



# Air Navigation Act 1937

Reprinted as in force on 21 December 2001

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the Office of the Queensland Parliamentary Counsel  
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\* Minor differences in presentation between this reprint and another reprint with the same number are due to the conversion to new styles. The content has not changed.

# Information about this reprint

This Act is reprinted as at 21 December 2001. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

## **Spelling**

The spelling of certain words or phrases may be inconsistent in this reprint or with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’). Variations of spelling will be updated in the next authorised reprint.



## Queensland

# Air Navigation Act 1937

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# Air Navigation Act 1937

[as amended by all amendments that commenced on or before 21 December 2001]

**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



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## **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

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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

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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

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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

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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.

## **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—

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- (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 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,

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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.

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## Endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 21 December 2001. Future amendments of the Air Navigation Act 1937 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	1991 Act No. 48	10 September 1991	9 November 1995
1A	2001 Act No. 79	21 December 2001	21 December 2001

### 5 Tables in earlier reprints

Name of table	Reprint No.
Corrected minor errors	1
Obsolete and redundant provisions	1
Renumbered provisions	1

## 6 List of legislation

### **Air Navigation Act 1937 1 Geo 6 No. 8**

date of assent 23 September 1937

commenced 5 May 1938 (proc pubd gaz 7 May 1938 p 1590)

amending legislation—

### **Air Navigation Act Amendment Act 1947 12 Geo 6 No. 5**

date of assent 15 December 1947

commenced on date of assent

### **Air Navigation Act Amendment Act 1991 No. 48**

date of assent 10 September 1991

commenced on date of assent

### **Transport Legislation Amendment Act 2001 No. 79 ss 1, 2(3), pt 2**

date of assent 29 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 21 December 2001 (2001 SL No. 279)

## 7 List of annotations

**Title** amd 1991 No. 48 s 3; 2001 No. 79 s 4

### **PART 1—PRELIMINARY**

**pt hdg** ins 2001 No. 79 s 5

### **Commencement of Act**

**s 2** om R1 (see RA s 39)

### **Repeal of the Act 12 Geo 5 No. 30**

**s 3** om R1 (see RA s 40)

### **Construction of this Act**

**s 3A** ins 1947 12 Geo 6 No. 5 s 2

### **Definitions**

**s 4** sub 1991 No. 48 s 4

def “**aircraft**” ins 2001 No. 79 s 6

def “**in flight**” ins 2001 No. 79 s 6

def “**operator**” ins 2001 No. 79 s 6

### **PART 2—APPLICATION OF REGULATIONS**

**pt hdg** ins 2001 No. 79 s 7

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

**prov hdg** amd 1991 No. 48 s 5

**s 5** amd 1947 12 Geo 6 No. 5 s 3

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

**s 6** amd 1947 12 Geo 6 No. 5 s 4

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**Certificates, licences etc.**

s 7            amd 1947 12 Geo 6 No. 5 s 5

**Purpose of this part**

prov hdg    amd 2001 No. 79 s 8

s 9            ins 1947 12 Geo 6 No. 5 s 6  
                 amd 2001 No. 79 s 8

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

s 10          ins 1947 12 Geo 6 No. 5 s 6  
                 amd 2001 No. 79 s 9

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

prov hdg    amd 2001 No. 79 s 10

s 11          ins 1947 12 Geo 6 No. 5 s 6  
                 amd 2001 No. 79 s 10

**PART 3—RECOVERY OF CERTAIN DAMAGES**

pt 3 (ss 12–17)    ins 2001 No. 79 s 11

**PART 4—MISCELLANEOUS**

pt 4 (s 18)    ins 2001 No. 79 s 11