Civil Aviation (Carriers' Liability) Act 1959

Act No. 2 of 1959 as amended

This compilation was prepared on 12 October 2012
taking into account amendments up to Act No. 136 of 2012

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

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An Act relating to Carriage by Air

Part I—Preliminary

1 Short title [*see* Note 1]

This Act may be cited as the *Civil Aviation (Carriers' Liability) Act 1959*.

2 Commencement [*see* Note 1]

(1) Parts I, III and V shall come into operation on the day on which this Act receives the Royal Assent.

(2) Parts II and IV shall come into operation on such dates as are respectively fixed by Proclamation.

5 Interpretation

(1) In this Act, unless the contrary intention appears:

Australia includes the Territories.

Australian person means:

(a) an individual who is an Australian citizen or is ordinarily resident in Australia; or

(b) the Commonwealth, a State or a Territory; or

(c) a person who is a nominee of the Commonwealth or of a State or a Territory; or

(d) a Commonwealth, State or Territory authority; or

(e) a person who is a nominee of a Commonwealth, State or Territory authority; or

(f) a local government body (whether incorporated or not) formed by or under a law of a State or a Territory; or

(g) a person who is a nominee of a local government body referred to in paragraph (f); or

(h) a body corporate that:

(i) is incorporated by or under a law of the Commonwealth or of a State or a Territory; and

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(ii) is substantially owned and effectively controlled by persons referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (i); or

(i) a person in the capacity of a trustee, or manager, of a fund in which the total interests (if any) of persons referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h) represent 60% or more of the total interests in the fund.

child: without limiting who is a child of a person for the purposes of this Act, someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

de facto partner of a person has the meaning given by the *Acts Interpretation Act 1901*.

family member has the meaning given by subsections (2) and (3).

Foreign Affairs Department means the Department administered by the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

parent: without limiting who is a parent of a person for the purposes of this Act, someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in this section.

SDR means Special Drawing Rights within the meaning of the *International Monetary Agreements Act 1947*.

stepchild: without limiting who is a stepchild of a person for the purposes of this Act, someone who is a child of a de facto partner of the person is the ***stepchild*** of the person, if he or she would be the person's stepchild except that the person is not legally married to the partner.

step-parent: without limiting who is a step-parent of a person for the purposes of this Act, someone who is a de facto partner of a parent of the person is the ***step-parent*** of the person, if he or she would be the person's step-parent except that he or she is not legally married to the person's parent.

the 1999 Montreal Convention means the Convention for the Unification of Certain Rules for International Carriage by Air,

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done at Montreal on 28 May 1999 (a copy of the English text of which is set out in Schedule 1A), as affected by:

(a) any revision of the limits of liability, in accordance with Article 24 of the Convention, that has become effective; and

(b) any other amendment of the Convention that has entered into force for Australia and a copy of the English text of which is set out in the regulations.

the Guadalajara Convention means the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier opened for signature at Guadalajara on 18 September 1961.

the Guatemala City Protocol means the Protocol done at Guatemala City on 8 March 1971 and called "Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955".

the Hague Protocol means the Protocol to amend the Warsaw Convention opened for signature at The Hague on 28 September 1955.

the Montreal Protocol No. 4 means the Protocol done at Montreal on 25 September 1975 and called "Montreal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as amended by the Protocol Done at The Hague on 28 September 1955".

the Montreal No. 4 Convention means the Convention that is, under Article XV of the Montreal Protocol No. 4, known as the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*.

the Warsaw Convention means the Convention for the Unification of Certain Rules Relating to International Carriage by Air opened for signature at Warsaw on 12 October 1929, and includes the Additional Protocol to that Convention with reference to Article 2 of that Convention.

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the Warsaw Convention as amended at The Hague means the Convention that is, under Article XIX of the Hague Protocol, known as the *Warsaw Convention as amended at The Hague, 1955*.

*Meaning of **family member***

(2) For the purposes of this Act, a person is a ***family member*** of a passenger at a particular time if, at that time, the person:

(a) is the passenger's spouse or de facto partner; or

(b) is a parent, step-parent or grandparent of the passenger; or

(c) is a child, step-child, ward or grandchild of the passenger; or

(d) is a sibling, step-brother, step-sister, half-brother or half-sister of the passenger; or

(e) is wholly or partly dependent on the passenger for financial support and is:

(i) a foster-sibling of the passenger; or

(ii) a foster-child of the passenger; or

(iii) a guardian of the passenger; or

(f) falls within a class of people (if any) specified in regulations made for the purposes of this paragraph.

(3) Relationships mentioned in subsection (2) are, for the purposes of this Part, taken to include:

(a) ex-nuptial relationships; and

(b) relationships by adoption; and

(c) relationships of child and parent that arise because of the definitions of ***child*** and ***parent*** in this section; and

(d) relationships traced through relationships referred to in paragraphs (a), (b) and (c).

5A Application of the *Criminal Code*

Chapter 2 (except Part 2.5) of the *Criminal Code* applies to all offences created by this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

6 Extension to Territories

This Act extends to every Territory.

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7 Act to bind Crown

(1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

(2) Nothing in this Act makes the Crown in any capacity liable to be prosecuted for an offence.

8 Texts of Conventions

(1) For the purposes of this Act, but subject to subsection (2), the text of a Convention specified in any of the following paragraphs is taken to be the text set out in the Schedule specified in that paragraph:

(a) Schedule 1—the Warsaw Convention;

(b) Schedule 2—the Warsaw Convention as amended at The Hague;

(c) Schedule 3—the Guadalajara Convention;

(e) Schedule 5—the Montreal No. 4 Convention.

(2) If there is any inconsistency between the text of a Convention, other than the 1999 Montreal Convention, as set out in a Schedule and the text that would result if the authentic French texts of the instruments making up the Convention were read and interpreted together as one single instrument, the latter text prevails.

(3) A certificate signed by the Secretary of the Foreign Affairs Department that a document to which the certificate is annexed is a true copy of the authentic French text of the Warsaw Convention, the Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol or the Montreal Protocol No. 4 is evidence that the document is such a true copy.

9 Conversion of SDR to Australian dollars

In assessing under this Act the damages recoverable in an action against a carrier, a court must convert all relevant SDR amounts into Australian dollars, using the exchange rate published by the Reserve Bank of Australia, being the rate that applies as at the day on which the court's judgment is given.

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Part IA—Carriage to which the 1999 Montreal Convention applies

9A Definitions

In this Part:

the Convention means the 1999 Montreal Convention as having the force of law because of section 9B.

9B The 1999 Montreal Convention to have force of law

Subject to this Part, the 1999 Montreal Convention has the force of law in Australia in relation to any carriage by air to which the 1999 Montreal Convention applies, irrespective of the nationality of the aircraft performing that carriage.

9C Limitation of liability for Australian international carriers

(1) The regulations may specify that a number of SDRs exceeding the relevant number of SDRs applies in relation to the liability of an Australian international carrier in respect of the death or injury of a passenger.

(2) If regulations are made under subsection (1), paragraphs 1 and 2 of Article 21 of the 1999 Montreal Convention have the force of law in Australia, in relation to the liability of an Australian international carrier, as if the relevant number of SDRs were instead the number of SDRs specified by the regulations.

(3) In this section:

Australian international carrier means:

(a) a carrier designated, nominated or otherwise authorised by Australia under a bilateral arrangement to operate scheduled international air services; or

(b) a carrier operating a non-scheduled international flight permitted under section 15D of the *Air Navigation Act 1920* and who is an Australian person.

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bilateral arrangement has the same meaning as in section 11A of the *Air Navigation Act 1920*.

relevant number of SDRs means the number of SDRs provided for in paragraphs 1 and 2 of Article 21 of the 1999 Montreal Convention.

Note: The number of SDRs provided for in paragraphs 1 and 2 of Article 21 of the 1999 Montreal Convention may have been revised as a result of a revision of the limits of liability becoming effective in accordance with Article 24 of the 1999 Montreal Convention.

9D Liability in respect of death

Liability

(1) This section applies in relation to liability imposed by the Convention on a carrier in respect of the death of a passenger or in respect of the injury that has resulted in the death of a passenger.

(2) Subject to section 9F, the liability under the Convention is in substitution for any civil liability of the carrier under any other law in respect of the death of the passenger or in respect of the injury that has resulted in the death of the passenger.

(3) Subject to subsection (4), the liability is enforceable for the benefit of any of the passenger's family members who sustained damage because of the passenger's death.

(4) The liability is enforceable for the benefit of the personal representative of the passenger in his or her capacity as personal representative to the extent that the damages recoverable in the action include:

(a) loss of earnings or profits up to the date of death of the passenger; or

(b) funeral, medical or hospital expenses paid or incurred by the passenger before the passenger's death or by the passenger's personal representative.

Action

(5) An action to enforce the liability may be brought by:

(a) the personal representative of the passenger; or

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(b) by a person for whose benefit the liability is, under this section, enforceable;

but only one action may be brought in Australia in respect of the death of any one passenger.

(6) The action to enforce the liability must be for the benefit of all people for whose benefit the liability is enforceable who:

(a) are resident in Australia; or

(b) not being resident in Australia, express the desire to take the benefit of the action.

Damages

(7) The damages recoverable in the action include:

(a) loss of earnings or profits up to the date of death of the passenger; and

(b) the reasonable expenses of the funeral of the passenger; and

(c) medical and hospital expenses reasonably incurred in relation to the injury that resulted in the death of the passenger.

(8) In awarding damages, the court or jury is not limited to the financial loss resulting from the death of the passenger.

Note: However, certain types of damages may not be recoverable under Article 29 of the Convention.

(9) Subject to subsection (10), the amount recovered in the action, after deducting any costs not recovered from the defendant, must be divided among the people entitled in the proportions the court (or, where the action is tried with a jury, the jury) directs.

Orders

(10) The court may, at any stage of the proceedings, make any order that appears to the court to be just and equitable having regard to:

(a) the provisions of the Convention limiting the liability of the carrier; and

(b) any proceedings which have been, or are likely to be, commenced against the carrier, whether in or outside Australia.

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Costs

(11) The second sentence of paragraph 6 of Article 22 of the 1999 Montreal Convention is taken not to apply to an action to which this section applies that is wholly or partly for the benefit of a person or people other than the plaintiff. However, the court may, in such an action, deal with any question of costs in any manner it thinks proper having regard to the operation of the sentence in cases to which it applies.

9E Liability in respect of injury

Subject to section 9F, the liability of a carrier under the Convention, in respect of personal injury suffered by a passenger that has not resulted in the death of the passenger, is in substitution for any civil liability of the carrier under any other law in respect of the injury.

9F Certain liabilities not excluded

Nothing in the Convention or in this Part is to be taken to exclude any liability of a carrier:

(a) to indemnify an employer of a passenger or any other person in respect of any liability of, or payments made by, that employer or other person under a law of the Commonwealth or of a State or Territory relating to workers' compensation; or

(b) to pay contribution to a tort-feasor who is liable in respect of the death of, or injury to, the passenger;

but this section does not increase the limit of liability of a carrier in respect of a passenger beyond the amount fixed by, or in accordance with, the Convention.

9G Proceeds of insurance policies etc.

In assessing damages in respect of liability under the Convention, the following must not be taken into account to reduce the damages:

(a) any amount paid or payable on the death of, or personal injury to, a passenger under a contract of insurance;

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(b) any amount paid or payable out of a superannuation, provident or like fund, or by way of benefit from a friendly society, benefit society or trade union;

(c) any amount in respect of a pension, social service benefit or repatriation benefit paid or payable, because of the death or injury of a passenger, by any government or person;

(d) in the case of the death of a passenger, any amount in respect of the acquisition by a family member of the passenger, consequent upon the passenger's death, of, or of an interest in, a dwelling used at any time as the home of that family member, or of, or of an interest in, the household contents of any such dwelling;

(e) in the case of the death of a passenger, a premium that would have become payable under a contract of insurance in respect of the life of the passenger if the passenger had lived after the time when the passenger died.

