

Australian Carriers' Liability Guide



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NB: Due to the extensive nature of this publication and the pace of reforms and judicial consideration there may be an absence of reference to a recent case or some references to legislation and its provisions which are no longer current, yet proclaimed, amended or repealed. This publication attempts to draw out the most significant points in the relevant legislation. Whilst all care has been taken to ensure that the most up to date information has been included, not all cases or aspects of the legislation have been considered. The material contained in this publication is in the nature of general comment only, and neither purports nor is intended to be advice on any particular matter. No reader should act on the basis of any matter contained in this publication without considering and, if necessary, taking appropriate professional advice upon his or her own particular circumstance.

Australian Carriers' Liability Guide

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PREFACE

Welcome to the first edition of Carter Newell's Australian Carriers' Liability Guide.

Twenty or so years ago, this area of law had little judicial intervention, with sporadic judgments scattered around Australia. Much of Australian aviation law either directly or indirectly impacting carriers and passengers had either not been fully codified, or to the extent it had, was relatively untested, particularly on contentious issues. This left overseas decisions based on underlying international Conventions, without any of the local nuances or judicial interpretation.

What a difference a couple of decades can make! When the Carter Newell Aviation Team compiled its first two Guides some years ago for Australian airports and carriers in the Asia Pacific region, we elected not to complete the suite by doing a Guide for *Australian* carriers, despite many suggesting the idea. This was because the jurisprudence back then in Australian aviation law was still in its early development, and indeed some state civil liability laws were only just being enacted. Fast forward to 2022 and that is well and truly no longer the case, as even a quick perusal of this Guide will show. This Guide owes its thanks to all those protagonists, carriers, passengers, insurers and courts in building a strong body of law, which have all led to the current state of Australian aviation liability law today.

The focus of this Guide is on domestic carriage and the civil liability laws that regulate it. It is broken into three parts. Part 1 focuses on the commercial carriage of passengers and therefore principally addresses the strict and capped liability regime of the Commonwealth *Civil Aviation (Carriers' Liability) Act 1959* and its state counterparts. Part 2 addresses another strict liability regime with respect to surface damage from an aircraft arising out of the Commonwealth *Damage By Aircraft Act 1999* and its state counterparts. Finally, Part 3 looks at the balance of civil liability laws most applicable for carriers in various common law causes of action and their (statutory) defences. This Guide focuses on the key liability issues for carriers and operators domestically in Australia; it does not focus on international carriage in any depth, nor commercial exposures under other laws.

We hope this Guide is of assistance in providing carriers, passengers, owners, operators, pilots, insurers and brokers with a better understanding of Australian carriers' liability laws and we look forward to more developments in this area in years to come.

Future reform

With the challenges faced by the aviation industry over recent years from a global pandemic, and the lessons learnt from its contraction, stimulus and ongoing recovery, *now* may be the best opportunity in decades to achieve deep-rooted and lasting reform. Take for instance the raft of complex issues the Australian Government's '*Future of Aviation Reference Panel*' has identified: an Aviation Ombudsman, decarbonisation, broader government funding and support with a focus on regional and remote accessibility, ongoing overhaul and modernisation of aviation laws (particularly the easing of burdensome CASA regulations), and sustainable aviation fuel research and development, to name a few. Thanks to an active and vocal industry, the prospect of genuine improvement and reform will hopefully be achieved via consultation between levels of government and industry stakeholders. There are still a range of issues for debate and legislative reform and as aviation civil liability laws continue to develop, the Carter Newell Aviation Team looks forward to providing updated editions of this Guide.

This Guide is part of our suite of related industry publications, which includes:

- Australian Civil Liability Guide, edition 11
- Asia Pacific Carriers' Liability Guide, edition 1
- Australian Airports Liability and Compliance Guide, edition 1

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LIST OF ABBREVIATIONS

ALA:	Aircraft Landing Area
AOC:	Air Operator's Certificate
CAR:	Civil Aviation Regulation
CAO:	Civil Aviation Order
DVT:	Deep Vein Thrombosis
IFR:	Instrument Flight Rules
LAME:	Licensed Aircraft Maintenance Engineer
RPT:	Regular Public Transport
SGHA:	Standard Ground Handling Agreement
VFR:	Visual Flight Rules
VNC:	Visual Navigation Chart

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