

3.1 About this Part

This part describes:

- CASA's authority to administer the CLI scheme
- The jurisdiction of Commonwealth legislation
- The jurisdiction of State legislation
- A carrier and the obligations of a carrier
- The relevance of international treaties
- Delegations held by CASA officers
- References to key legislative provisions.

3.2 CASA's Authority to Administer the CLI Scheme

CASA is empowered under section 9 the *Civil Aviation Act 1988* and Part IVA of the *Civil Aviation (Carriers' Liability) Act 1959* (Cth) and complementary State legislation to administer and enforce the compulsory insurance scheme.

3.3 Commonwealth Legislation

The legislative basis for the Carriers' Liability Insurance (CLI) scheme is Part IVA of the *Civil Aviation (Carriers' Liability) Act 1959* (Cth) together with the *Civil Aviation (Carriers' Liability) Regulations*.

The Commonwealth laws extend to transport of passengers by a Carrier (refer to the definition of carrier at section 3.5):

- to or from Australia (i.e. international flights);
- between Australian States;
- between a State and a Territory; and
- within a Territory.

Where an international carrier proposes to confine its operations to flights falling within the jurisdiction of Commonwealth law (e.g. flights to and from Australia), it is not necessary for the carrier's insurance contract to extend cover under State laws. In such cases CASA may issue a Certificate of Compliance (CoC) which reflects that the carrier has met the requirements of Commonwealth legislation only.

3.4 State Legislation

All States of Australia have introduced legislation to mirror Commonwealth legislation, thereby giving nationwide legislative coverage for the CLI scheme.

The State legislation has force with respect to **intrastate** passenger charter or regular public transport flights only.

State legislation became effective:

- in all States **except** Western Australia on 1 December 1996
- in Western Australia on 1 September 1998.

The relevant Acts of parliament in each State are:

- *Civil Aviation (Carriers Liability) ACT 1964 QLD*
- *Civil Aviation (Carriers Liability) ACT 1967 NSW*
- *Civil Aviation (Carriers Liability) ACT 1961 VIC*
- *Civil Aviation (Carriers Liability) ACT 1963 TAS*
- *Civil Aviation (Carriers Liability) ACT 1962 SA*
- *Civil Aviation (Carriers Liability) ACT 1961 WA*

For practical purposes, CASA has based its CLI administrative policies and procedures on the Commonwealth legislation (given that identical provisions have been mirrored in State legislation).

Intrastate carriers do **not** have the option of complying with the law(s) of one or more States to the exclusion of Commonwealth legislation and/or selective States. Instead, intrastate carriers must hold insurance contracts that extend cover under Commonwealth legislation as well as **all** States' laws.

3.5 Definition and Obligations of a Carrier under the Act

Obligations under Part IVA of the *Civil Aviation (Carriers' Liability) Act 1959* (Cth) (in this part 'the Act') extend to all carriers as defined by the Act.

It is important to note that determining an international carrier's obligations under the Act with respect to any flight forming the whole or part of unbroken carriage to/from Australia can be complex. Where there is any doubt or confusion over a foreign carrier's obligations, the case should be referred to OLC for advice.

The Act defines a carrier as a person engaged, or offering to engage, in an air transport operation for the carriage of passengers to which:

1. Parts II or III of the Act applies.

Generally covers international operations to/from Australia.

May be subject to the force of international treaties (refer to section 3.6).

An international carrier may be:

- a **Contractual Carrier** who offers to transport passengers to/from Australia on the carrier's own aircraft, or aircraft operated by another carrier regardless of whether or not the carrier holds an Australian AOC or other form of operating approval; and/or
- an **Actual Carrier** who transports passengers to/from Australia on behalf of a contractual carrier, whether or not the carrier holds an Australian AOC or other form of operating approval.

OR

2. Part IV of the Act applies.

Generally covers operations by domestic carriers who hold:

- a) an airline licence being:
 - i. an international airline licence in force under the Air Navigation Regulations; or
 - ii. an Air Operator's Certificate in force under the *Civil Aviation Act 1988* authorising airline operations; or
- b) a charter licence being:
 - i. a charter licence in force under the Air Navigation Regulations; or
 - ii. an Air Operator's Certificate in force under the *Civil Aviation Act 1988* authorising charter operations.



For practical purposes, CLI staff should assume that a carrier has obligations under the Act if the carrier:

1. Holds an Australian Air Operator's Certificate authorising:
 - o passenger charter;
 - o regular public transport; or
 - o international air transport operations; or
 - o cargo charter/airline operations in cases where security guards, animal veterinarians or other non-crew members are carried on aircraft;

OR

2. Is a foreign person/carrier who offers to transport passengers under contract to/from Australia on the carrier's own aircraft, or aircraft operated by another carrier;

OR

3. Is a carrier providing an aircraft and crew to another carrier engaged in operations to/from Australia, under a wet lease agreement.

3.6 The Effect of International Treaties on International Carriers

Note: This is an area that may require OLC interpretation/advice given the complexities of the legislation and the relevance of international treaties.

Generally speaking, a foreign carrier is required to hold a CoC (issued under Section 41C(7) of the Act) if:

1. The carrier is a **contractual carrier** (i.e. is a carrier who offers to transport passenger to/from Australia under a contract of carriage) **and** the carrier is a national of a country that is a signatory to one of the following international treaties:
 - o Warsaw Convention
 - o Hague Protocol (amending the Warsaw Convention).
2. The carrier is an **actual carrier** (i.e. is a carrier who physically transports passengers to/from Australia on its own behalf or on behalf of another carrier (viz. contracting carrier) **and** the carrier is a national of a country that is a signatory to the following international treaty:
 - o Guadalajara Convention.