9H Contributory negligence

(1) For the purposes of Article 20 of the Convention, if, in an action against a carrier under the Convention relating to damage:

(a) sustained in the case of death or bodily injury of a passenger; or

(b) sustained in the case of destruction or loss of, or of damage to, baggage of a passenger; or

(c) sustained in the event of the destruction or loss of, or damage to, cargo; or

(d) occasioned by delay in the carriage by air of a passenger, a passenger's baggage, or cargo;

the carrier proves that the damage was caused by, or contributed to by, the negligence of the passenger or the consignor of the cargo, the damages recoverable in respect of the damage must be assessed in accordance with this section.

(2) The court must determine the damages that would have been recoverable if:

(a) there were no limit on the amount of the damages fixed by or in accordance with the Convention; and

(b) there had been no negligence on the part of the passenger or consignor.

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(3) The damages determined under subsection (2) must be reduced to the extent the court thinks just and equitable having regard to the share of the passenger or the consignor in the responsibility for the damage.

(4) If the damages, as reduced in accordance with subsection (3), exceed any maximum liability of the carrier fixed by or in accordance with the Convention, the court must further reduce the damages to the maximum liability.

(5) If any case to which subsection (1) applies is tried with a jury, the jury must determine the damages referred to in subsection (2) and the amount of the reduction under subsection (3).

9J Action against a State Party to the 1999 Montreal Convention which undertakes carriage by air

(1) If, at a particular time, an action under the Convention is brought in a court in Australia to enforce a claim in respect of carriage undertaken by a State Party to the 1999 Montreal Convention, the State Party is taken to have submitted to the jurisdiction of the court, unless:

(a) the action relates to carriage that is the subject of a declaration by the State Party under Article 57 of the 1999 Montreal Convention; and

(b) the declaration is in effect at that time.

(2) Nothing in this section authorises the issue of execution against the property of a State Party to the 1999 Montreal Convention.

9K Evidence of certain matters

(1) The Minister may, by notice published in the *Gazette*, declare that:

(a) a State Party specified in the notice has or has not taken any action referred to in Article 53, 54, 56 or 57 of the 1999 Montreal Convention and the particulars of any action so taken; or

(b) a revision of the limits of liability, in accordance with Article 24 of the 1999 Montreal Convention, has become effective and the particulars of the revision.

(2) A notice in force under this section is prima facie evidence of the matters declared.

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(3) A notice made under subsection (1) is not a legislative instrument.

9L Jurisdiction of State courts preserved

For the purposes of section 38 of the *Judiciary Act 1903*, an action under the Convention is taken not to be a matter arising directly under a treaty.

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Part II—Carriage to which the Warsaw Convention and the Hague Protocol apply

10 Definition

In this Part:

the Convention means the Warsaw Convention as amended at The Hague.

11 Convention to have force of law

(1) The provisions of the Convention have, subject to this Part, the force of law in Australia in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage.

(2) A reference in this Part to the Convention shall, unless the contrary intention appears, be read as a reference to the provisions of the Convention as having the force of law by virtue of this section.

11A Limitation of liability for Australian international carriers

(1) Despite the terms of paragraph 1 of Article 22 of the Convention, but subject to the regulations relating to passenger tickets, the liability of an Australian international carrier under this Part in respect of each passenger, by reason of the passenger's injury or death resulting from an accident, is limited to:

(a) if neither paragraph (b) nor (c) applies—260,000 SDRs; or

(b) if, at the date of the accident, a regulation was in force prescribing a number of SDRs that exceeds 260,000 for the purpose of this section and paragraph (c) does not apply—the number of SDRs so prescribed; or

(c) if, at the date of the accident, no regulation was in force under paragraph (b) but the contract of carriage under which the passenger was carried specified the limit of the carrier's liability as a number of SDRs that exceeds 260,000—the number of SDRs so specified; or

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(d) if, at the date of the accident, a regulation prescribing a number of SDRs exceeding 260,000 was in force under paragraph (b) but the contract of carriage under which the passenger was carried specified the limit of the carrier's liability as a number of SDRs that exceeds the number so prescribed—the number of SDRs so specified.

(2) In this section:

Australian international carrier means:

(a) a carrier designated, nominated or otherwise authorised by Australia under a bilateral arrangement to operate scheduled international air services; or

(b) a carrier operating a non-scheduled international flight permitted under section 15D of the *Air Navigation Act 1920* and who is an Australian person.

bilateral arrangement has the same meaning as in section 11A of the *Air Navigation Act 1920*.

12 Liability in respect of death

(1) The provisions of this section apply in relation to liability imposed by the Convention on a carrier in respect of the death of a passenger (including the injury that resulted in the death).

(2) Subject to section 14, the liability under the Convention is in substitution for any civil liability of the carrier under any other law in respect of the death of the passenger or in respect of the injury that has resulted in the death of the passenger.

(3) Subject to the next succeeding subsection, the liability is enforceable for the benefit of such of the passenger's family members as sustained damage by reason of his or her death.

(4) To the extent that the damages recoverable include loss of earnings or profits up to the date of death, or funeral, medical or hospital expenses paid or incurred by the passenger before his or her death or by his or her personal representative, the liability is enforceable for the benefit of the personal representative of the passenger in his or her capacity as personal representative.

(6) The action to enforce the liability may be brought by the personal representative of the passenger or by a person for whose benefit the

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liability is, under the preceding provisions of this section, enforceable, but only one action shall be brought in Australia in respect of the death of any one passenger, and the action, by whomsoever brought, shall be for the benefit of all persons for whose benefit the liability is so enforceable who are resident in Australia or, not being resident in Australia, express the desire to take the benefit of the action.

(7) The damages recoverable in the action include loss of earnings or profits up to the date of death and the reasonable expenses of the funeral of the passenger and medical and hospital expenses reasonably incurred in relation to the injury that resulted in the death of the passenger.

(8) In awarding damages, the court or jury is not limited to the financial loss resulting from the death of the passenger.

(9) Subject to the next succeeding subsection, the amount recovered in the action, after deducting any costs not recovered from the defendant, shall be divided amongst the persons entitled in such proportions as the court (or, where the action is tried with a jury, the jury) directs.

(10) The court may at any stage of the proceedings make any such order as appears to the court to be just and equitable in view of the provisions of the Convention limiting the liability of the carrier and of any proceedings which have been, or are likely to be, commenced against the carrier, whether in or outside Australia.

(11) The second sentence of paragraph 4 of Article 22 of the Warsaw Convention, as amended by the Hague Protocol, shall not be construed as applying to an action to which this section applies that is wholly or partly for the benefit of a person or persons other than the plaintiff, but the court may, in such an action, deal with any question of costs in such manner as it thinks proper having regard to the operation of that sentence in cases to which it applies.

13 Liability in respect of injury

Subject to the next succeeding section, the liability of a carrier under the Convention in respect of personal injury suffered by a passenger, not being injury that has resulted in the death of the

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passenger, is in substitution for any civil liability of the carrier under any other law in respect of the injury.

14 Certain liabilities not excluded

Nothing in the Convention or in this Part shall be deemed to exclude any liability of a carrier:

(a) to indemnify an employer of a passenger or any other person in respect of any liability of, or payments made by, that employer or other person under a law of the Commonwealth or of a State or Territory providing for compensation, however described, in the nature of workers' compensation; or

(b) to pay contribution to a tort-feasor who is liable in respect of the death of, or injury to, the passenger;

but this section does not operate so as to increase the limit of liability of a carrier in respect of a passenger beyond the amount fixed by or in accordance with the Convention.

15 Proceeds of insurance policies etc.

In assessing damages in respect of liability under the Convention there shall not be taken into account by way of reduction of the damages:

(a) a sum paid or payable on the death of, or personal injury to, a passenger under a contract of insurance; or

(b) a sum paid or payable out of a superannuation, provident or like fund, or by way of benefit from a friendly society, benefit society or trade union; or

(c) any sum in respect of a pension, social service benefit or repatriation benefit paid or payable, consequent upon the death or injury, by any government or person; or

(d) in the case of the death of a passenger, any amount in respect of the acquisition by a family member of the passenger, consequent upon the passenger's death, of, or of an interest in, a dwelling used at any time as the home of that family member, or of, or of an interest in, the household contents of any such dwelling; or

(e) in the case of death, a premium that would have become payable under a contract of insurance in respect of the life of

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the deceased passenger if he or she had lived after the time at which he or she died.

16 Contributory negligence

(1) Effect shall be given to Article 21 of the Warsaw Convention in accordance with the provisions of this section.

(2) If, in an action against a carrier under the Convention, the carrier proves that the damage was caused by or contributed to by the negligence of the passenger or the consignor, the damages recoverable shall be assessed in accordance with this section.

(3) The court shall first determine the damages that would have been recoverable if there were no limit on the amount of those damages fixed by or in accordance with the Convention and there had been no negligence on the part of the passenger or consignor.

(4) The damages determined under the last preceding subsection shall be reduced to such extent as the court thinks just and equitable having regard to the share of the passenger or the consignor in the responsibility for the damage.

(5) If the damages as reduced in accordance with the last preceding subsection exceed the maximum liability of the carrier fixed by or in accordance with the Convention, the court shall further reduce the damages to that maximum amount.

(6) Where any case to which subsection (2) applies is tried with a jury, the jury shall determine the damages referred to in subsection (3) and the amount of the reduction under subsection (4).

17 Actions against Parties to the Convention who undertake carriage by air

(1) A Party to the Convention which has not availed itself of the provisions of the Additional Protocol to the Warsaw Convention with reference to Article 2 of that Convention shall, for the purposes of an action under the Convention brought in a court in Australia to enforce a claim in respect of carriage undertaken by that Party, be deemed to have submitted to the jurisdiction of that court.

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(2) Nothing in this section authorizes the issue of execution against the property of a Party to the Convention.

18 Evidence of certain matters

(1) The Minister may, by notice published in the *Gazette*, from time to time declare:

(a) that a country specified in the notice is a country which has ratified or adhered to the Hague Protocol and the date on which the ratification or adherence became effective;

(b) that a country specified in the notice has, at the time of deposit of its instrument of ratification of or adherence to the Hague Protocol, declared that its acceptance of that Protocol does not apply to a territory or territories specified in the notice;

(c) that a country specified in the notice has duly made a declaration under Article XXVI of the Hague Protocol and the date on which the declaration became effective;

(d) that a country specified in the notice has duly extended the application of the Hague Protocol to a territory or territories specified in the notice;

(e) the extent (if any) to which a Party to the Hague Protocol has availed itself of the provisions of the Additional Protocol to the Warsaw Convention with reference to Article 2 of that Convention; or

(f) that a country specified in the notice has denounced the Hague Protocol in respect of all of the territories for the foreign relations of which that country is responsible or in respect of any such territory specified in the notice, and the date upon which the denunciation became effective.

(2) A notice in force under this section is evidence of the matters declared.

19 Jurisdiction of State courts preserved

For the purposes of section 38 of the *Judiciary Act 1903*, an action under the Convention shall be deemed not to be a matter arising directly under a treaty.

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Part III—Carriage to which the Warsaw Convention without the Hague Protocol applies

20 Interpretation

(1) In this Part, ***the Convention*** means the Warsaw Convention as in force, unaffected by the Hague Protocol, between Australia and any other countries.

(2) For the purposes of this Part, a reference in the Convention to the territory of a High Contracting Party to the Convention shall be read as a reference to the territories in respect of which a Party declared, in pursuance of section 22, to be a High Contracting Party to the Convention is declared, in pursuance of that section, to be bound by the Convention.

