

South Australia



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A.D. 2002

**AIR TRANSPORT (ROUTE LICENSING—PASSENGER SERVICES)
ACT 2002**

No. 13 of 2002

[Assented to 5 September 2002]

An Act to establish a licensing system for regular passenger air services on declared routes between airports in the State; and for other purposes.

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The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Air Transport (Route Licensing—Passenger Services) Act 2002*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"air service" means a service provided by aircraft between airports in the State;

"CASA" means the Civil Aviation Safety Authority;

"charter service" means a passenger service where—

- (a) seats on the aircraft are not made available to members of the public generally; and
- (b) the service satisfies any other criteria prescribed by the regulations for the purposes of this definition,

but does not include any service of a class excluded by the regulations from the ambit of this definition;

"declared route"—see section 5(1);

"passenger service" means an air service involving the carriage of passengers for a fare or other consideration;

"route service licence" means a licence under Part 3;

"scheduled air service" means—

- (a) a passenger service conducted between two airports in the State according to a fixed schedule; or
- (b) any other passenger service of a class prescribed by the regulations for the purposes of this definition,

but does not include any service of a class excluded by the regulations from the ambit of this definition.

(2) For the purposes of this Act, a route between any two places will be taken to be constituted by any route that an aircraft may take when flying between those two places.

(3) For the purposes of this Act, a person who operates a scheduled air service between two airports to which a declared route relates will be taken to be operating the service on the declared route.

Prescribed criteria

4. (1) In making a decision under this Act as to the number of route service licences that should be awarded for a particular route, and to whom a route service licence should be awarded, the Minister must take into account the following (insofar as the Minister thinks appropriate and without limiting any other matter that the Minister may consider relevant):

- (a) the extent to which a particular arrangement may result in a monopoly, or a market share that is close to a monopoly, in the provision of air services within the State;
- (b) the benefits in maintaining and developing sustainable air services, and competition between the operators of air services, within the State;
- (c) the steps that may need to be taken to promote or encourage the efficient operation of air services within the State, and innovation in the delivery of air services;
- (d) the public benefits that may accrue if air services are maintained or encouraged within the State.

(2) For the purposes of subsection (1), a reference to the State includes a part of the State.

**PART 2
DECLARED ROUTES****Declared routes**

5. (1) The Minister may, by notice in the *Gazette*, declare a route between two airports in the State to be a declared route for the purposes of this Act.

(2) A notice under subsection (1) must include—

- (a) a description of the route; and
- (b) information on the number of route service licences that the Minister expects to be made available for the relevant route; and
- (c) information about the conditions that may be fixed in relation to a route service licence; and
- (d) information on the process for making an application for a route service licence,

and may include other information the Minister considers appropriate.

(3) The Minister should not declare a route to be a declared route unless the Minister is satisfied that it is in the public interest that the declaration be made in order to encourage an operator or operators of air services to establish, maintain, re-establish, increase or improve scheduled air services on the route.

(4) The Minister must, in connection with the operation of subsection (3), take into account—

- (a) the apparent public demand for scheduled air services on the relevant route; and
- (b) the publicly declared intentions of any operator, or potential operator, of scheduled air services on the relevant route; and
- (c) any economic or social costs that may be suffered by a local community if a declaration is not made; and
- (d) the extent to which scheduled air services may improve if a declaration is made; and
- (e) the adequacy of alternative transport services that are available, or might become available if a declaration is not made, to members of the local communities within the vicinity of the relevant airports; and
- (f) financial issues associated with the operation of scheduled air services on the relevant route,

and may take into account such other matters as the Minister thinks fit.

(5) Subject to this section, a declaration under this section will initially have effect for a period, not exceeding three years, specified by the Minister by notice in the *Gazette*.

(6) If, at the time the Minister makes a declaration under this section with respect to a route, a person is operating a scheduled air service on that route, the operation of a declaration must commence not earlier than six weeks after the day on which the declaration is published in the *Gazette*.

