

The Centenary of Civil Aviation - 2021



Australia Post stamp issued to commemorate the Centenary. It shows G-AUAB approaching to land, watched by government officials. The scene represents the important early work carried out by the Civil Aviation Branch to survey flight routes, to build aerodromes and to create rules and regulations for safety. In the background of the stamp is a watermark of the front page of the original Air Navigation Act 1920, as well as text from a newspaper article about Brinsmead's 1924 flight. [<https://australiapostcollectables.com.au/stamp-issues/civil-aviation-100-years>]

Some regard 28 March 2021 as the Centenary of civil aviation in Australia. It should perhaps more properly be regarded as the centenary of civil aviation *regulation*, because on 28 March 1921, the Air Navigation Act 1920 and its regulations came into force. Australia Post, as evidenced by its stamp pictured at left seem to subscribe to this view.

Of course civil aviation in Australia, depending how you choose to define it, has a much longer history than that. Even if we limit the definition to powered heavier-than-air non-military flight, it goes back to Colin Defries's November 1909 Wright Flyer flight in Sydney, or,

if you discount that one, to Carl (Bill) Wittber and Fred Custance's Bleriot flights north of Adelaide in March the following year. If you discount those too because none were adequately witnessed, then the Victorians can claim the first civil flight on 18 March 1910 – at Diggers Rest in a Voisin flown by an American, Harry Houdini – which was witnessed and certified by the Aerial League of Australia. They even gave him a trophy.



Harry Houdini in his Voisin at Diggers Rest - March 1910 [PD]

Civil aviation continued to develop in Australia after that virtually unregulated, but with pilots certified under the auspices of the Royal Aero Club by the Aerial League of Australia, which had been formed in 1909. William Hart was the first pilot to be so licenced in Australia when he was awarded Royal Aero Club licence number 199 on 5 December 1911. He went on to establish Australia's first civil flying school in January the following year.

Then the Commonwealth first put its toe into aviation regulation with the introduction of the Aerial Navigation Regulations under the *Defence Act 1903-1915* in May 1915. The Regulations required all aircraft to be registered by the Commandant of a Military District and included a number of rules and prohibitions such as not allowing aircraft to carry photographic equipment or to operate within ten miles of a military establishment. They were introduced to limit civil flying rather than to develop it – Bill Wittber, for instance, was prevented from flying the aircraft he had developed just prior to the war.

Civil aviation, however, really took off after the Great War when hundreds of trained AFC and RFC airmen came home with grand plans to make lives in aviation. Examples are Joseph Larkin's formation of Larkin-Sopwith Avition Company at Glenhuntly in June 1919, Harry Butler's and Harry Kauper's formation of their company at Northfield in July 1919 and Horrie Miller's and Arthur Kennedy's formation of their Commercial Aviation Co in 1920.

Meanwhile, the Commonwealth Government had the task of introducing the provisions relating to the regulation of aerial navigation of the 1919 Paris Convention into Australia Law. The Convention established rules for air navigation between states. This was achieved with the passing of the *Air Navigation Act 1920*. The Act and its regulations were to be administered by a new branch of the Department of Defence called the Civil Aviation Branch (CAB), and the establishment of a new position of Controller of Civil Aviation to lead it.

The CAB, led by its inaugural Controller Lt Col Horace Brinsmead, began operating on 28 March 1921 when the Air Navigation Regulations came into effect. The regulations established rules of the air and dealt with matters such as safety, aerodromes, registration of aircraft, inspection and certificates of airworthiness, licensing of personnel, lights and signals, and log books.

It is under these rules that civil aviation blossomed and the roots of civil aviation as we know it today grew, so 28 March 1921 is certainly an important date to be commemorated. Qantas in 1920, West Australian Airways in 1921, Larkin's subsidised mail and passenger flights with Australian Aerial Services in 1924 and of course the national aero club movement in 1925 all developed under this regime. The many achievements of the CAB under Horace Brinsmead included support for flying training, building safe infrastructure, and surveying landing grounds and airmail routes, which assisted early airlines to become viable operations.



Lt Col. Horace Brinsmead, c. 1928, [National Library of Australia, PIC/15611/12832]

An interesting footnote to the story is that while the Commonwealth had powers in relation to air navigation across state borders by virtue of the *Air Navigation Act 1920*, a constitutional challenge in 1936 revealed that its assumed powers to enforce regulations under the Act pertaining to flights wholly within a state had no basis. The states had all agreed to cede these powers to the Commonwealth by passing enabling Air Navigation Acts of their own during the development of the Commonwealth Act, but although four states passed appropriate legislation, Tasmania was the only state to proclaim it. So between 1921 and the challenge in 1936, the Commonwealth's regulation of intrastate air services had no basis in law other than in Tasmania.