21 Provisions of Convention to have force of law

(1) The provisions of the Convention have, subject to this Part, the force of law in Australia in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage.

(2) A reference in this Part to the Convention shall, unless the contrary intention appears, be read as a reference to the provisions of the Convention as having the force of law by virtue of this section.

21A Limitation of liability for Australian international carriers

(1) Despite the terms of paragraph 1 of Article 22 of the Convention, but subject to the regulations relating to passenger tickets, the liability of an Australian international carrier under this Part in respect of each passenger, by reason of the passenger's injury or death resulting from an accident, is limited to:

(a) if neither paragraph (b) nor (c) applies—260,000 SDRs; or

(b) if, at the date of the accident, a regulation was in force prescribing a number of SDRs that exceeds 260,000 for the

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purpose of this section and paragraph (c) does not apply—the number of SDRs so prescribed; or

(c) if, at the date of the accident, no regulation was in force under paragraph (b) but the contract of carriage under which the passenger was carried specified the limit of the carrier's liability as a number of SDRs that exceeds 260,000—the number of SDRs so specified; or

(d) if, at the date of the accident, a regulation prescribing a number of SDRs exceeding 260,000 was in force under paragraph (b) but the contract of carriage under which the passenger was carried specified the limit of the carrier's liability as a number of SDRs that exceeds the number so prescribed—the number of SDRs so specified.

(2) In this section:

Australian international carrier means:

(a) a carrier designated, nominated or otherwise authorised by Australia under a bilateral arrangement to operate scheduled international air services; or

(b) a carrier operating a non-scheduled international flight permitted under section 15D of the *Air Navigation Act 1920* and who is an Australian person.

bilateral arrangement has the same meaning as in section 11A of the *Air Navigation Act 1920*.

22 Evidence of certain matters

(1) The Minister may, by notice published in the *Gazette*, from time to time declare:

(a) who are the High Contracting Parties to the Convention;

(b) the territory in respect of which any such Party is bound by the Convention; and

(c) the extent (if any) to which any Party has availed itself of the provisions of the Additional Protocol to the Convention.

(2) A notice in force under this section is evidence of the matters declared.

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(3) A notice published by the Governor-General in the *Gazette*, before the date of commencement of this Part, under subsection (3) of section 3 of the *Carriage by Air Act 1935* and in force immediately before that date shall, for the purposes of this Act, be deemed to be a notice published by the Minister under this section.

23 Conversion of francs

Any sum in francs mentioned in Article 22 of the Convention shall, for the purposes of an action against a carrier, be converted into Australian currency at the rate of exchange prevailing on the date on which the amount of any damages to be paid by the carrier is ascertained by the court or jury.

24 Adoption of certain provisions of Part II

The provisions of sections 12 to 17 (inclusive), except subsection (11) of section 12, apply for the purposes of this Part as if contained in this Part.

24A Jurisdiction of State courts preserved

For the purposes of section 38 of the *Judiciary Act 1903*, an action under the Convention is taken not to be a matter arising directly under a treaty.

25 Duration of Part [*see* Note 2]

(1) This Part shall continue in force until a date to be fixed by Proclamation, being a date not earlier than the date upon which a denunciation by Australia of the Convention in accordance with Article 39 of the Convention takes effect.

(2) Upon the date fixed in pursuance of the last preceding subsection, this Part shall be deemed to be repealed.

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Part IIIA—Carriage to which the Guadalajara Convention applies

25A Provisions of Convention to have force of law

The provisions of the Guadalajara Convention have, subject to Parts II, III and IIIC as affected by the next succeeding section, the force of law in Australia in relation to any carriage by air to which that Convention applies.

25B Modification of Parts II and III

In relation to carriage to which the Guadalajara Convention applies, references in Part II (other than section 11), in Part III (other than section 21) and in Part IIIC (other than section 25K) to ***the Convention*** shall be read as including references to the provisions of the Guadalajara Convention as having the force of law by virtue of this Part.

25C Evidence of certain matters

(1) The Minister may, by notice in the *Gazette*, from time to time publish information as to the coming into operation of the Guadalajara Convention or as to the States that have or have not taken any action referred to in Article XI, XII, XIV, XV or XVI of that Convention and as to the particulars of any action so taken.

(2) A notice in force under this section is evidence of the matters specified in the notice.

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Part IIIC—Carriage to which the Montreal No. 4 Convention applies

25J Interpretation

In this Part:

the Convention means the Montreal No. 4 Convention.

25K Effect of Convention in Australia

(1) Subject to this Part, the Convention has the force of law in Australia in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage.

(2) A reference in this Part to the Convention is to be read, unless the contrary intention appears, as a reference to the Convention as having the force of law because of this section.

25L Application of certain provisions of Part IV

Sections 35 to 39 (inclusive) apply to carriage to which the Convention applies in the same way as they apply to carriage under Part IV, and for that purpose:

(a) a reference in section 37 to Part IV is taken to be a reference to this Part and the Convention; and

(b) any other reference to Part IV is taken to be a reference to the Convention.

25M Jurisdiction of State courts preserved

For the purposes of section 38 of the *Judiciary Act 1903*, an action under the Convention is taken not to be a matter arising directly under a treaty.

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25N Evidence of certain matters

(1) The Minister may, by notice published in the *Gazette*, from time to time declare:

(a) who are the Parties to the Convention; and

(b) the territory in respect of which any Party is bound by the Convention; and

(c) the extent to which any Party has availed itself of a reservation permitted by the Convention.

(2) A notice under this section is evidence of the matters declared.

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Part IV—Other carriage to which this Act applies

26 Interpretation

(1) In this Part, unless the contrary intention appears:

airline licence means:

(a) an international airline licence in force under the Air Navigation Regulations; or

(b) an Air Operator's Certificate in force under the *Civil Aviation Act 1988* authorising airline operations; or

(c) a New Zealand AOC with ANZA privileges (as defined in section 3 of the *Civil Aviation Act 1988*) authorising airline operations.

baggage, in relation to a passenger, means:

(a) registered baggage; or

(b) baggage, personal effects or other articles, not being registered baggage, in the possession of the passenger, or in the possession of another person (being a person accompanying the passenger or a servant or agent of the carrier) on behalf of the passenger, while the passenger is on board an aircraft for the purposes of carriage to which this Part applies or during the course of any of the operations of embarking or disembarking.

charter licence means:

(a) a charter licence in force under the Air Navigation Regulations; or

(b) an Air Operator's Certificate in force under the *Civil Aviation Act 1988* authorising charter operations; or

(c) a New Zealand AOC with ANZA privileges (as defined in section 3 of the *Civil Aviation Act 1988*) authorising charter operations.

commercial transport operations means operations in which an aircraft is used, for hire or reward, for the carriage of passengers or cargo.

contract includes an arrangement made without consideration.

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domestic carrier means a carrier operating a flight for the carriage of passengers:

(a) between a place in a State and a place in another State; or

(b) between a place in a Territory and a place in Australia outside that Territory; or

(c) between a place in a Territory and another place in that Territory;

other than carriage to which Part IA, II or III applies.

registered baggage, in relation to a passenger, means baggage, personal effects or other articles registered with the carrier as baggage intended to be carried under a contract for carriage of the passenger to which this Part applies.

the Air Navigation Regulations means the Air Navigation Regulations in force under the *Air Navigation Act 1920*, and includes those Regulations as in force by virtue of a law of a State.

(1A) If an Air Operator's Certificate in force under the *Civil Aviation Act 1988* does not authorise airline operations only because the holder of the certificate does not comply with section 41E of this Act in relation to the operations, this Part has effect as if the certificate did authorise the operations.

(2) For the purposes of this Part, where, by reason of a contract of charter or other contract between the holder of an airline licence or a charter licence and another person, persons or baggage are or is carried, or are or is to be carried, in an aircraft while it is being operated by the holder of the airline licence or charter licence, that contract shall be deemed to be a contract of carriage providing for that carriage.

27 Application of Part

(1) This Part applies to the carriage of a passenger where the passenger is or is to be carried in an aircraft being operated by the holder of an airline licence or a charter licence in the course of commercial transport operations, or in an aircraft being operated in the course of trade and commerce between Australia and another country, under a contract for the carriage of the passenger:

(a) between a place in a State and a place in another State;

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(b) between a place in a Territory and a place in Australia outside that Territory;

(c) between a place in a Territory and another place in that Territory; or

(d) between a place in Australia and a place outside Australia;

not being carriage to which the 1999 Montreal Convention, the Warsaw Convention, the Hague Protocol, the Montreal Protocol No. 4 or the Guadalajara Convention applies.

(3) For the purposes of this section, where, under a contract of carriage, the carriage is to begin and end in the one State or Territory (whether at the one place or not) but is to include a landing or landings at a place or places outside that State or Territory, the carriage shall be deemed to be carriage between the place where the carriage begins and that landing place, or such one of those landing places as is most distant from the place where the carriage begins, as the case may be.

(4) For the purposes of this section, where:

(a) the carriage of a passenger between two places is to be performed by two or more carriers in successive stages;

(b) the carriage has been regarded by the parties as a single operation, whether it has been agreed upon by a single contract or by two or more contracts; and

(c) this Part would apply to that carriage if it were to be performed by a single carrier under a single contract;

this Part applies in relation to a part of that carriage notwithstanding that that part consists of carriage between a place in a State and a place in the same State.

28 Liability of the carrier for death or injury

Subject to this Part, where this Part applies to the carriage of a passenger, the carrier is liable for damage sustained by reason of the death of the passenger or any personal injury suffered by the passenger resulting from an accident which took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

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29 Liability of the carrier in respect of baggage

(1) Where this Part applies to the carriage of a passenger, the carrier is liable under this Part, and not otherwise, for damage sustained in the event of the destruction or loss of, or injury to, baggage of the passenger, if the occurrence which causes the destruction, loss or injury takes place during the period of the carriage by air unless the carrier proves that the carrier and the carrier's servants and agents took all necessary measures to avoid the destruction, loss or injury or that it was impossible for the carrier or them to take such measures.

(2) For the purposes of the last preceding subsection but subject to the next succeeding subsection, the period of the carriage by air comprises:

(a) in relation to baggage other than registered baggage—the period during which the passenger is on board the aircraft or is in the course of any of the operations of embarking or disembarking; and

(b) in relation to registered baggage—the period during which the baggage is in the charge of the carrier, whether on board the aircraft or elsewhere.

(3) In proceedings under this section in respect of registered baggage, if the carrier proves that the baggage was, within a period of twelve hours after the arrival of the aircraft at the place to which the baggage was to be carried in the aircraft, available for collection by the passenger at a place at which, under the contract, the baggage was to be or could be made available to the passenger, the period of the carriage by air shall not be deemed to include any time after the expiration of that period of twelve hours.

(4) In the application of section 39 in relation to an action under this Part in respect of baggage other than registered baggage, the carrier shall be deemed to have proved that the damage was caused by the negligence of the passenger, except so far as the passenger proves that he or she was not responsible for the damage.

(5) Where, in relation to carriage referred to in subsection (4) of section 27, registered baggage has been destroyed, lost or injured in circumstances in which, if the carriage had been performed by a single carrier, that carrier would be subject to liability under this section, the carriers (other than a carrier who proves that the

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baggage was not in the carrier's charge at the time of the destruction, loss or injury) are jointly and severally subject to that liability.

30 Complaint to be made in respect of baggage

(1) For the purposes of an action under this Part, evidence proving receipt of registered baggage, without complaint, by the person entitled to delivery is evidence that the baggage has been delivered in good condition and in accordance with the contract of carriage.