(7) The period of six weeks under subsection (6) will cease to apply if the scheduled air services on the route are discontinued.

(8) The Minister may from time to time, by notice in the *Gazette*—

- (a) vary the day on which the operation of the declaration is to commence;
- (b) extend the period of operation of a declaration.

(9) However, any particular extension must not exceed three years and in any event the total period of a declaration must not exceed six years (although the expiration of a declaration does not prevent the Minister making a new declaration in relation to the same route after due consideration of the matters prescribed by subsections (3) and (4)).

(10) The Minister may at any time, if the Minister thinks fit, by notice in the *Gazette*, revoke a declaration under this section.

(11) If the Minister—

- (a) makes a declaration under this section; or
- (b) varies the day on which the operation of a declaration is to commence under this section; or
- (c) extends the period of a declaration under this section; or
- (d) revokes a declaration under this section,

the Minister must ensure—

- (e) that a copy of the relevant notice is published—
 - (i) in a newspaper circulating generally through out the State; and
 - (ii) in a newspaper circulating generally through out Australia; and
- (f) if a person is operating a scheduled air service on the relevant route at the time of the publication of the relevant notice—that a copy of the notice is served on the person in the manner prescribed by the regulations.

(12) The publication of information under subsection (2) does not prevent the Minister subsequently making a decision or taking action that is different to what was published by the Minister under that subsection.

PART 3
ROUTE SERVICE LICENCES

Requirement for licence

6. (1) A person must not, during the period of a declaration under Part 2, operate a scheduled air service on the declared route unless the person is the holder of a route service licence for that route issued by the Minister under this Act.

(2) Subsection (1) does not apply with respect to—

- (a) a charter service; or
- (b) an air service provided in place of a scheduled air service normally provided by the holder of a route service licence due to an emergency or technical difficulty with, or the routine maintenance of, a particular aircraft; or
- (c) an alternative or additional air service contemplated by the terms or conditions of a route service licence; or
- (d) an air service operated with the consent of the Minister under section 10; or
- (e) an air service of a prescribed kind.

Maximum penalty: \$35 000.

Applications for licences

7. (1) All route service licences are to be granted on application to the Minister.

(2) The Minister may invite applications for a route service licence or for route service licences for a declared route by tender or may invite applications on any other basis as the Minister thinks fit.

(3) An application for a route service licence—

- (a) must be made in the manner and form required by the Minister; and
- (b) must be accompanied by the prescribed fee.

(4) The Minister may require an applicant for a route service licence—

- (a) to furnish further information specified by the Minister; and
- (b) to verify, by statutory declaration, information furnished for the purposes of the application.

(5) An applicant for a route service licence must meet any requirement, standard, criteria, qualification or condition set out in the regulations or specified by the Minister in an invitation for applications or by notice given in accordance with the regulations, and must satisfy the Minister as to any other matter the Minister considers relevant.

(6) If the Minister decides not to grant an application for a route service licence, the Minister must, at the request of the applicant, give the applicant a written statement of the Minister's reasons for the decision.

Conditions

8. (1) The conditions of a route service licence may—

- (a) fix the term of the licence and provide for its extension;
- (b) make provision with respect to performance and service levels (including as to the quality and type of aircraft to be used in the provision of scheduled air services on the declared route), and flight schedules (and provide a scheme for their review or variation from time to time);
- (c) make provision with respect to the fares to be charged by the holder of the licence for scheduled air services on the declared route (and provide a scheme for their review or variation from time to time);
- (d) make provision with respect to alternative or additional air services in specified circumstances;
- (e) fix amounts payable by the holder of the licence for or under the licence;
- (f) provide for the provision of infrastructure or for capital or other expenditure by the holder of the licence;
- (g) require the provision of reports and other information to the Minister;
- (h) provide for the suspension or cancellation of the licence by the Minister and the grounds for suspension or cancellation;
- (i) make any other provision the Minister considers appropriate.