For reference purposes, signatories to relevant treaties are identified in [Part E, Signatories to International Treaties and Conventions](#).

Montreal Convention (not yet in force)

In May 1999, the International Civil Aviation Organisation held an international conference on air law in Montreal Canada to consider updating the Warsaw system of carriers' liability to provide a vastly improved system of compensation covering persons injured/killed in air accidents.

The outcome of this conference was the Montreal Convention.

The Montreal Convention was signed by Australia on 28 May 1999.

As at mid-2001 the Montreal Convention had not come into force as it had not been ratified by ICAO member nations, including Australia. (Note that this Montreal Convention is not included in the table in [Part E, Signatories to International Treaties and Conventions](#).)

3.7 Delegations Held by CASA Officers

The staff positions in CASA listed below have been granted the following delegations under Commonwealth and State Legislation.

Position	Section 41C and 41CA	Section 41J
	<p><i>... require a carrier to provide evidence of insurance, or, adequate financial arrangements to discharge any personal injury liabilities.</i></p> <p><i>... to issue a Certificate of Compliance...</i></p>	<p><i>... to apply to a court injunction...</i></p>
Director	YES	YES
Deputy Director	YES	YES
General Counsel	YES	YES
Executive Manager, Aviation Safety Compliance	YES	YES
General Manager, Airline Operations	YES	YES
General Manager, General Aviation Operations	YES	YES
Manager, Enforcement & Investigations	YES	YES
Senior Assessor, Carriers' Liability—Compliance	YES	NO

3.8 Key Legislative Provisions

3.8.1 Key Legislative Provisions Reference Table

The following table indicates the legislative/policy basis for:

- CLI administrative functions performed by CASA; and
- CLI requirements imposed on air carriers.

Function	Regulation(s)	Section of the Act
<p>Air carriers (other than Crown Carriers) must have insurance in place that meets the prescribed requirements of the Act:</p> <p>A carrier (other than a Crown Carrier) must not carry passengers unless the carrier is covered by an acceptable insurance in place.</p>		41E(1)
<p>Evidence of insurance (or, adequate financial arrangements):</p> <p>A carrier (other than a Crown Carrier) must produce evidence of insurance in order to obtain a CoC.</p> <p>A carrier that is, or is an agent of, the Crown may be required to produce evidence that adequate financial arrangements exist to discharge any personal injury liabilities.</p> <p>For surveillance or audit purposes a delegate may require a carrier (other than a Crown Carrier) to produce specific details of insurance contracts.</p>	5(1) 5(3) 6	CASA policy supported by Section 41C(7) 41CA(1) 41C(1)
<p>What type of insurance is required?:</p> <p>Carriers (other than Crown Carriers) must have insurance that meets certain prescribed requirements.</p> <p>An insurance contract held by a carrier must give coverage for all aircraft types/classes authorised on the carrier's AOC.</p>		41C(2) 41C(3) 41C(4) 41C(5) 41C(6) CASA policy supported by Section 41C(3)



Function	Regulation(s)	Section of the Act
<p>Authorised insurers: Insurers must meet certain qualifications.</p>	7 8	41C(2)(b)
<p>Issue of a Certificate of Compliance to a carrier that is not a Crown Carrier: If satisfied that a carrier's insurance meets the prescribed requirements of the Act, CASA may issue a certificate to the carrier.</p>		41C(7)
<p>Issue of a Certificate of Compliance to a Crown Carrier: If satisfied that a Crown Carrier has adequate financial arrangements in place to discharge any personal injury liabilities CASA may issue a certificate to the carrier.</p>		41CA(2)
<p>What exclusions are permitted in an insurance contract?: A contract of insurance may include some standard/approved exclusions. A contract of insurance may exclude liability in respect of an employee of the carrier who is travelling in the course of his/her duties as an employee.</p>	9(1) 9(2) 9(3)	
<p>When is an insurer not liable?: An insurer cannot limit/escape liability to indemnify a passenger against injury by means of a warranty or exclusion in a contract (except under exclusions contained in the Regulations) An insurer cannot limit/escape liability to indemnify a passenger for the reason that a carrier has breached conditions in a contract of insurance. A contract of insurance may exclude liability for death or injury to a passenger where the contract does not cover the aircraft type/class on which a passenger was travelling when an injury was incurred.</p>	9(1) 9(2) 9(3) 9(4) 9(5)	41D 41D



Function	Regulation(s)	Section of the Act
<p>Cancellation of insurance contracts:</p> <p>Legislation does not specify grounds on which an insurer may cancel a contract of insurance.</p> <p>Insurers must give notice to CASA of any contract(s) of insurance that has lapsed, expired, been cancelled or altered.</p> <p>An insurance contract will be deemed to be in force if an insurer has failed to notify CASA that the contract has lapsed, expired or been cancelled.</p>	<p>10</p> <p>11</p>	<p>41(G)</p>
<p>Return of a certificate:</p> <p>CASA may request an carrier to return a CoC where a contract of insurance is no longer in force, or where the certificate needs to be corrected.</p> <p>Consideration given to conduct of directors, servants and agents of a body corporate in relation to an offence.</p> <p>Conflict of laws in Australia and other countries.</p>	<p>12</p>	<p>41(F)</p> <p>41(H)</p>
<p>Penalty against uninsured carriers who carry passengers:</p> <p>Carriers who carry passengers without an acceptable insurance contract in place are guilty of an offence punishable by imprisonment.</p>		<p>41E(2)</p>
<p>Enforcement actions by CASA:</p> <p>CASA may apply to a court of competent jurisdiction for an injunction to restrain an uninsured carrier from carrying passengers.</p>		<p>41(J)</p>

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