(2) An action does not lie against a carrier under this Part in respect of baggage, except in case of fraud on the part of the carrier, unless the passenger, or a person acting on his or her behalf, has complained by writing delivered to the carrier or served on the carrier by post or in such other manner as is prescribed:

(a) in the case of injury to registered baggage or of loss or destruction of part only of an item of registered baggage—within the period of three days after the date of receipt by or on behalf of the passenger of the baggage, or of the remainder of that item of baggage, as the case may be;

(b) in the case of loss or destruction of the whole of an item of registered baggage—within the period of twenty-one days from the date on which the baggage should have been placed at the disposal of the passenger; or

(c) in the case of injury to, or loss or destruction of, baggage other than registered baggage—within the period of three days from the date on which the carriage of the passenger ended.

(3) A court having jurisdiction in actions under this Part in respect of baggage may, by order, grant leave to a person to institute or continue an action in that court in relation to baggage notwithstanding that there has been a failure to complain in accordance with the last preceding subsection within the time fixed by that subsection, where the court is satisfied that it is just and equitable to do so by reason of special circumstances.

(4) Subsection (2) does not apply in relation to an action in respect of which leave has been granted under the last preceding subsection.

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31 Limitation of liability

(1) Subject to the regulations relating to passenger tickets, the liability of a domestic carrier under this Part in respect of each passenger, by reason of his or her injury or death resulting from an accident, is limited to:

(a) where neither paragraph (b) nor paragraph (c) applies—$500,000;

(b) where, at the date of the accident, a regulation was in force prescribing an amount higher than $500,000 for the purposes of this subsection but paragraph (c) does not apply—the amount prescribed by that regulation; or

(c) if, at the date of the accident, no regulation was in force under paragraph (b) but the contract of carriage under which the passenger was carried specified the limit of the carrier's liability as an amount that exceeds $500,000—the amount so specified; or

(d) if, at the date of the accident, a regulation prescribing an amount was in force as mentioned in paragraph (b) but the contract of carriage under which the passenger was carried specified an amount that exceeds that amount as the limit of the carrier's liability—the amount so specified.

(1A) Subject to the regulations relating to passenger tickets, the liability under this Part of a carrier to which this Part applies, other than a domestic carrier, in respect of each passenger, by reason of the passenger's injury or death resulting from an accident, is limited to:

(a) if neither paragraph (b) nor (c) applies—260,000 SDRs; or

(b) if, at the date of the accident, a regulation was in force prescribing a number of SDRs that exceeds 260,000 for the purpose of this section and paragraph (c) does not apply—the number of SDRs so prescribed; or

(c) if, at the date of the accident, no regulation was in force under paragraph (b) but the contract of carriage under which the passenger was carried specified the limit of the carrier's liability as a number of SDRs that exceeds 260,000—the number of SDRs so specified; or

(d) if, at the date of the accident, a regulation prescribing a number of SDRs exceeding 260,000 was in force under paragraph (b) but the contract of carriage under which the

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passenger was carried specified the limit of the carrier's liability as a number of SDRs that exceeds the number so prescribed—the number of SDRs so specified.

(2) Subject to the regulations relating to baggage checks, the liability of a carrier under this Part in respect of the destruction or loss of, or injury to, the baggage of any one passenger, being baggage that is, or includes, registered baggage, is limited to:

(a) where neither paragraph (b) nor paragraph (c) applies—$900;

(b) where, at the date of the occurrence that caused the destruction, loss, or injury, a regulation was in force prescribing an amount higher than $900 for the purposes of this subsection but paragraph (c) does not apply—the amount prescribed by that regulation; or

(c) where an amount that exceeds:

(i) if, at the date of the occurrence referred to in paragraph (b), no regulation was in force as mentioned in that paragraph—$900; or

(ii) if, at the date of the occurrence referred to in paragraph (b), a regulation prescribing an amount was in force as mentioned in that paragraph—the amount prescribed by the regulation;

is specified, in the contract of carriage pursuant to which the passenger was carried, as the limit of the carrier's liability—the amount so specified.

(3) The liability of a carrier under this Part in respect of the destruction or loss of, or injury to, the baggage, other than registered baggage, of any one passenger is limited to:

(a) where neither paragraph (b) nor paragraph (c) applies—$90;

(b) where, at the date of the occurrence that caused the destruction, loss or injury, a regulation was in force prescribing an amount higher than $90 for the purposes of this subsection but paragraph (c) does not apply—the amount prescribed by that regulation; or

(c) where an amount that exceeds:

(i) if, at the date of the occurrence referred to in paragraph (b), no regulation was in force as mentioned in that paragraph—$90; or

(ii) if, at the date of the occurrence referred to in paragraph (b), a regulation prescribing an amount was

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in force as mentioned in that paragraph—the amount prescribed by that regulation;

is specified, in the contract of carriage pursuant to which the passsenger was carried, as the limit of the carrier's liability—the amount so specified.

32 Contracting out

(1) Any provision of an agreement tending to relieve the carrier of liability in accordance with this Part or to fix a lower limit than the appropriate limit of liability provided by this Part is null and void, but the nullity of such a provision does not involve the nullity of the whole contract of carriage.

(2) The last preceding subsection does not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of goods carried.

33 Servants and agents of carrier

(1) If an action in respect of any damage is brought against a servant or agent of a carrier, the servant or agent, if he or she proves that he or she acted within the scope of his or her employment or authority, is entitled to avail himself or herself of the limits of liability, if any, which the carrier would be entitled to invoke under section 31 in an action against the carrier in respect of that damage.

(2) The aggregate of the amounts recoverable from the carrier, the carrier's servants and agents shall not exceed the limits referred to in the last preceding subsection.

(3) The right to bring an action against a servant or agent of a carrier in respect of any damage, being damage which gave rise to a cause of action against the carrier under this Part, is extinguished if the action is not brought within the time specified in the next succeeding section.

34 Limitation of actions

The right of a person to damages under this Part is extinguished if an action is not brought by him or her or for his or her benefit within two years after the date of arrival of the aircraft at the destination, or, where the aircraft did not arrive at the destination;

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(a) the date on which the aircraft ought to have arrived at the destination; or

(b) the date on which the carriage stopped;

whichever is the later.

35 Liability in respect of death

(1) The provisions of this section apply in relation to liability imposed by this Part on a carrier in respect of the death of a passenger (including the injury that resulted in the death).

(2) Subject to section 37, the liability under this Part is in substitution for any civil liability of the carrier under any other law in respect of the death of the passenger or in respect of the injury that has resulted in the death of the passenger.

(3) Subject to the next succeeding subsection, the liability is enforceable for the benefit of such of the passenger's family members as sustained damage by reason of his or her death.

(4) To the extent that the damages recoverable include loss of earnings or profits up to the date of death, or funeral, medical or hospital expenses paid or incurred by the passenger before his or her death or by his or her personal representative, the liability is enforceable for the benefit of the personal representative of the passenger in his or her capacity as personal representative.

(6) The action to enforce the liability may be brought by the personal representative of the passenger or by a person for whose benefit the liability is, under the preceding provisions of this section, enforceable, but only one action shall be brought in respect of the death of any one passenger, and such an action, by whomsoever brought, shall be for the benefit of all persons for whose benefit the liability is so enforceable who are resident in Australia or, not being resident in Australia, express the desire to take the benefit of the action.

(7) The damages recoverable in the action include loss of earnings or profits up to the date of death and the reasonable expenses of the funeral of the passenger and medical and hospital expenses reasonably incurred in relation to the injury that resulted in the death of the passenger.

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(8) In awarding damages, the court or jury is not limited to the financial loss resulting from the death of the passenger.

(9) Subject to the next succeeding subsection, the amount recovered in the action, after deducting any costs not recovered from the defendant, shall be divided amongst the persons entitled in such proportions as the court (or, where the action is tried with a jury, the jury) directs.

(10) The court may at any stage of the proceedings make any such order as appears to the court to be just and equitable in view of the provisions of this Part limiting the liability of the carrier and of any proceedings which have been, or are likely to be, commenced against the carrier, whether in or outside Australia.

36 Liability in respect of injury

Subject to the next succeeding section, the liability of a carrier under this Part in respect of personal injury suffered by a passenger, not being injury that has resulted in the death of the passenger, is in substitution for any civil liability of the carrier under any other law in respect of the injury.

37 Certain liabilities not excluded

Nothing in this Part shall be deemed to exclude any liability of a carrier:

(a) to indemnify an employer of a passenger or any other person in respect of any liability of, or payments made by, that employer or other person under a law of the Commonwealth or of a State or Territory providing for compensation, however described, in the nature of workers' compensation; or

(b) to pay contribution to a tort-feasor who is liable in respect of the death of, or injury to, the passenger;

but this section does not operate so as to increase the limit of liability of a carrier in respect of a passenger beyond the amount fixed by or in accordance with this Part.

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38 Proceeds of insurance policies etc.

In assessing damages in respect of liability under this Part there shall not be taken into account by way of reduction of the damages:

(a) a sum paid or payable on the death of, or injury to, a passenger under a contract of insurance; or

(b) a sum paid or payable out of a superannuation, provident or like fund, or by way of benefit from a friendly society, benefit society or trade union; or

(c) any sum in respect of a pension, social service benefit or repatriation benefit paid or payable, consequent upon the death or injury, by any government or person; or

(d) in the case of the death of a passenger, any amount in respect of the acquisition by a family member of the passenger, consequent upon the passenger's death, of, or of an interest in, a dwelling used at any time as the home of that family member, or of, or of an interest in, the household contents of any such dwelling; or

(e) a premium that would have become payable under a contract of insurance in respect of the life of a deceased passenger if he or she had lived beyond the time at which he or she died.

39 Contributory negligence

(1) If, in an action against a carrier under this Part, the carrier proves that the damage was caused or contributed to by the negligence of the passenger, the damages recoverable shall be assessed in accordance with this section.

(2) The court shall first determine the damages that would have been recoverable if there were no limit on the amount of those damages fixed by or in accordance with this Part and there had been no negligence on the part of the passenger.

(3) The damages determined under the last preceding subsection shall be reduced to such extent as the court thinks just and equitable having regard to the share of the passenger in the responsibility for the damage.

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(4) If the damages as reduced in accordance with the last preceding subsection exceed the maximum liability of the carrier fixed by or in accordance with this Part, the court shall further reduce the damages to that maximum amount.

(5) Where any case to which subsection (1) applies is tried with a jury, the jury shall determine the damages referred to in subsection (2) and the amount of the reduction under subsection (3).

40 Regulations relating to passenger tickets and baggage checks

The regulations may make provision relating to passenger tickets and baggage checks in respect of passengers or baggage in relation to whom or which this Part applies, being provision for:

(a) the circumstances in which such tickets and checks must be issued by carriers;

(b) matters to be included in such tickets and checks; and

(c) the non-application of a provision of section 31 (except in cases where the limit of liability under that provision is a sum specified in the contract of carriage) where specified provisions of the regulations relating to the issue, form and contents of such tickets or checks have not been complied with.

41 Application of Part to cargo

The regulations may provide for applying, with such exceptions, adaptations and modifications as are prescribed, the provisions of the Montreal No. 4 Convention and any of the provisions of this Act to and in relation to the carriage of cargo, being carriage in relation to which, if it were the carriage of passengers, this Part would apply, but so that no adaptation or modification of the provisions of Article 22 of the Montreal No. 4 Convention shall have the effect of limiting the liability of the carrier to a sum less than the sum to which the carrier's liability would be limited if those provisions were applied without adaptation or modification.

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Part IVA—Carriers to be insured against liability to passengers for death or personal injury

Division 1—Preliminary

41A Object of Part

The object of this Part is to require carriers to hold, in respect of carriage to which Part IA, II, III or IV applies, insurance that will ensure, as far as practicable, that compensation within the limits of liability prescribed by this Act will be paid in respect of death or personal injury suffered by passengers on aircraft.