(2) It will be a condition of a route service licence that the holder of the licence—

- (a) must have appropriate CASA certification to operate the relevant air services on the declared route at the time of commencing operations on the route (and, if the person to whom the licence is granted does not have such CASA certification at the time that the licence is granted, that he or she obtain it within a period specified by the Minister (being a period expiring before operations are due to commence under the licence)); and
- (b) must maintain appropriate CASA certification during the term of the licence.

(3) Before suspending or cancelling a licence pursuant to a condition under subsection (1)(h) (but without affecting the operation of subsection (4)), the Minister must give the holder of the licence a reasonable opportunity to make representations about the proposed action.

(4) If the holder of a route service licence is in breach of the condition imposed by subsection (2), the licence is immediately suspended by force of this subsection during the period of the breach (and the Minister may then proceed to cancel the licence if the breach is not remedied within a reasonable time).

(5) The Minister may, after consultation with the holder of the route service licence, if the Minister considers it appropriate to do so, by written notice to the holder of the route service licence, vary a condition to which a route service licence is subject.

(6) The holder of a route service licence may, on application made to the Minister in writing, request the variation of a condition to which the licence is subject, and the Minister may, as the Minister thinks fit—

- (a) grant the variation; or
- (b) refuse to grant the variation.

(7) The conditions of a route service licence may be varied by the addition, substitution or deletion of one or more conditions.

(8) Nothing in subsections (5), (6) or (7) allows the variation of the condition imposed by subsection (2).

(9) A person must not contravene or fail to comply with a condition of a route service licence.

Maximum penalty: \$35 000.

Special terms

9. (1) A route service licence may (but need not)—

- (a) confer on the holder of the licence an exclusive right to operate scheduled air services on the declared route; and
- (b) provide for other matters relevant to the operation of air services (including new scheduled air services) on the declared route.

(2) However, a right conferred on the holder of a route service licence—

- (a) cannot affect or limit the ability of another person to operate an air service of a kind specified by the regulations, or specified in the licence itself, during the term of the licence (and such a specified air service may be a scheduled air service); and
- (b) will be subject to such other qualifications as may be prescribed by the regulations, or specified in the licence itself, during the term of the licence.

Assignment of rights under licence

10. (1) The holder of a route service licence must not transfer, assign, subcontract or otherwise deal with the licence, or a right, power or duty under the licence, except with the consent of the Minister.

Maximum penalty: \$20 000.

(2) The Minister must not consent to a dealing under subsection (1) unless satisfied—

- (a) that adequate provision will be made for the operation of services under the terms of the route service licence; and
- (b) as to any other matter the Minister considers relevant.

(3) A purported dealing in contravention of subsection (1) is void.

(4) Subsection (1) does not apply—

- (a) to a situation where a service is being provided in place of a scheduled air service normally provided by the holder of the route service licence due to an emergency or technical difficulty with, or the routine maintenance of, a particular aircraft; or
- (b) to an alternative or additional air service contemplated by the terms or conditions of the route service licence; or
- (c) in circumstances prescribed by the regulations, or specified in the licence itself, for the purposes of this subsection.

Special fees

11. (1) In addition to any other fee payable under this Act, the Minister may require the payment of—

- (a) a fee for lodging a tender for a route service licence under this Part; and
- (b) a fee for administering a route service licence under this Part (which fee may vary from licence to licence, and may be payable from time to time during the term of the licence).

(2) The Minister may determine the amount of a fee under this section, subject to any limits prescribed by the regulations.

Existing operators

12. (1) Subject to subsection (2), if at the time the Minister makes a declaration under section 5(1) with respect to a particular route a person (an "existing operator") is operating a scheduled air service on that route, the Minister must, before the Minister makes a general invitation to the aviation industry for applications for a route service licence, offer to grant to the existing operator a route service licence on conditions that the Minister considers to be fair and reasonable in the circumstances after taking into account any representations made by the existing operator.

(2) The Minister is not required to make an offer under subsection (1) if the existing operator has publicly declared that he or she intends to discontinue scheduled air services on the route.

