

8.1 About this Part

This part describes:

- The necessary credentials for insurers
- Conditions for legal compliance of insurance contracts, including:
 - The operation of section 41D of the Carriers' Liability Act
 - Compliance of contracts written by Australian insurers
 - Compliance of contracts written by foreign insurers
- Roles and responsibilities of CLI Unit staff when approaching a carrier for evidence of insurance where CASA has doubts about existing arrangements.

8.2 Credentials of Insurers

Civil Aviation (Carriers' Liability) Regulation 7(1) specifies that it is a prescribed requirement in relation to each contract of insurance that:

1. The insurer is authorised under section 23 or 24 of the *Insurance Act 1973* to conduct insurance business in Australia; or
2. The insurer is:
 - a. permitted or authorised under the law of a foreign country to carry on insurance business; and
 - b. the Minister is satisfied that the requirements imposed on the insurer under the law are similar to or consistent with the requirements under the Act—i.e. Australian law.

In light of the above, insurers are required to include a statement in all certificates/declarations of insurance presented to CASA, confirming that the insurer satisfies one of the above eligibility criteria. Suitable statements are included in all sample declarations of insurance prepared by CASA to assist the insurance industry.

8.3 Legal Compliance of Insurance Contracts

The CLI Unit has a duty to ensure, as far as practicable, that contracts of insurance between air carriers and insurers satisfy the prescribed requirements of Part IVA of the *Civil Aviation (Carriers' Liability) Act 1959* (Cth) and corresponding State legislation (together referred to in this part as the Carriers' Liability Act).

During the late 1990s, CASA sought advice from the Attorney-General's Department (AGS) on a range of CLI issues including the legal compliance of insurance contracts. The views of AGS on the issues raised are reflected in the following sections.

8.3.1 Operation of Section 41D of the Carriers' Liability Act

In 1999, the AGS provided advice to CASA in relation to the operation of section 41D of the Carriers' Liability Act.

Section 41D provides that an insurer's liability under a contract of insurance to indemnify a carrier against personal injury liability to the extent mentioned in subsection 41C(3) of the Carriers' Liability Act is not affected by any warranty or exclusion in the contract of insurance or by any breach of the contract of insurance by the carrier.

In their advice to CASA, AGS expressed a view to the effect that section 41D, while not prohibiting exclusions being included in an insurance policy, makes any exclusion, other than those prescribed under the section, ineffective to limit the obligations of the insurer to indemnify the insured carrier in relation to personal injury liability. In other words, section 41D operates as a form of 'safety net' to ensure that any contract of insurance that purports to indemnify a carrier under the provisions of the Carriers' Liability Act, will be unaffected by any illegal warranties or exclusions that may be contained in the contract.

However, the AGS advice suggests that it is not clear that the section 41D provision would operate in the same way for policies, the proper law of which is a country other than Australia.

8.3.2 Contracts Written by Australia Insurers

In the absence of a legally prescribed format for evidence of insurance, CASA has accepted/approved standard certificate formats used by the following major Australian aviation insurers/brokers/underwriters on the basis of legal advice obtained on certificate formats and past audits performed by CASA of the insurers' policies:

- QBE Insurance (Australia) Limited
- Australian Aviation Underwriting Pool—refer to section 4.5.3 for an AAUP Standard Declaration of Insurance
- Australian Aviation Insurance Group
- Aviation Office of Australia
- Rural & General Insurance Limited (no longer an aviation insurer).



CLI staff may issue a Certificate of Compliance (CoC) to a carrier on the basis of a declaration/certificate of insurance received from a different (to the above) Australian insurer/broker/underwriter, provided that the declaration/certificate conforms with the requirements set out in section [4.4.1](#).

8.3.3 Contracts Written by Foreign Insurers

As mentioned in section [8.3.1](#), CASA has received legal advice to the effect that contracts of insurance written under foreign laws may not be subject to section 41D of the Carriers' Liability Act. Therefore, CASA cannot rely on section 41D to invalidate any unlawful exclusions or warranties that may be contained in foreign insurance contracts.

CASA has accepted legal advice received from the AGS to the effect that an insurance policy, whether it is written under domestic or foreign laws, will satisfy the requirements of the Carriers' Liability Act 1959 if the policy contains the AVN57A (Australia) endorsement (this endorsement was developed by the Lloyd's insurance group in London). This view has been supported by legal counsel from the Department of Transport and Regional Services.