41B Definitions

In this Part:

acceptable contract of insurance has the meaning given by section 41C.

adequate financial arrangements has the meaning given by section 41C.

carrier means a person engaged, or proposing to engage, in a passenger-carrying operation.

CASA means the Civil Aviation Safety Authority.

contract of insurance, in relation to a passenger-carrying operation that a carrier engages in, or proposes to engage in, means a contract:

(a) that is between the carrier and an insurer; and

(b) under which the insurer indemnifies the carrier against personal injury liability in respect of each passenger carried, or to be carried, by air by the carrier in the operation.

passenger-carrying operation means an air transport operation for the carriage of passengers to which Part IA, II, III or IV applies.

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personal injury liability, in respect of a passenger carried, or to be carried, by air by a carrier in a passenger-carrying operation, means liability under this Act in respect of the death of, or personal injury suffered by, the passenger.

41C Acceptable contracts of insurance and adequate financial arrangements

Acceptable contracts of insurance

(1) For the purposes of this Part, an ***acceptable contract of insurance***, in relation to a passenger-carrying operation that a carrier engages in, or proposes to engage in, is a contract of insurance that relates to the operation and meets the prescribed requirements.

(2) The prescribed requirements are:
  (a) the requirements of subsections (3) and (4); and
  (b) any other requirements made by the regulations for the purposes of this section.

(3) It is a requirement in relation to a contract of insurance that, under the contract, the insurer's liability to indemnify the carrier against personal injury liability, in respect of each passenger carried, or to be carried, by air by the carrier in the operation, is for an amount that is not less than:
  (aa) in respect of carriage by a carrier to which Part IA applies—260,000 SDRs or such higher number of SDRs as is prescribed by regulations for the purposes of this paragraph; or
  (a) in respect of carriage by a domestic carrier to which Part IV applies—$500,000; or
  (b) in respect of any other carriage—260,000 SDRs.

(4) It is a requirement of a contract of insurance that, under the contract, the insurer's liability to indemnify the carrier against personal injury liability:
  (a) is not affected by any breach of a safety-related requirement imposed by or under any Act or by the Civil Aviation Safety Authority; and
  (b) is not contingent upon the financial condition or solvency of the carrier or upon the carrier not being or not becoming bankrupt or not beginning to be or not being wound up.

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(5) The prescribed requirements do not prevent a contract of insurance from including provisions indemnifying the carrier against a liability other than personal injury liability.

(6) A contract of insurance under which:

(a) the insurer indemnifies the carrier against liability as required by Part 205 of the Federal Aviation Regulations of the United States of America made under the law known as Title 49 United States Code—Transportation; and

(b) the insurer's liability to indemnify the carrier:

(i) extends to carriage in, to or from Australia; and

(ii) is not affected by any breach of a requirement referred to in paragraph (4)(a);

is taken to meet the requirements referred to in subsection (4).

Adequate financial arrangements

(7) For the purposes of this Part, ***adequate financial arrangements***, in relation to a passenger-carrying operation that a carrier engages in, or proposes to engage in, are financial arrangements that are adequate to discharge any personal injury liability of the carrier in respect of each passenger carried, or to be carried, by air by the carrier in the operation.

(8) To avoid doubt, an acceptable contract of insurance in relation to a passenger-carrying operation is an ***adequate financial arrangement*** in relation to the operation.

41D Insurer's liability not affected by exclusions or breaches

Except as prescribed by the regulations, an insurer's liability under a contract of insurance to indemnify the carrier against personal injury liability to the extent mentioned in subsection 41C(3) is not affected by any warranty or exclusion in the contract of insurance or by any breach of the contract of insurance by the carrier.

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Division 2—Insurance requirements

41E Carriers to be covered by acceptable insurance

(1) A person (other than a person who is, or is an agent of, the Crown in any capacity) must not engage in, or propose to engage in, a passenger-carrying operation, unless an acceptable contract of insurance in relation to the operation is in force.

(2) A person who intentionally contravenes subsection (1) is guilty of an offence punishable on conviction by imprisonment for a period of not more than 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

(3) A person who is, or is an agent of, the Crown in any capacity must not engage in, or propose to engage in, a passenger-carrying operation, unless adequate financial arrangements in relation to the operation exist.

41F Conduct by directors, servants and agents

(1) If, in proceedings for an offence against this Part, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and

(b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Part, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

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(3) If, in proceedings for an offence against this Part, it is necessary to establish the state of mind of an individual in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a servant or agent of the individual within the scope of his or her actual or apparent authority; and

(b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of an individual by a servant or agent of the individual within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Part, to have been engaged in also by the individual unless the individual establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

(5) If:

(a) a person who is an individual is convicted of an offence; and

(b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for the offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of, or to a member of a board or other group of persons administering or managing the affairs of, a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

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(9) A reference in this section to an offence against this Part includes a reference to an offence created by section 6 of the *Crimes Act 1914* or section 11.1, 11.4 or 11.5 of the *Criminal Code* that relates to this Part.

41G Grounds of cancellation of contract of insurance not affected

Nothing in this Part affects:

(a) the grounds on which an insurer may cancel a contract of insurance between the insurer and a carrier; or

(b) any right that an insurer may have to recover from a carrier an amount paid by the insurer under a contract of insurance between the insurer and the carrier.

41H Conflict of laws

If:

(a) the proper law of a contract of insurance would, except for a term that it should be the law of a foreign country or a term to a similar effect, be the law of any part of Australia; or

(b) a contract of insurance contains a term that purports to substitute, or has the effect of substituting, the law of a foreign country for all or any of the provisions of this Part;

this Part applies to the contract despite that term.

41J Injunctions

(1) In this section:

prohibited carriage means a passenger-carrying operation in relation to which:

(a) an acceptable contract of insurance is not in force; or

(b) if the carrier is, or is an agent of, the Crown in any capacity—an adequate financial arrangement does not exist.

(2) If CASA has reason to believe that a carrier has engaged, or is proposing to engage, in prohibited carriage, CASA may apply to a court of competent jurisdiction for an injunction restraining the carrier from engaging in the carriage.

(3) If the carrier does not satisfy the court that it is not engaging, or proposing to engage, in prohibited carriage, the court must grant the injunction.

(4) If in the opinion of the court it is desirable to do so, the court may grant an interim injunction pending determination of an application under subsection (2).

(5) The court may discharge or vary an injunction or an interim injunction granted under this section.

(6) The power of the court to grant an injunction or an interim injunction restraining a carrier from engaging in prohibited carriage may be exercised:

(a) whether or not it appears to the court that the carrier intends to engage again, or to continue to engage, in prohibited carriage of that kind; and

(b) whether or not the carrier has previously engaged in prohibited carriage of that kind.

(7) A court must not require CASA, as a condition of granting an interim injunction, to give any undertakings as to damages.

(8) The Federal Court of Australia is invested with federal jurisdiction in matters where CASA applies for an injunction or an interim injunction under this section.

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Division 3—Auditing

41JA Auditing

CASA may, at any time and from time to time, by written notice given to a carrier, require the carrier, within a period stated in the notice, to produce evidence, satisfactory to CASA, that:

(a) an acceptable contract of insurance is in force in relation to a specified passenger-carrying operation that the carrier engages in, or proposes to engage in; or

(b) if the carrier is, or is an agent of, the Crown in any capacity—adequate financial arrangements exist in relation to a specified passenger-carrying operation that the carrier engages in, or proposes to engage in.

41K Audit regulations

The regulations may make provision for or in relation to:

(a) the manner and form in which notices may be given under section 41JA; and

(b) the period that may be set out in such notices; and

(c) the manner and form in which evidence is to be produced under that section; and

(d) the giving by persons referred to in the regulations (who may be individuals not resident in Australia or corporations not incorporated or carrying on business in Australia) of notice (whether in advance, or after the occurrence of the event concerned) to CASA of any modification, cancellation, non-renewal or expiry, or of any proposed modification, cancellation or non-renewal, or of any impending expiry, of an acceptable contract of insurance; and

(e) the consequences (including any effect on the contract of insurance) of failure to give a notice referred to in paragraph (d).

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Division 4—Miscellaneous

41L Delegation

(1) The Director may, in writing, delegate all or any of CASA's powers under this Part to a member of the staff of CASA.

(2) The power of delegation includes a power to delegate a power to any member of the staff of CASA from time to time holding, occupying, or performing the duties of, a specified office or position, even if the office or position does not come into existence until after the delegation is given.

(3) If:

(a) the Director has, under this section, delegated a power of CASA contained in a provision of this Part; and

(b) a delegate exercises the power;

a reference in that provision to CASA is taken, in relation to the exercise of the power by the delegate, to be a reference to the delegate.

(4) In this section:

Director has the same meaning as in the *Civil Aviation Act 1988*.

41M Saving

Any action taken or any other thing done by, or in relation to, the Minister or a delegate of the Minister before the commencement of this section is to be treated after that commencement as if it had been taken or done by or in relation to CASA.

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Part V—Miscellaneous

41N Corresponding State laws may confer functions and powers on Commonwealth authorities and officers

A law of a State may confer functions and powers on Commonwealth authorities and officers for the purposes of any of the provisions of sections 41B to 41M as those provisions apply as a law of the State, either with or without modifications, and those Commonwealth authorities and officers may perform or exercise the functions or powers so conferred.

42 Stowaways

(1) Where a person travels in an aircraft without the consent of the carrier and Part IA, Part II, Part III, Part IIIC or Part IV would apply in relation to the carriage of that person if he or she were a passenger carried under a contract for his or her carriage for reward between the place where he or she boarded the aircraft and his or her place of disembarkation, the liability (if any) of the carrier, or of the carrier's servants or agents, in respect of that person and his or her baggage is subject to the limits as to amounts that are applicable in respect of passengers under that Part.

(2) This section does not impose any liability on a carrier or a servant or agent of a carrier to which the carrier is not subject apart from this section.

(3) For the purposes of this section, the place of disembarkation of a person shall be deemed to be the next scheduled stopping place after the place at which he or she boards the aircraft or, if he or she continues on board after the aircraft leaves that next scheduled stopping place, the scheduled stopping place next after the last stopping place from which the aircraft departed with that person on board.

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43 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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Schedules

Schedule 1A—The 1999 Montreal Convention

Note: See subsection 5(1) (definition of ***the 1999 Montreal Convention***).

CONVENTION
FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

THE STATES PARTIES TO THIS CONVENTION

RECOGNIZING the significant contribution of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the "Warsaw Convention", and other related instruments to the harmonization of private international air law;

RECOGNIZING the need to modernize and consolidate the Warsaw Convention and related instruments;

RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution;

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944;

CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests;

HAVE AGREED AS FOLLOWS:

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Chapter I

General Provisions

Article 1 — Scope of Application

1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2. For the purposes of this Convention, the expression *international carriage* means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

3. Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

Article 2 — Carriage Performed by State and Carriage of Postal Items

1. This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

2. In the carriage of postal items, the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.

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3. Except as provided in paragraph 2 of this Article, the provisions of this Convention shall not apply to the carriage of postal items.

Chapter II

Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo

Article 3 — Passengers and Baggage

1. In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing:

(a) an indication of the places of departure and destination;

(b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

4. The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.

5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

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Article 4 — Cargo

1. In respect of the carriage of cargo, an air waybill shall be delivered.

2. Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.

Article 5 — Contents of Air Waybill or Cargo Receipt

The air waybill or the cargo receipt shall include:

(a) an indication of the places of departure and destination;

(b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place; and

(c) an indication of the weight of the consignment.

