposes of subsection 31(2) of the Act, the amount prescribed is \$3,000.
- (2) For the purposes of subsection 31(3) of the Act, the amount prescribed is \$300.

Part 3—Insurance requirements and permitted liability exclusions

8 Requirements in relation to a contract of insurance [1991 Regulation 7]

- (1) For the purposes of paragraph 41C(2)(b) of the Act, it is a prescribed requirement in relation to a contract of insurance:
 - (a) that the insurer is authorised under section 12 of the *Insurance Act 1973* to carry on insurance business in Australia; or
 - (b) that:
 - (i) the insurer is permitted or authorised under the law of a foreign country to carry on insurance business; and
 - (ii) CASA is satisfied that the requirements imposed on the insurer under that law are similar to or consistent with requirements under that Act.
- (2) For the purposes of paragraph 41C(3)(aa) of the Act, the number of SDRs prescribed is 480,000.

9 Permitted exclusions of insurer's liability [1991 Regulation 9]

- (1) This section is made for the purposes of section 41D of the Act.

Standard exclusion clauses

- (2) A contract of insurance that indemnifies the insured carrier against personal injury liability may exclude liability by adopting:
 - (a) a standard exclusion clause covered by subsection (3); or
 - (b) a clause that has similar effect to a standard exclusion clause covered by subsection (3).
- (3) This subsection covers the following standard exclusion clauses, as accessible on the International Underwriting Association of London website (<http://www.iaclauses.co.uk>) on 1 October 2019:
 - (a) the *Aviation Radioactive Contamination Exclusion Clause (General)* (also called AVN 38A);
 - (b) the *Nuclear Risks Exclusion Clause* (also called AVN 38B);
 - (c) the *Noise and Pollution and Other Perils Exclusion Clause* (also called AVN 46B);
 - (d) the *War, Hijacking and Other Perils Exclusion Clause (Aviation)* (also called AVN 48B).

Exclusion of liability for employees

- (4) A contract of insurance that indemnifies the insured carrier against personal injury liability may exclude liability in respect of an employee of the carrier who is travelling in the course of the employee's duties as an employee.

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Part 3 Insurance requirements and permitted liability exclusions

Section 9

Exclusion of liability for aircraft not notified

- (5) A contract of insurance that indemnifies an insured carrier against personal injury liability may exclude liability in respect of a passenger who travels on an aircraft operated by the carrier that is not of a notified type in relation to the contract of insurance.
- (6) For the purposes of subsection (5), a type of aircraft is a notified type in relation to a contract of insurance if:
 - (a) the insurer has given CASA a notice in writing to the effect that the insurer is prepared to indemnify the insured carrier in relation to personal injury liability arising out of the operation by the insured carrier of aircraft of that type; and
 - (b) the type is endorsed on the contract of insurance.

Part 4—Auditing

10 Notices under section 41JA of the Act [1991 Regulation 5]

- (1) For the purposes of paragraph 41K(b) of the Act, the period that may be set out in a notice given to a carrier under section 41JA of the Act is 14 days from the day the carrier receives the notice.
- (2) However, if CASA has received a notice from an insurer in relation to a carrier under section 12 of these Regulations or regulation 10 of the *Civil Aviation (Carriers' Liability) Regulations 1991* as it continues to apply under section 16 of these Regulations:
 - (a) the period that may be set out in a notice given to the carrier under section 41JA of the Act is 3 days from the day the carrier receives the notice; and
 - (b) the notice must state that CASA has received the notice from the insurer under the relevant section or regulation.
- (3) Also, if CASA reasonably believes that a contract of insurance may have ceased to be in force, or may no longer meet a prescribed requirement mentioned in subsection 41C(2) of the Act:
 - (a) the period that may be set out in a notice given to a carrier under section 41JA of the Act in relation to the contract of insurance is 3 days from the day the carrier receives the notice; and
 - (b) the notice must include a statement to the effect that CASA believes that the contract of insurance may have ceased to be in force or may no longer meet the prescribed requirement.