In light of the above, CASA will continue to encourage all foreign insurers to adopt the AVN57A (Australia) endorsement for CLI purposes. This option is reflected on all sample insurance declarations/certificates prepared and promoted by CASA.

If a foreign insurer chooses to provide CLI cover to its clients under a policy endorsement other than the AVN57A (Australia) endorsement, CASA will require insurers to include the full text of their CLI policy endorsements in a declaration/certificate of insurance that is presented to CASA.

Samples of declarations/certificates of insurance (issued by insurers in the USA) which include the full text of the CLI policy endorsements can be found at [4.5.5 Certificate of Insurance with Full Text of Endorsement—Sample 1](#) and [4.5.6 Certificate of Insurance with Full Text of Endorsement—Sample 2](#).

CLI staff may issue a CoC to a carrier on the basis of a declaration/certificate of insurance received from a foreign insurer provided that the certificate satisfies the requirements set out in section [4.4.1](#).



8.3.4 Notice to a Carrier under Section 41C(1) Requiring Insurance Evidence

Senior Assessor

If, at any time, CASA has doubts over the terms under which a carrier is indemnified by an insurer, you may exercise the power under section 41C(1) of the Carriers' Liability Act to require new/additional evidence of insurance.

Section 41C(1) provides that CASA may, at any time and from time to time, by written notice given to a carrier (other than a carrier that is, or is an agent of, the Crown in any capacity), require the carrier, within a period set out in the notice to the carrier, to produce evidence, satisfactory to CASA, that there is in force between the carrier and an insurer a contract of insurance that meets the prescribed requirements.

A suitable form of words for a notice issued under section 41C(1) is set out in the following section [8.4.1](#) Notice under Subsection 41C(1) of the *Civil Aviation (Carriers' Liability) Act 1959* (Cth) and corresponding State Legislation.

Having served a notice under section 41C(1) to a carrier, you must inform the carrier of CASA's findings in relation to evidence of insurance received in response to the notice.

8.4 Sample Letter

8.4.1 Notice under Subsection 41C(1) of the Civil Aviation (Carriers' Liability) Act 1959 (Cth) and Corresponding State Legislation



CIVIL AVIATION
SAFETY AUTHORITY
AUSTRALIA

CASA ref. [xx/xx]

[Date]

Director(s)
[Carrier Name]
[Address Line 1]
[Address Line 2]
[ADDRESS LINE 3]

(Sent by facsimile to Fax No: (99)-9999 9999)

Dear Director(s)

Notice under subsection 41C(1) of the *Civil Aviation (Carriers' Liability) Act 1959 (Cwth)* and corresponding State legislation (together referred to as the "Carriers' Liability Act")

In the course of administering the Carriers' Liability Insurance scheme, CASA usually relies on evidence of insurance in the form of a Declaration(s) of Insurance as a basis on which to satisfy itself that an operator has suitable insurance arrangements in place covering passengers carried on commercial flights. Consistent with this practice, a Certificate of Compliance was issued to your company under Section 41C(7) of the Carriers' Liability Act on [date of issue] on the basis of a Declaration of Insurance issued by your insurer, [Insurer Name].

In order to ensure that a contract(s) of insurance between an operator and an insurer do not contain exclusions or limitations which may be judged to be contrary to the prescribed requirements of section 41C of the Carriers' Liability Act, it is CASA's practice to occasionally examine contracts of insurance in respect of which CASA has issued a Certificate of Compliance.

Against this background, I am giving notice to your company under subsection 41C(1) of the Carriers' Liability Act. This notice requires you to provide satisfactory evidence that there is a contract of insurance between [Carrier Name] and an insurer that meets the requirements prescribed in subsection 41C(2) of the Carriers' Liability Act.

Under regulation 6 of the *Civil Aviation (Carriers' Liability) Regulations* ("the Regulations") I require you to provide that evidence in the form of a certified true copy of relevant contract(s) of insurance.

Regulation 5 of the Regulations states that you have 14 days in which to provide that evidence. That time commences from the end of the day on which you receive this notice.



CIVIL AVIATION
SAFETY AUTHORITY
AUSTRALIA

If you are unclear about any of the obligations of your company in relation to this letter, or have any questions, you may contact me on telephone (02) 6217 1151 or facsimile (02) 6217 1110.

Yours sincerely

Lief Nystrom
Delegate of CASA

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