Article 6 — Document Relating to the Nature of the Cargo

The consignor may be required, if necessary to meet the formalities of customs, police and similar public authorities, to deliver a document indicating the nature of the cargo. This provision creates for the carrier no duty, obligation or liability resulting therefrom.

Article 7 — Description of Air Waybill

1. The air waybill shall be made out by the consignor in three original parts.

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2. The first part shall be marked "for the carrier"; it shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier who shall hand it to the consignor after the cargo has been accepted.

3. The signature of the carrier and that of the consignor may be printed or stamped.

4. If, at the request of the consignor, the carrier makes out the air waybill, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 8 — Documentation for Multiple Packages

When there is more than one package:

(a) the carrier of cargo has the right to require the consignor to make out separate air waybills;

(b) the consignor has the right to require the carrier to deliver separate cargo receipts when the other means referred to in paragraph 2 of Article 4 are used.

Article 9 — Non-compliance with Documentary Requirements

Non-compliance with the provisions of Articles 4 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 10 — Responsibility for Particulars of Documentation

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.

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2. The consignor shall indemnify the carrier against all damage suffered by it, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on its behalf.

3. Subject to the provisions of paragraphs 1 and 2 of this Article, the carrier shall indemnify the consignor against all damage suffered by it, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

Article 11 — Evidentiary Value of Documentation

1. The air waybill or the cargo receipt is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.

2. Any statements in the air waybill or the cargo receipt relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 12 — Right of Disposition of Cargo

1. Subject to its liability to carry out all its obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.

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2. If it is impossible to carry out the instructions of the consignor, the carrier must so inform the consignor forthwith.

3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the cargo receipt.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

Article 13 — Delivery of the Cargo

1. Except when the consignor has exercised its right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, on payment of the charges due and on complying with the conditions of carriage.

2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

Article 14 — Enforcement of the Rights of Consignor and Consignee

The consignor and the consignee can respectively enforce all the rights given to them by Articles 12 and 13, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage.

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Article 15 — Relations of Consignor and Consignee or Mutual Relations of Third Parties

1. Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the cargo receipt.

Article 16 — Formalities of Customs, Police or Other Public Authorities

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, its servants or agents.

2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

Chapter III

Liability of the Carrier and Extent of Compensation for Damage

Article 17 — Death and Injury of Passengers — Damage to Baggage

1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted

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from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.

Article 18 — Damage to Cargo

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.

2. However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:

(a) inherent defect, quality or vice of that cargo;

(b) defective packing of that cargo performed by a person other than the carrier or its servants or agents;

(c) an act of war or an armed conflict;

(d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.

4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took

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place during the carriage by air. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

Article 19 — Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 20 — Exoneration

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 21.

Article 21 — Compensation in Case of Death or Injury of Passengers

1. For damages arising under paragraph 1 of Article 17 not exceeding 100 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

2. The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100 000 Special Drawing Rights if the carrier proves that:

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(a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or

(b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

Article 22 — Limits of Liability in Relation to Delay, Baggage and Cargo

1. In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights.

2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.

3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4. In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

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5. The foregoing provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.

6. The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

Article 23 — Conversion of Monetary Units

1. The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgement, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.

2. Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 21 is fixed at a sum of 1 500 000 monetary units per passenger in judicial proceedings in their territories; 62 500 monetary units per passenger with respect to paragraph 1 of Article 22; 15 000 monetary units per passenger

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with respect to paragraph 2 of Article 22; and 250 monetary units per kilogramme with respect to paragraph 3 of Article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1 of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 21 and 22 as would result from the application of the first three sentences of paragraph 1 of this Article. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

Article 24 — Review of Limits

1. Without prejudice to the provisions of Article 25 of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Articles 21, 22 and 23 shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 23.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the

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Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

Article 25 — Stipulation on Limits

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

Article 26 — Invalidity of Contractual Provisions

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Article 27 — Freedom to Contract

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

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Article 28 — Advance Payments

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

Article 29 — Basis of Claims

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 30 — Servants, Agents — Aggregation of Claims

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.

2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

3. Save in respect of the carriage of cargo, the provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

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Article 31 — Timely Notice of Complaints

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.

2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.

3. Every complaint must be made in writing and given or dispatched within the times aforesaid.

4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

Article 32 — Death of Person Liable

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his or her estate.

Article 33 — Jurisdiction

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to

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or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

3. For the purposes of paragraph 2,

(a) "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;

(b) "principal and permanent residence" means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.

4. Questions of procedure shall be governed by the law of the court seised of the case.

Article 34 — Arbitration

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.

2. The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in Article 33.

3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.

4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

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Article 35 — Limitation of Actions

1. The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

2. The method of calculating that period shall be determined by the law of the court seised of the case.

Article 36 — Successive Carriage

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Convention and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Article 37 — Right of Recourse against Third Parties

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

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Chapter IV

Combined Carriage

Article 38 — Combined Carriage

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

Chapter V

Carriage by Air Performed by a Person
other than the Contracting Carrier

Article 39 — Contracting Carrier — Actual Carrier

The provisions of this Chapter apply when a person (hereinafter referred to as "the contracting carrier") as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

Article 40 — Respective Liability of Contracting and Actual Carriers

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Article 39, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in

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this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

Article 41 — Mutual Liability

1. The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2. The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights or defences conferred by this Convention or any special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it.

Article 42 — Addressee of Complaints and Instructions

Any complaint to be made or instruction to be given under this Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Article 12 shall only be effective if addressed to the contracting carrier.

Article 43 — Servants and Agents

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Convention to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention.

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Article 44 — Aggregation of Damages

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.

Article 45 — Addressee of Claims

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

Article 46 — Additional Jurisdiction

Any action for damages contemplated in Article 45 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before a court in which an action may be brought against the contracting carrier, as provided in Article 33, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

Article 47 — Invalidity of Contractual Provisions

Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Chapter.

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Article 48 — Mutual Relations of Contracting and Actual Carriers

Except as provided in Article 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

Chapter VI

Other Provisions

Article 49 — Mandatory Application

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

Article 50 — Insurance

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

Article 51 — Carriage Performed in Extraordinary Circumstances

The provisions of Articles 3 to 5, 7 and 8 relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

Article 52 — Definition of Days

The expression "days" when used in this Convention means calendar days, not working days.

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Chapter VII

Final Clauses

Article 53 — Signature, Ratification and Entry into Force

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 6 of this Article.

2. This Convention shall similarly be open for signature by Regional Economic Integration Organisations. For the purpose of this Convention, a "Regional Economic Integration Organisation" means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorized to sign and to ratify, accept, approve or accede to this Convention. A reference to a "State Party" or "States Parties" in this Convention, otherwise than in paragraph 2 of Article 1, paragraph 1(b) of Article 3, paragraph (b) of Article 5, Articles 23, 33, 46 and paragraph (b) of Article 57, applies equally to a Regional Economic Integration Organisation. For the purpose of Article 24, the references to "a majority of the States Parties" and "one-third of the States Parties" shall not apply to a Regional Economic Integration Organisation.

3. This Convention shall be subject to ratification by States and by Regional Economic Integration Organisations which have signed it.

4. Any State or Regional Economic Integration Organisation which does not sign this Convention may accept, approve or accede to it at any time.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary.

6. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Depositary between the States which have deposited such

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instrument. An instrument deposited by a Regional Economic Integration Organisation shall not be counted for the purpose of this paragraph.

7. For other States and for other Regional Economic Integration Organisations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.

8. The Depositary shall promptly notify all signatories and States Parties of:

(a) each signature of this Convention and date thereof;

(b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;

(c) the date of entry into force of this Convention;

(d) the date of the coming into force of any revision of the limits of liability established under this Convention;

(e) any denunciation under Article 54.

Article 54 — Denunciation

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

Article 55 — Relationship with other Warsaw Convention Instruments

This Convention shall prevail over any rules which apply to international carriage by air:

1. between States Parties to this Convention by virtue of those States commonly being Party to

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(a) the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* Signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);

(b) the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929, Done at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);

(c) the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention);

(d) the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955 Signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);

(e) Additional Protocol Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol Signed at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or

2. within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.

Article 56 — States with more than one System of Law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

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2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has made such a declaration:

(a) references in Article 23 to "national currency" shall be construed as referring to the currency of the relevant territorial unit of that State; and

(b) the reference in Article 28 to "national law" shall be construed as referring to the law of the relevant territorial unit of that State.

Article 57 — Reservations

No reservation may be made to this Convention except that a State Party may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to:

(a) international carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State; and/or

(b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Montreal on the 28th day of May of the year one thousand nine hundred and ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall

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remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all States Parties to this Convention, as well as to all States Parties to the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol, and the Montreal Protocols.
[Signatures omitted]

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Schedule 1—Convention for the unification of certain rules relating to international carriage by air

Note: See section 8.

Chapter I—Scope—Definitions

Article 1

1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2. For the purposes of this Convention the expression "international carriage" means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of this Convention.

3. Carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.

Article 2

1. The Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

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2. This Convention does not apply to carriage performed under the terms of any international postal Convention.

Chapter II—Documents of Carriage

SECTION 1—PASSENGER TICKET

Article 3

1. For the carriage of passengers the carrier must deliver a passenger ticket which shall contain the following particulars:

(a) the place and date of issue;

(b) the place of departure and of destination;

(c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character;

(d) the name and address of the carrier or carriers;

(e) a statement that the carriage is subject to the rules relating to liability established by this Convention.

2. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to the rules of this Convention. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this Convention which exclude or limit his liability.

SECTION 2—BAGGAGE CHECK

Article 4

1. For the carriage of baggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a baggage check.

2. The baggage check shall be made out in duplicate, one part for the passenger and the other part for the carrier.

3. The baggage check shall contain the following particulars:

(a) the place and date of issue;

(b) the place of departure and of destination;

(c) the name and address of the carrier or carriers;

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(d) the number of the passenger ticket;

(e) a statement that delivery of the baggage will be made to the bearer of the baggage check;

(f) the number and weight of the packages;

(g) the amount of the value declared in accordance with Article 22(2);

(h) a statement that the carriage is subject to the rules relating to liability established by this Convention.

4. The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to the rules of this Convention. Nevertheless, if the carrier accepts baggage without a baggage check having been delivered, or if the baggage check does not contain the particulars set out at (d) (f) and (h) above, the carrier shall not be entitled to avail himself of those provisions of the Convention which exclude or limit his liability.

SECTION 3—AIR WAYBILL

Article 5

1. Every carrier of cargo has the right to require the consignor to make out and hand over to him a document called an "air waybill"; every consignor has the right to require the carrier to accept this document.

2. The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Article 9, be none the less governed by the rules of this Convention.

Article 6

1. The air waybill shall be made out by the consignor in three original parts and be handed over with the cargo.

2. The first part shall be marked "for the carrier", and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the cargo. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

3. The carrier shall sign on acceptance of the cargo.

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4. The signature of the carrier may be stamped; that of the consignor may be printed or stamped.

5. If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7

The carrier of cargo has the right to require the consignor to make out separate air waybills when there is more than one package.

Article 8

The air waybill shall contain the following particulars:

(a) the place and date of its execution;

(b) the place of departure and of destination;

(c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character;

(d) the name and address of the consignor;

(e) the name and address of the first carrier;

(f) the name and address of the consignee, if the case so requires;

(g) the nature of the cargo;

(h) the number of the packages, the method of packing and the particular marks or numbers upon them;

(i) the weight, the quantity and the volume or dimensions of the cargo;

(j) the apparent condition of the cargo and of the packing;

(k) the freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it;

(l) if the cargo is sent for payment on delivery, the price of the cargo, and, if the case so requires, the amount of the expenses incurred;

(m) the amount of the value declared in accordance with Article 22(2);

(n) the number of parts of the air waybill;

(o) the documents handed to the carrier to accompany the air waybill;

(p) the time fixed for the completion of the carriage and a brief note of the route to be followed, if these matters have been agreed upon;

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(q) a statement that the carriage is subject to the rules relating to liability established by this Convention.

