Legal Obligations in Wildlife Management at Airports

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Based on a paper of the same title by
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Introduction

- The nature of legal obligations and liability
- Sources of legal liability for airport operators
- Bird/animal strike statistics
- Few claims: Why?
- Change in legal character of obligations on airport operators

The nature of legal obligations and liability

- Legal obligation
  - An enforceable requirement either to *engage in* or to *refrain from* certain conduct or actions.
- Legal liability
  - The legal consequences of failing to fulfil a legal obligation, for example:
    - Compensation
    - Court order
    - Criminal charge
    - Administrative action
- Liability may also be considered to arise from any situation that *causes a loss in revenue* for the operator.
- Circularity: An obligation arises to avoid liability, but failure to fulfil an obligation gives rise to liability.

Sources of Legal Liability for Airport Operators

- Negligence
  - The requirement to take *reasonable care* to prevent damage, loss or injury to others
  - 'Neighbour principle'
    Donoghue v Stephenson [1932] AC 563 at 580 per Lord Atkin

> The rule that you are to love your neighbour becomes in law you must not injure your neighbour; and the lawyer's question, Who is my neighbour? receives a restricted reply. ***You must take reasonable care to avoid acts and omissions which you can reasonably foresee would be likely to injure your neighbour.*** Who then, in law, is my neighbour? The answer seems to be – ***persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation*** of being so affected when I am directing my mind to the acts or omissions which are called into question. [Emphasis added.]

Sources of Legal Liability for Airport Operators

- Negligence (cont..)
  - *Skyways Pty Ltd v Commonwealth* (1984)
    - Air Traffic Controller liability for mid-air collision
  - *Page v Byrne and FAC* (1994)
    - Airport Operator liability for obstacles on approach to abandoned/disused runway
  - Liability arises from *relationship* between airport operator, airport user and the regulations.
  - Duty to mitigate wildlife risk is *non-delegable*.
    - Liability for negligence of contractors!

Sources of Legal Liability for Airport Operators

- Criminal Negligence
  - Similar principles apply as to civil negligence
  - A much higher level of culpability is required to be shown for criminal liability to be imposed
  - Penalties can include fines and custodial sentences

Sources of Legal Liability for Airport Operators

- Contract
  - The legal requirement to act in accordance with legally-binding promises
  - A contract is formed when one party makes an *offer* that is *unconditionally accepted* by the other party, and *something of legal value* is given by each party to the other.
  - Contract for aeronautical services – *implied term* that wildlife risk will be mitigated?
  - Ensure adequate terms in contracts with:
    - Contractors (non-delegable liability); and
    - Employees (vicarious liability)

Sources of Legal Liability for Airport Operators

- Breach of statutory duty
  - Liability arises where a statute *imposes a duty* upon a person, that person *breaches that duty*, and the Parliament had the *statutory intent* that a right to sue would be created
  - Consider duties of airport operators under civil aviation legislation

Sources of Legal Liability for Airport Operators

- Work Health & Safety Legislation
  - General duty on all employers to *provide a safe system of work* (Vic & WA) or *ensure the health and safety of workers* (everywhere else)
  - Generally, compliance with civil aviation legislation satisfies this requirement

Sources of Legal Liability for Airport Operators

- Misleading and Deceptive Conduct
  - Section 18(1) of the Australian Consumer Law (under the *Competition and Consumer Act 2010*) provides:

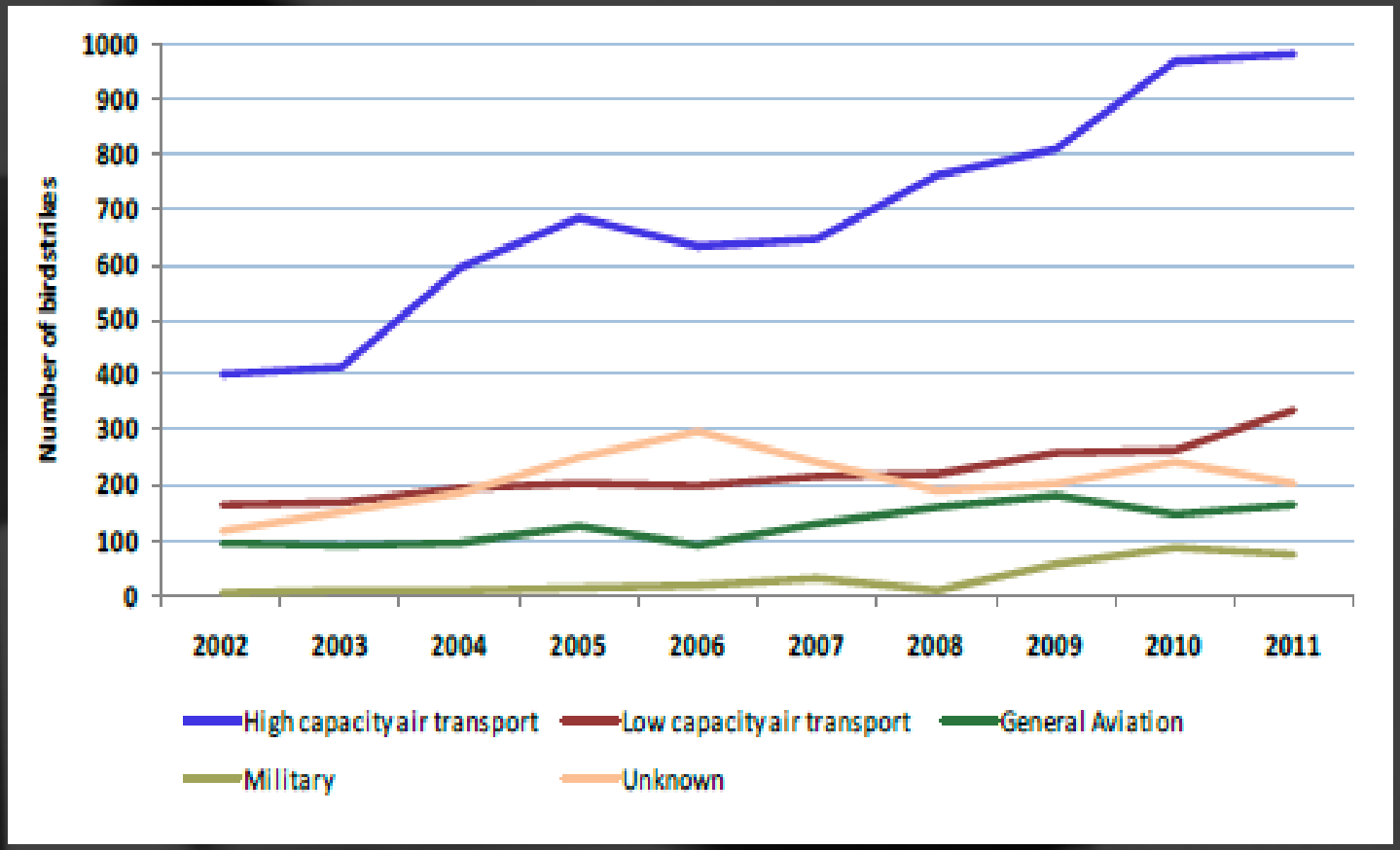
    A person shall not, in trade or commerce, engage in conduct that is misleading or deceptive or likely to mislead or deceive

  - Liability under this section may arise where:
    - A representation is made that is *untrue*;
    - Another person *relies* on that representation; and
    - Due to that reliance, that person suffers *damage*.
  - In this light, consider the contents of your Wildlife Hazard Management Plan... is your operation consistent with what it says?

Bird/Animal Strike Statistics

- ATSB collects statistics on bird and animal strikes
- Report for period 2002-2011:
  - 1,751 bird strikes in 2011
  - Most bird strikes involve high capacity air transport
  - Increasing trend in absolute numbers as well as in rate per aircraft movement
  - Most common phases: take-off and landing
  - Animal strikes are rare – birds are the main problem
- Overall: many bird strikes, and *most occur at or near airports*

Bird/Animal Strike Statistics



Source: ATSB

Few claims: Why?

- Previously considered as ‘act of God’ (so, no *duty of care*)
- ICAO SARPS prescribe actions required of airport operators (so, *standard of care* is clear and may be met)
- Difficult to prove ‘*causation*’ required for negligence
- Strict liability regimes under *Civil Aviation (Carriers’ Liability) Act 1959* and *Damage by Aircraft Act 2010* impose liability on *carriers*, not airport operators. Easier to sustain claim when *no need to prove negligence*

Few claims: Why?

- BUT!
  - Recall the non-delegable duty!
  - Recent statutory amendment to *Damage by Aircraft Act* allows the aircraft operator to claim '*contribution*' against anyone who caused or contributed to the loss/damage – including an airport operator
  - Similar rights to 'contribution' under *Civil Aviation (Carriers' Liability) Act*

Changes in legal character

- Old:
  Rules and Practices for Airports
  - *Administrative instrument* made under *Civil Aviation Regulations 1988* (Cth) reg 92A
  - Promulgated by CASA
- Present:
  Civil Aviation Safety Regulations 1998 (Cth) Part 139
  - *Legislative/statutory instrument* made under the *Civil Aviation Act 1988* (Cth).
  - Created by Parliamentary process
  - Stricter liability – a higher duty to obey statute
  - Possible liability for *breach of statutory duty*

Conclusions

- Apart from administrative action of CASA, airport operator may be liable in various causes of action:
  - Negligence
  - Contract
  - Breach of Statutory Duty
  - Breaches of OH&S/WHS Legislation
  - Criminal Negligence
- There are many wildlife strikes, and most occur at or near airports
- Not many claims, due to difficulties in linking airport operator to damage, or ease in suing aircraft operators instead of airport operators

Conclusions

- Not many claims, due to difficulties in linking airport operator to damage, or ease in suing aircraft operators instead of airport operators
- However, this should be no cause for complacency!
  - New rules are statutory in nature leading perhaps to a stricter duty of care
  - Focus on Airport operators to mitigate risk
  - Non-delegable duties
  - Aircraft operators not always strictly liable!

Thank you! Questions?