

South Australia



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ELIZABETHAE II REGINAE
A.D. 2000

WRONGS (DAMAGE BY AIRCRAFT) AMENDMENT ACT 2000

No. 8 of 2000

[Assented to 20 April 2000]

An Act to amend the Wrongs Act 1936.

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Insertion of new Division in Part 3
DIVISION 6—DAMAGE BY AIRCRAFT
 - 29A. Damage by aircraft
 - 29B. Exclusion of liability for trespass or nuisance
4. Further amendments of principal Act

SCHEDULE

Further Amendments of Principal Act

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Wrongs (Damage by Aircraft) Amendment Act 2000*.
- (2) The *Wrongs Act 1936* is referred to in this Act as "the principal Act".

Commencement

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

Insertion of new Division in Part 3

3. The following Division is inserted in Part 3 of the principal Act after section 29:

DIVISION 6—DAMAGE BY AIRCRAFT

Damage by aircraft

29A. (1) In this section—

"**aircraft damage**" means personal injury, loss of life, material loss, damage or destruction in South Australia that is not covered by the Commonwealth Act but would, assuming the aircraft had been engaged in trade and commerce among the States, have been covered by the Commonwealth Act;

"**Commonwealth Act**" means the *Damage by Aircraft Act 1999* (Cwth).

(2) Words and expressions used in this section that are defined in the Commonwealth Act have the same respective meanings as in the Commonwealth Act.

(3) Subject to the following qualifications, liability for aircraft damage is to be determined on the same principles as under the Commonwealth Act.

(4) The following qualifications apply:

- (a) a person who uses an aircraft as a passenger or for the transportation of passengers or goods is not to be regarded as an operator of the aircraft if the person reasonably relies on the skill of another (not being an employee) to operate the aircraft;
- (b) if aircraft damage results from the unauthorised use of an aircraft, a person (other than the unauthorised user) who is liable for damage as owner or operator of the aircraft is entitled to be indemnified against that liability by the person (not being an employee) who used the aircraft without proper authority;
- (c) if aircraft damage results from an impact between an aircraft or part of an aircraft and a person or object (other than a person or object in the aircraft), liability is to be determined according to principles of negligence unless—
 - (i) the impact occurs while the aircraft is in flight; or
 - (ii) the impact is caused by the aircraft or part of the aircraft crashing or falling to the ground;

(d) exemplary damages are not to be awarded for aircraft damage unless the defendant is shown to have caused the damage intentionally or recklessly.

(5) This section does not apply to damage arising from operations of any of the following kinds carried out from an aircraft:

- (a) seeding;
- (b) the spreading of fertiliser, weedicide, pesticide or other agricultural chemicals;
- (c) firefighting;
- (d) the dispersal of pollutants;
- (e) any similar operations,

unless the damage is caused by an impact between the aircraft or part of the aircraft and the ground or an impact between a substantial thing dropping or falling from the aircraft and the ground.

Exclusion of liability for trespass or nuisance

29B. (1) In this section—

"**Commonwealth Acts**" means the *Air Navigation Act 1920* (Cwth) and the *Civil Aviation Act 1988* (Cwth);

"**land**" includes a building, structure or other property on land (whether affixed to the land or not);

"**relevant air navigation regulations**" means the regulations governing air navigation under the Commonwealth Acts including those regulations as they apply to air navigation in South Australia under the *Air Navigation Act 1937*.

(2) No action for trespass or nuisance arises by reason only of the flight of an aircraft over land, or the ordinary incidents of such a flight, if—

- (a) the aircraft flies at a height that is reasonable having regard to prevailing weather conditions and other relevant circumstances; and
- (b) the aircraft is operated in accordance with the relevant air navigation regulations.

Further amendments of principal Act

4. The principal Act is further amended as set out in the Schedule.

SCHEDULE

Further Amendments of Principal Act

Provision Amended	How Amended
Italicised heading immediately before section 24	Strike out this heading and substitute: DIVISION 1—PROCEEDINGS AGAINST AND CONTRIBUTIONS BETWEEN TORT-FEASORS
Section 24	Strike out "section 25 to 27 inclusive" and substitute "this Division".
Italicised heading immediately before section 27A	Strike out this heading and substitute: DIVISION 2—APPORTIONMENT OF LIABILITY IN CASES OF CONTRIBUTORY NEGLIGENCE
Section 27A(7)	Strike out "Sections 24 to 27 (inclusive) of this Act (which relate to proceedings against, and contributions between, joint and several tort-feasors) shall apply" and substitute "Division 1 applies".
Italicised heading immediately before section 27C	Strike out this heading and substitute: DIVISION 3—RIGHTS AS BETWEEN EMPLOYER AND EMPLOYEE IN CASES OF VICARIOUS LIABILITY
Italicised heading immediately before section 28	Strike out this heading and substitute: DIVISION 4—MENTAL OR NERVOUS SHOCK
Italicised heading immediately before section 29	Strike out this heading and substitute: DIVISION 5—REMEDIES AGAINST CERTAIN SHIPOWNERS
Italicised heading immediately before section 30	Strike out this heading and substitute: DIVISION 7—ABOLITION OF RULE OF COMMON EMPLOYMENT
Italicised heading immediately before section 32	Strike out this heading and substitute: DIVISION 8—ACTIONS IN TORT RELATING TO HUSBAND AND WIFE
Italicised heading immediately before section 35	Strike out this heading and substitute: DIVISION 9—ABOLITION OF ACTIONS OF SEDUCTION, ENTICEMENT AND HARBOURING
Italicised heading immediately before section 35A	Strike out this heading and substitute: DIVISION 10—PRINCIPLES GOVERNING ASSESSMENT OF DAMAGES IN RELATION TO INJURIES ARISING FROM MOTOR ACCIDENTS
Italicised heading immediately before section 36	Strike out this heading and substitute: DIVISION 11—LIABILITY FOR PERJURY IN CIVIL ACTIONS
Italicised heading immediately before section 37	Strike out this heading and substitute: DIVISION 12—RACIAL VICTIMISATION