Article 9

If the carrier accepts cargo without an air waybill having been made out, or if the air waybill does not contain all the particulars set out in Article 8(a) to (i) inclusive and (q), the carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability.

Article 10

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo which he inserts in the air waybill.

2. The consignor will be liable for all damage suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.

Article 11

1. The air waybill is *prima facie* evidence of the conclusion of the contract, of the receipt of the cargo and of the conditions of carriage.

2. The statements in the air waybill relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 12

1. Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the aerodrome of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air waybill, or by requiring it to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

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2. If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

3. If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the air waybill or the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

Article 13

1. Except in the circumstances set out in the preceding Article, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to hand over to him the air waybill and to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage set out in the air waybill.

2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

Article 14

The consignor and the consignee can respectively enforce all the rights given them by Articles 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

Article 15

1. Articles 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill.

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Article 16

1. The consignor must furnish such information and attach to the air waybill such documents as are necessary to meet the formalities of customs, octroi or police before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his servants or agents.

2. The carrier is under no obligation to inquire into the correctness or sufficiency of such information or documents.

Chapter III—Liability of the Carrier

Article 17

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered baggage or any cargo, if the occurrence which caused the damage so sustained took place during the carriage by air.

2. The carriage by air within the meaning of the preceding paragraph comprises the period during which the baggage or cargo is in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

3. The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or trans-shipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

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Article 20

1. The carrier is not liable if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

2. In the carriage of cargo and baggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

1. In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 125,000 francs. Where, in accordance with the law of the Court seised of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

2. In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.

3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

4. The sums mentioned above shall be deemed to refer to the French franc consisting of 65½ milligrams gold of millesimal fineness 900. These sums may be converted into any national currency in round figures.

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Article 23

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Article 24

1. In the cases covered by Articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention.

2. In the cases covered by Article 17 the provisions of the preceding paragraph also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

Article 25

1. The carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the Court seised of the case, is considered to be equivalent to wilful misconduct.

2. Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused as aforesaid by any servant or agent of the carrier acting within the scope of his employment.

Article 26

1. Receipt by the person entitled to delivery of baggage or cargo without complaint is prima facie evidence that the same has been delivered in good condition and in accordance with the document of carriage.

2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within three days from the date of receipt in the case of baggage and seven days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the baggage or cargo has been placed at his disposal.

3. Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

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4. Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his estate.

Article 28

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.

2. Questions of procedure shall be governed by the law of the Court seised of the case.

Article 29

1. The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

2. The method of calculating the period of limitation shall be determined by the law of the Court seised of the case.

Article 30

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, baggage or cargo is subjected to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

2. In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

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3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, or damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Chapter IV—Provisions Relating to Combined Carriage

Article 31

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

Chapter V—General and Final Provisions

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28.

Article 33

Nothing contained in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Convention.

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Article 34

This Convention does not apply to international carriage by air performed by way of experimental trial by air navigation undertakings with the view to the establishment of a regular line of air navigation, nor does it apply to carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

Article 35

The expression "days" when used in this Convention means current days not working days.

Article 36

The Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

Article 37

1. This Convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry for Foreign Affairs of Poland, which will notify the deposit to the Government of each of the High Contracting Parties.

2. As soon as this Convention shall have been ratified by five of the High Contracting Parties it shall come into force as between them on the ninetieth day after the deposit of the fifth ratification. Thereafter it shall come into force between the High Contracting Parties who shall have ratified and the High Contracting Party who deposits his instrument of ratification on the ninetieth day after the deposit.

3. It shall be the duty of the Government of the Republic of Poland to notify to the Government of each of the High Contracting Parties the date on which this Convention comes into force as well as the date of the deposit of each ratification.

Article 38

1. This Convention shall, after it has come into force, remain open for accession by any State.

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2. The accession shall be effected by a notification addressed to the Government of the Republic of Poland, which will inform the Government of each of the High Contracting Parties thereof.

3. The accession shall take effect as from the ninetieth day after the notification made to the Government of the Republic of Poland.

Article 39

1. Any one of the High Contracting Parties may denounce this Convention by a notification addressed to the Government of the Republic of Poland, which will at once inform the Government of each of the High Contracting Parties.

2. Denunciation shall take effect six months after the notification of denunciation, and shall operate only as regards the Party who shall have proceeded to denunciation.

Article 40

1. Any High Contracting Party may, at the time of signature or of deposit of ratification or of accession declare that the acceptance which he gives to this Convention does not apply to all or any of his colonies, protectorates, territories under mandate, or any other territory subject to his sovereignty or his authority, or any territory under his suzerainty.

2. Accordingly any High Contracting Party may subsequently accede separately in the name of all or any of his colonies, protectorates, territories under mandate or any other territory subject to his sovereignty or to his authority or any territory under his suzerainty which has been thus excluded by his original declaration.

3. Any High Contracting Party may denounce this Convention, in accordance with its provisions, separately or for all or any of his colonies, protectorates, territories under mandate or any other territory subject to his sovereignty or to his authority, or any other territory under his suzerainty.

Article 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this Convention to call for the assembling of a new international Conference in order to consider any improvements which may be made in this Convention. To this end he will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such Conference.

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This Convention done at Warsaw on the 12th October, 1929, shall remain open for signature until the 31st January, 1930.

[*Here* follow *the signatures of the Plenipotentiaries of the States (including Australia) on behalf of which the Convention was signed*.]

ADDITIONAL PROTOCOL

(with reference to Article 2)

The High Contracting Parties reserve to themselves the right to declare at the time of ratification or of accession that the first paragraph of Article 2 of this Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority.

[*Here follow the signatures of the Plenipotentiaries of the States (including Australia) on behalf of which the Additional Protocol was signed.*]

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Schedule 2—The Warsaw Convention as amended at the Hague

Note: See section 8.

Article XIX of the Hague Protocol provides that, as between the parties *to the Protocol, the Warsaw Convention and the Protocol are to be read and interpreted together as one single instrument, to be known as the "Warsaw Convention as amended at The Hague, 1955".*

The text in this Schedule contains:

(a) the operative provisions of the Warsaw Convention as modified by Chapter I of the Hague Protocol; and

(b) the remaining provisions of the Protocol.

OPERATIVE PROVISIONS OF THE WARSAW CONVENTION, AS MODIFIED BY THE HAGUE PROTOCOL

Chapter I—Scope—Definitions

Article 1

1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2. For the purposes of this Convention, the expression *international carriage* means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

3. Carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

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Article 2

1. The Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

2. This Convention shall not apply to carriage of mail and postal packages.

Chapter II—Documents of Carriage

SECTION 1—PASSENGER TICKET

Article 3

1. In respect of the carriage of passengers a ticket shall be delivered containing:
   (a) an indication of the places of departure and destination;
   (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
   (c) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage.

2. The passenger ticket shall constitute *prima facie* evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if, with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by paragraph 1(c) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22.

SECTION 2—BAGGAGE CHECK

Article 4

1. In respect of the carriage of registered baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a passenger ticket which complies with the provisions of Article 3, paragraph 1, shall contain:
   (a) an indication of the places of departure and destination;

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(b) if the places of departure and destination are within the Territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;

(c) a notice to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to baggage.

2. The baggage check shall constitute *prima facie* evidence of the registration of the baggage and of the conditions of the contract of carriage. The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if the carrier takes charge of the baggage without a baggage check having been delivered or if the baggage check (unless combined with or incorporated in the passenger ticket which complies with the provisions of Article 3, paragraph 1(c)) does not include the notice required by paragraph 1(c) of this Article, he shall not be entitled to avail himself of the provisions of Article 22, paragraph 2.

SECTION 3—AIR WAYBILL

Article 5

1. Every carrier of cargo has the right to require the consignor to make out and hand over to him a document called an "air waybill"; every consignor has the right to require the carrier to accept this document.

2. The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Article 9, be none the less governed by the rules of this Convention.

Article 6

1. The air waybill shall be made out by the consignor in three original parts and be handed over with the cargo.

2. The first part shall be marked "for the carrier", and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the cargo. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

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3. The carrier shall sign prior to the loading of the cargo on board the aircraft.

4. The signature of the carrier may be stamped; that of the consignor may be printed or stamped.

5. If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7

The carrier of cargo has the right to require the consignor to make out separate air waybills when there is more than one package.

Article 8

The air waybill shall contain:

(a) an indication of the places of departure and destination;

(b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;

(c) a notice to the consignor to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo.

Article 9

If, with the consent of the carrier, cargo is loaded on board the aircraft without an air waybill having been made out, or if the air waybill does not include the notice required by Article 8, paragraph (c), the carrier shall not be entitled to avail himself of the provisions of Article 22, paragraph 2.

Article 10

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo which he inserts in the air waybill.

2. The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor.

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Article 11

1. The air waybill is prima facie evidence of the conclusion of the contract, of the receipt of the cargo and of the conditions of carriage.

2. The statements in the air waybill relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 12

1. Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the aerodrome of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air waybill, or by requiring it to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

3. If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the air waybill or the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

Article 13

1. Except in the circumstances set out in the preceding Article, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to hand over to him the air waybill and to deliver the cargo to him, on payment

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of the charges due and on complying with the conditions of carriage set out in the air waybill.

2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

Article 14

The consignor and the consignee can respectively enforce all the rights given them by Articles 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

Article 15

1. Articles 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill.

3. Nothing in this Convention prevents the issue of a negotiable air waybill.

Article 16

1. The consignor must furnish such information and attach to the air waybill such documents as are necessary to meet the formalities of customs, octroi or police before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his servants or agents.

2. The carrier is under no obligation to inquire into the correctness or sufficiency of such information or documents.

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Chapter III—Liability of the Carrier

Article 17

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

1. The carrier is liable for damages sustained in the event of the destruction or loss of, or of damage to, any registered baggage or any cargo, if the occurrence which caused the damage so sustained took place during the carriage by air.

2. The carriage by air within the meaning of the preceding paragraph comprises the period during which the baggage or cargo is in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

3. The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or trans-shipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

Article 20

The carrier is not liable if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

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Article 22

1. In the carriage of persons the liability of the carrier for each passenger is limited to the sum of two hundred and fifty thousand francs. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed two hundred and fifty thousand francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

2. (a) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of two hundred and fifty francs per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the passenger's or consignor's actual interest in delivery at destination.

(b) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to five thousand francs per passenger.

4. The limits prescribed in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

5. The sums mentioned in francs in this Article shall be deemed to refer to a currency unit consisting of sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into national

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currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgment.

Article 23

1. Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

2. Paragraph 1 of this Article shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

Article 24

1. In the cases covered by Articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention.

2. In the cases covered by Article 17 the provisions of the preceding paragraph also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

Article 25

The limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.

Article 25A

1. If an action is brought against a servant or agent of the carrier arising out of damage to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22.

2. The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.

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3. The provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 26

1. Receipt by the person entitled to delivery of baggage or cargo without complaint is prima facie evidence that the same has been delivered in good condition and in accordance with the document of carriage.

2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal.

3. Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

4. Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his estate.

Article 28

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.

2. Questions of procedure shall be governed by the law of the Court seised of the case.

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Article 29

1. The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

2. The method of calculating the period of limitation shall be determined by the law of the Court seised of the case.

Article 30

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, baggage or cargo is subjected to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

2. In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, or damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Chapter IV—Provisions Relating to Combined Carriage

Article 31

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

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Chapter V—General and Final Provisions

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28.

Article 33

Nothing contained in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Convention.