(3) An existing operator has 14 days in which to accept an offer under subsection (1) after its receipt by the existing operator.

Report to Parliament

13. The Minister must, within 12 sitting days after awarding a route service licence under this Part, cause a report containing the following information to be laid before both Houses of Parliament:

- (a) the full name of the person to whom the licence has been awarded;
- (b) the term of the licence;
- (c) details concerning—
 - (i) the performance and service levels, and flight schedules, required at the commencement of the licence; and

- (ii) the fares to be initially charged by the holder of the licence;
- (d) other information the Minister considers appropriate.

Other matters

14. (1) The holder of a route service licence may, with the consent of the Minister, surrender the licence.

(2) The awarding of a route service licence to a particular person does not constitute a warranty or representation by the Minister or the Crown that the person is fit to, or capable of, operating an air service in a safe or reliable manner, and no liability may attach to the Minister or the Crown by virtue of the fact that the Minister has awarded a route service licence to a particular person under this Part.

**PART 4
APPEALS****Appeals**

15. (1) The following appeals may be made to the Administrative and Disciplinary Division of the District Court:

- (a)** the holder of a route service licence may appeal against a decision of the Minister with respect to—
 - (i)** a variation, or proposed variation, of a condition of the licence under section 8(5); or
 - (ii)** an application to the Minister for a variation of a condition of the licence under section 8(6);
- (b)** the holder of a route service licence may appeal against a decision of the Minister refusing consent to a dealing with the licence under section 10(1);
- (c)** an existing operator within the meaning of section 12 may appeal against a decision of the Minister fixing the conditions of a route service licence offered to the existing operator under that section;
- (d)** the holder of a route service licence may appeal against a decision of the Minister refusing consent to the surrender of the licence;
- (e)** the holder of a route service licence may appeal against a decision of the Minister suspending or cancelling the licence, other than where a cancellation is occurring in conjunction with the expiration of the period of the relevant declaration under Part 2.

(2) Subject to subsection (3), an appeal must be instituted within 21 days of the making of the decision appealed against.

(3) An appeal under subsection (1)(c) must be instituted within 14 days of the making of the decision appealed against.

(4) The Minister must, if so required by a person affected by a decision made by the Minister that is, or may be, the subject to an appeal under this section, state in writing the reasons for the decision.

(5) Except as provided by this section, a decision of the Minister under Part 2 or 3 is not subject to review or appeal in any court.

**PART 5
MISCELLANEOUS****Authorised officers**

- 16. (1)** The Minister may appoint suitable persons to be authorised officers under this Act.
- (2) An appointment under this section may be subject to any condition or limitation specified by the Minister.
- (3) A person appointed under this section must be issued with an identity card—
- (a) containing a photograph of the person; and
 - (b) stating any limitations on the authorised officer's authority.
- (4) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise a power under this Act, produce for the inspection of the person his or her identity card.
- (5) An authorised officer may, as may reasonably be required in connection with the administration, operation or enforcement of this Act—
- (a) at any time, enter and inspect premises;
 - (b) require a person to produce documents (which may include a written record reproducing in an understandable form information stored by computer, microfilm or other process);
 - (c) examine, copy or take extracts from a document or information so produced or require a person to provide a copy of any such document or information;
 - (d) require a person to produce evidence of a licence required under this Act;
 - (e) require a person to answer questions;
 - (f) give directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration, operation or enforcement of this Act;
 - (g) exercise other prescribed powers.
- (6) An authorised officer must not exercise the powers conferred by subsection (5)(a) in respect of premises that are domestic premises, or that are not the premises of the holder of a route service licence, except on the authority of a warrant issued by a magistrate unless the authorised officer believes, on reasonable grounds, that the circumstances require immediate action to be taken.
- (7) In the exercise of powers under this section an authorised officer may be assisted by such persons as may be necessary or desirable in the circumstances.

(8) An occupier of premises must give to an authorised officer or a person assisting an authorised officer such assistance as is reasonably required for the effective exercise of a power conferred by this section.

Maximum penalty: \$5 000.