11 Form in which evidence to be produced under section 41JA of the Act [1991 Regulation 6]

- (1) This section is made for the purposes of paragraph 41K(c) of the Act.
- (2) Evidence that an acceptable contract of insurance is in force that a carrier is to produce under section 41JA of the Act must be in one of the following forms:
 - (a) a certificate by the insurer that the contract is in force;
 - (b) the contract;
 - (c) a written receipt for payment of a premium for the contract;
 - (d) a form mentioned in the notice given to the carrier under section 41JA of the Act.

12 Notice of cancellation etc of contract of insurance [1991 Regulation 10]

- (1) This section is made for the purposes of paragraph 41K(d) of the Act.
- (2) The insurer under an acceptable contract of insurance must give CASA written notice of either of the following events:

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Part 4 Auditing

Section 13

- (a) a modification of the contract that will result in the contract no longer meeting a prescribed requirement mentioned in subsection 41C(2) of the Act;
 - (b) the cancellation of the contract by the insurer.
- (3) The insurer must give the notice at least 3 business days before the event is expected to happen.
- (4) The insurer under an acceptable contract of insurance that is not renewed must give CASA written notice of the non-renewal within 3 business days after the contract expires.
- (5) The insurer under an acceptable contract of insurance must give CASA written notice of a terminating event within 3 business days after the insurer becomes aware, or ought reasonably to have become aware, of the event.
- (6) A **terminating event** means an act of the carrier that would, apart from subsection 13(4), have as a result the contract ceasing to be in force before the end of the term set out in the contract.

13 Effect of failure to give notice under section 12 [1991 Regulation 11]

- (1) This section is made for the purposes of paragraph 41K(e) of the Act.
- (2) If, in relation to a contract of insurance, an event described in subsection 12(2) occurs, but the insurer does not give CASA notice of the event as required by subsections 12(2) and (3), then, despite anything in the contract of insurance, the contract remains in force until the earliest of the following:
- (a) the time when the carrier obtains from the same or another insurer an acceptable contract of insurance;
 - (b) if the insurer subsequently gives the notice—3 business days after CASA receives the notice;
 - (c) if the insurer does not give the notice before the end of 3 months after the day the event happens—the end of that period.
- (3) If, in relation to a contract of insurance, the contract is not renewed, and the insurer does not give CASA notice of the non-renewal as required by subsection 12(4), then, despite anything in the contract of insurance, the contract remains in force until the earliest of the following:
- (a) the time when the carrier obtains from the same or another insurer an acceptable contract of insurance;
 - (b) if the insurer subsequently gives the notice—3 business days after CASA receives the notice;
 - (c) if the insurer does not give the notice before the end of 3 months after the day the contract expires—the end of that period.
- (4) If, in relation to a contract of insurance, a terminating event occurs, but the insurer does not give CASA notice as required by subsection 12(5), then, despite anything in the contract of insurance, the contract continues in force until the earliest of the following:

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- (a) the time when the insured carrier obtains from the same or another insurer an acceptable contract of insurance;
- (b) if the insurer subsequently gives the notice—3 business days after CASA receives the notice;
- (c) if the insurer does not give the notice before the end of 3 months after the day the event happens—the end of that period.

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Part 5 Transitional, application and savings provisions

Division 1 Civil Aviation (Carriers' Liability) Regulations 2019

Section 14

Part 5—Transitional, application and savings provisions

Division 1—Civil Aviation (Carriers' Liability) Regulations 2019

14 Application—Notices under section 41JA of the Act

Sections 10 and 11 of these Regulations apply in relation to notices given under section 41JA of the Act on or after 1 October 2019.

15 Application—Notice of cancellation etc of contract of insurance entered into on or after 1 October 2019

Sections 12 and 13 apply in relation to a contract of insurance entered into on or after 1 October 2019.

16 Savings—Notice of cancellation etc of contract of insurance entered into before 1 October 2019

Despite the repeal of the *Civil Aviation (Carriers' Liability) Regulations 1991* by Schedule 1 to these Regulations, regulations 10 and 11 of the *Civil Aviation (Carriers' Liability) Regulations 1991* continue to apply on and after 1 October 2019 in relation to a contract of insurance entered into before 1 October 2019.

Schedule 1—Repeals

Civil Aviation (Carriers' Liability) Regulations 1991

1 The whole of the instrument

Repeal the instrument.