Henry Goya Henry in his Genairco now in the Powerhouse Museum, c1935

[<https://asopa.typepad.com/.a/6a00d83454f2ec69e2017ee9b90dba970d-popup>]

The challenge was mounted in New South Wales by a gentleman rejoicing in the name Henry Goya Henry. He had had his licence suspended under the federal Air Navigation Regulations but continued to fly. Two days after the suspension he flew under the Sydney Harbour Bridge, thus demonstrating a serious problem with authority. He was convicted of breaching Regulation 6 made under Section 4 of the Commonwealth Air Navigation Act 1920, but challenged the constitutional

validity of the conviction in the High Court. The Court agreed with the Commonwealth's arguments about the importance of uniform regulation of an activity that involved so much "comingling" of interstate and intrastate flights, but upheld the appeal because the Act and its Regulations had no effect within the states in the absence of enabling state legislation.

The Commonwealth therefore sought a Constitutional change to give it the powers the states had agreed to but failed to cede, in a referendum held on 6 March 1938. Anybody involved in aviation considered this to be a thorough going no-brainer, and the aero clubs and *Aircraft* magazine lobbied strongly for a 'yes' vote. State governments, however, were less convinced, and South Australia's not at all. The South Australian Liberal and Country League Premier, Richard Butler, campaigned vigorously for months that a 'yes' vote would be a "*tragedy for the Nation and would go down as one of the greatest political blunders in the history of the country.*" He apparently came to that view because he feared unfettered Commonwealth development of the carriage of mail and passengers would threaten the State's rail development.

There may have been another reason: Butler's intense disgruntlement over the Commonwealth's treatment of South Australia during its consideration of where to site the proposed factory for the Commonwealth Aircraft Corporation. The South Australian Government had put forward a proposal to build the factory at Port Adelaide and when

Fisherman's Bend in Melbourne was chosen Butler was quoted as saying *"the selection of the Melbourne site had been due to the antagonism of the Commonwealth public servants towards South Australia, and the unsympathetic attitude of Commonwealth public servants towards South Australia, and the unsympathetic attitude of the Federal Government."*

The company wrote to the Premier with a very vague sop saying *"when the time arrives for consideration of the erection of additional facilities (whenever that might be) the company hoped to be able to give more favourable consideration to the establishment of a section of the industry in South Australia"*. This, as could be expected, did little to soothe Mr Butler's disappointment and could hardly have been conducive to enthusiastic participation in a process of joint Commonwealth-State cooperation on aviation matters.

On 6 March the referendum failed to gain a majority of states with only Victoria and Queensland voting in favour. 59.87% of South Australians voted against it, the highest percentage of any of the states except Tasmania. This was followed by a Commonwealth-States meeting in the middle of April 1937, chaired by Robert Menzies, then the federal Attorney-General, to consider the need for uniform legislation. The conference agreed that there *"should"* be uniform rules throughout Australia in relation to air navigation and aircraft, that they should include the regulation of airworthiness, pilot competency, airspace and aerodromes, and that this should be accomplished by enabling federal rules to apply within the states.

The undertaking was hedged slightly with provision for the states to make their own transport regulations not pertaining to the matters ceded to the Commonwealth, and to operate state-owned air services. The powers the states were seeking to protect for themselves related to the taxing of air operations and their economic rather than operational regulation. The conference also agreed that before introducing their legislation, the states would refer it to a joint Commonwealth-states committee for review. The Commonwealth then produced a 'model Bill', which was considered by the states on May 29 in Melbourne and resulted in South Australia repealing its unproclaimed *Commonwealth Powers (Air Navigation) Act 1921* and introducing the *Air Navigation Act 1937*, which passed on 3 November 1937 and was proclaimed on 12 January 1938. Similar legislation was passed in the other states, and the uniform regulation throughout the Commonwealth that had operated problem-free since 1920 until Mr Henry came along, finally had the force of law.

It is the Centenary of the introduction of the Commonwealth's uniform civil regulatory regime that we are celebrating on 28 March 2021.

Mike Milln
History Group
February 2021