(9) Subject to subsections (10) and (11), a person who—

- (a) without reasonable excuse, hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers under this Act; or
- (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
- (c) without reasonable excuse, fails to obey a requirement or direction of an authorised officer under this Act; or
- (d) without reasonable excuse, fails to answer, to the best of the person's knowledge, information and belief, a question put by an authorised officer; or
- (e) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

Maximum penalty: \$5 000.

(10) A person is not obliged to answer a question or to produce, or provide a copy of, a document or information as required under this section that to do so might tend to incriminate the person or make the person liable to a penalty.

(11) A person is not obliged to provide information under this section that is privileged on the ground of legal professional privilege.

(12) An authorised officer, or a person assisting an authorised officer, who, in the course of exercising powers under this Act—

- (a) addresses offensive language to any other person; or
- (b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Maximum penalty: \$5 000.

Delegations

17. (1) The Minister may delegate a function or power conferred or vested in the Minister under this Act.

(2) A delegation—

(a) may be made—

(i) to a particular person or body; or

(ii) to the person for the time being occupying a particular office or position; and

(b) may be made subject to conditions and limitations specified in the instrument of appointment; and

(c) is revocable at will and does not derogate from the power of the Minister to act in a matter.

Exemptions

18. (1) The Minister may, by notice in the *Gazette*, confer exemptions from this Act or specified provisions of this Act—

(a) on specified persons or persons of a specified class; or

(b) in relation to specified services or services of a specified class.

(2) An exemption may be granted on such conditions as the Minister thinks fit.

(3) The Minister may, at any time, by notice in the *Gazette*—

(a) vary or revoke an exemption; or

(b) vary or revoke a condition of an exemption.

(4) A person who contravenes or fails to comply with a condition of an exemption is guilty of an offence.

Maximum penalty: \$20 000.

Annual reports

19. (1) The administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act must, on or before 30 September in each year, present a report to the Minister on the operation and administration of this Act during the previous financial year.

(2) A report required under this section may be incorporated in the annual report of the relevant administrative unit.

(3) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

Immunity of persons engaged in administration of Act

20. (1) No personal liability attaches to a person engaged in the administration of this Act for an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of official powers or functions.

(2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

False or misleading information

21. A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty: \$10 000.

Continuing offence

22. (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—

- (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
- (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

(2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

Liability of directors

23. (1) If a corporation commits an offence against this Act, each director of the corporation is guilty of an offence and liable to the same penalty as is fixed for the principal offence unless it is proved that the principal offence did not result from failure on the director's part to take reasonable care to prevent the commission of the offence.

(2) A director of a corporation may be prosecuted and convicted of an offence under this section whether or not the corporation has been prosecuted or convicted of the offence committed by the corporation.

Evidentiary

24. In proceedings for an offence against this Act, an apparently genuine document purporting to be a certificate signed by the Minister certifying—

- (a) that a person named in the certificate was at a specified time a delegate of the Minister unconditionally or subject to specified conditions or limitations; or
- (b) that a person named in the certificate was or was not at a specified time the holder of a route service licence; or
- (c) that a provision set out in the certificate was at a specified time a condition of a route service licence,

is, in the absence of proof to the contrary, proof of the matters certified.

Obligations under other laws

25. Nothing in this Act relieves a person of any obligation to hold or effect any licence or registration which the person is otherwise by law required to hold.

Regulations

26. (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), those regulations may make provision for or relating to—

- (a) the furnishing to the Minister by the holder of a route service licence of information, records or periodic returns relating to air services provided on a declared route; and
- (b) the service of notices or other documents for the purposes of this Act; and
- (c) fines, not exceeding \$5 000, for offences against the regulations; and
- (d) facilitation of proof of the commission of offences against the regulations.

(3) The regulations may—

- (a) be of general application or vary in their application according to prescribed factors;
- (b) provide that a matter or thing in respect of which regulations may be made is to be determined or dispensed with according to the discretion of the Minister or another prescribed person or authority.