Article 34

The provisions of Articles 3 to 9 inclusive relating to documents of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

Article 35

The expression "days" when used in this Convention means current days not working days.

Article 36

The Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

Article 40A

1. In Article 37, paragraph 2 and Article 40, paragraph 1, the expression *High Contracting Party* shall mean *State*. In all other cases, the expression *High Contracting Party* shall mean a State whose ratification of or adherence to the Convention has become effective and whose denunciation thereof has not become effective.

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2. For the purposes of the Convention the word *territory* means not only the metropolitan territory of a State but also all other territories for the foreign relations of which that State is responsible.

Article 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this Convention to call for the assembling of a new international Conference in order to consider any improvements which may be made in this Convention. To this end he will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such Conference.

Additional Protocol

(with reference to Article 2)

The High Contracting Parties reserve to themselves the right to declare at the time of ratification or of accession that the first paragraph of Article 2 of this Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority.

REMAINING PROVISIONS OF THE HAGUE PROTOCOL

PROTOCOL

to amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929

THE GOVERNMENTS UNDERSIGNED

CONSIDERING that it is desirable to amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929, HAVE AGREED as follows:

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Chapter I—Amendments to the Convention

[omitted]

Chapter II—Scope of Application of the Convention as Amended

Article XVIII

The Convention as amended by this Protocol shall apply to international carriage as defined in Article 1 of the Convention, provided that the places of departure and destination referred to in that Article are situated either in the territories of two parties to this Protocol or within the territory of a single party to this Protocol with an agreed stopping place within the territory of another State.

Chapter III—Final Clauses

Article XIX

As between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument and shall be known as the *Warsaw Convention as amended at The Hague, 1955*.

Article XX

Until the date on which this Protocol comes into force in accordance with the provisions of Article XXII, paragraph 1, it shall remain open for signature on behalf of any State which up to that date has ratified or adhered to the Convention or which has participated in the Conference at which this Protocol was adopted.

Article XXI

1. This Protocol shall be subject to ratification by the signatory States.

2. Ratification of this Protocol by any State which is not a Party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.

3. The instruments of ratification shall be deposited with the Government of the People's Republic of Poland.

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Article XXII

1. As soon as thirty signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the ninetieth day after the deposit of the thirtieth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.

2. As soon as this Protocol comes into force it shall be registered with the United Nations by the Government of the People's Republic of Poland.

Article XXIII

1. This Protocol shall, after it has come into force, be open for adherence by any non-signatory State.

2. Adherence to this Protocol by any State which is not a Party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.

3. Adherence shall be effected by the deposit of an instrument of adherence with the Government of the People's Republic of Poland and shall take effect on the ninetieth day after the deposit.

Article XXIV

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the People's Republic of Poland.

2. Denunciation shall take effect six months after the date of receipt by the Government of the People's Republic of Poland of the notification of denunciation.

3. As between the Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 39 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

Article XXV

1. This Protocol shall apply to all territories for the foreign relations of which a State Party to this Protocol is responsible, with the exception of territories in respect of which a declaration has been made in accordance with paragraph 2 of this Article.

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2. Any State may, at the time of deposit of its instrument of ratification or adherence, declare that its acceptance of this Protocol does not apply to any one or more of the territories for the foreign relations of which such State is responsible.

3. Any State may subsequently, by notification to the Government of the People's Republic of Poland, extend the application of this Protocol to any or all of the territories regarding which it has made a declaration in accordance with paragraph 2 of this Article. The notification shall take effect on the ninetieth day after its receipt by that Government.

4. Any State Party to this Protocol may denounce it, in accordance with the provisions of Article XXIV, paragraph 1, separately for any or all of the territories for the foreign relations of which such State is responsible.

Article XXVI

No reservation may be made to this Protocol except that a State may at any time declare by a notification addressed to the Government of the People's Republic of Poland that the Convention as amended by this Protocol shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft, registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities.

Article XXVII

The Government of the People's Republic of Poland shall give immediate notice to the Governments of all States signatories to the Convention or this Protocol, all States Parties to the Convention or this Protocol, and all States Members of the International Civil Aviation Organization or of the United Nations and to the International Civil Aviation Organization:

(a) of any signature of this Protocol and the date thereof;

(b) of the deposit of any instrument of ratification or adherence in respect of this Protocol and the date thereof;

(c) of the date on which this Protocol comes into force in accordance with Article XXII, paragraph 1;

(d) of the receipt of any notification of denunciation and the date thereof;

(e) of the receipt of any declaration or notification made under Article XXV and the date thereof; and

(f) of the receipt of any notification made under Article XXVI and the date thereof.

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IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.

DONE at The Hague on the twenty-eighth day of the month of September of the year One Thousand Nine Hundred and Fifty-five, in three authentic texts in the English, French and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Convention was drawn up, shall prevail.

This Protocol shall be deposited with the Government of the People's Republic of Poland with which, in accordance with Article XX, it shall remain open for signature, and that Government shall send certified copies thereof to the Governments of all States signatories to the Convention or this Protocol, all States Parties to the Convention or this Protocol, and all States Members of the International Civil Aviation Organization or of the United Nations, and to the International Civil Aviation Organization.

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Schedule 3—Convention

Note: See section 8.

CONVENTION,

Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier.

THE STATES SIGNATORY TO THE PRESENT CONVENTION

NOTING that the Warsaw Convention does not contain particular rules relating to international carriage by air performed by a person who is not a party to the agreement for carriage

CONSIDERING that it is therefore desirable to formulate rules to apply in such circumstances

HAVE AGREED AS FOLLOWS:

Article I

In this Convention:

a) "Warsaw Convention" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929, or the Warsaw Convention as amended at The Hague, 1955, according to whether the carriage under the agreement referred to in paragraph (b) is governed by the one or by the other;

b) "contracting carrier" means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor;

c) "actual carrier" means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph (b) but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention. Such authority is presumed in the absence of proof to the contrary.

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Article II

If an actual carrier performs the whole or part of carriage which, according to the agreement referred to in Article I, paragraph (b), is governed by the Warsaw Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Convention, be subject to the rules of the Warsaw Convention, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which he performs.

Article III

1. The acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2. The acts and omissions of the contracting carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the limits specified in Article 22 of the Warsaw Convention. Any special agreement under which the contracting carrier assumes obligations not imposed by the Warsaw Convention or any waiver of rights conferred by that Convention or any special declaration of interest in delivery at destination contemplated in Article 22 of the said Convention, shall not affect the actual carrier unless agreed to by him.

Article IV

Any complaint to be made or order to be given under the Warsaw Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, orders referred to in Article 12 of the Warsaw Convention shall only be effective if addressed to the contracting carrier.

Article V

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if he proves that he acted within the scope of his employment, be entitled to avail himself of the limits of liability which are applicable under this Convention to the carrier whose servant or agent he is unless it is proved that he acted in a manner which, under the Warsaw Convention, prevents the limits of liability from being invoked.

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Article VI

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

Article VII

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

Article VIII

Any action for damages contemplated in Article VII of this Convention must be brought, at the option of the plaintiff, either before a court in which an action may be brought against the contracting carrier, as provided in Article 28 of the Warsaw Convention, or before the court having jurisdiction at the place where the actual carrier is ordinarily resident or has his principal place of business.

Article IX

1. Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Convention or to fix a lower limit than that which is applicable according to this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of this Convention.

2. In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

3. Any clause contained in an agreement for carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless, for the carriage of cargo arbitration clauses are allowed,

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subject to this Convention, if the arbitration is to take place in one of the jurisdictions referred to in Article VIII.

Article X

Except as provided in Article VII, nothing in this Convention shall affect the rights and obligations of the two carriers between themselves.

Article XI

Until the date on which this Convention comes into force in accordance with the provisions of Article XIII, it shall remain open for signature on behalf of any State which at that date is a Member of the United Nations or of any of the Specialized Agencies.

Article XII

1. This Convention shall be subject to ratification by the signatory States.

2. The instruments of ratification shall be deposited with the Government of the United States of Mexico.

Article XIII

1. As soon as five of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the fifth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.

2. As soon as this Convention comes into force, it shall be registered with the United Nations and the International Civil Aviation Organization by the Government of the United States of Mexico.

Article XIV

1. This Convention shall, after it has come into force, be open for accession by any State Member of the United Nations or of any of the Specialized Agencies.

2. The accession of a State shall be effected by the deposit of an instrument of accession with the Government of the United States of Mexico and shall take effect as from the ninetieth day after the date of such deposit.

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Article XV

1. Any Contracting State may denounce this Convention by notification addressed to the Government of the United States of Mexico.

2. Denunciation shall take effect six months after the date of receipt by the Government of the United States of Mexico of the notification of denunciation.

Article XVI

1. Any Contracting State may at the time of its ratification of or accession to this Convention or at any time thereafter declare by notification to the Government of the United States of Mexico that the Convention shall extend to any of the territories for whose international relations it is responsible.

2. The Convention shall, ninety days after the date of the receipt of such notification by the Government of the United States of Mexico, extend to the territories named therein.

3. Any Contracting State may denounce this Convention, in accordance with the provisions of Article XV, separately for any or all of the territories for the international relations of which such State is responsible.

Article XVII

No reservation may be made to this Convention.

Article XVIII

The Government of the United States of Mexico shall give notice to the International Civil Aviation Organization and to all States Members of the United Nations or of any of the Specialized Agencies:

a) of any signature of this Convention and the date thereof;

b) of the deposit of any instrument of ratification or accession and the date thereof;

c) of the date on which this Convention comes into force in accordance with Article XIII, paragraph 1;

d) of the receipt of any notification of denunciation and the date thereof;

e) of the receipt of any declaration or notification made under Article XVI and the date thereof.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

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DONE at Guadalajara on the eighteenth day of September One Thousand Nine Hundred and Sixty-one in three authentic texts drawn up in the English, French and Spanish languages. In case of any inconsistency, the text in the French language, in which language the Warsaw Convention of 12 October 1929 was drawn up, shall prevail. The Government of the United States of Mexico will establish an official translation of the text of the Convention in the Russian language.

This Convention shall be deposited with the Government of the United States of Mexico with which, in accordance with Article XI, it shall remain open for signature, and that Government shall send certified copies thereof to the International Civil Aviation Organization and to all States Members of the United Nations or of any Specialized Agency.

[*Here follow the signatures of the Plenipotentiaries of the States on behalf of which the Convention has been signed.*]

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Schedule 5—The Montreal No. 4 Convention

Note: See section 8.

("WARSAW CONVENTION AS AMENDED AT THE HAGUE, 1955, AND BY PROTOCOL NO. 4 OF MONTREAL, 1975")

Article XV of the Montreal Protocol No. 4 and Article XIX of the Hague Protocol together *provide that, as between parties to the Montreal Protocol No. 4, that Protocol, the Hague Protocol and the Warsaw Convention are to be read and interpreted together as one single instrument.*

The text in this Schedule contains:

(a) the operative provisions of the Warsaw Convention as modified by Chapter I of the Hague Protocol and Chapter I of the Montreal Protocol No. 4; and

(b) the remaining provisions of the Hague Protocol and the Montreal Protocol No. 4.

OPERATIVE PROVISIONS OF THE WARSAW CONVENTION, AS MODIFIED BY THE HAGUE AND MONTREAL NO. 4 PROTOCOLS

Chapter I—Scope—Definitions

Article 1

1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2. For the purposes of this Convention, the expression *international carriage* means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purpose of this Convention.

3. Carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon

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under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

Article 2

1. The Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

2. In the carriage of postal items the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.

3. Except as provided in paragraph 2 of this Article, the provisions of this Convention shall not apply to the carriage of postal items.

Chapter II—Documents of Carriage

SECTION 1—PASSENGER TICKET

Article 3

1. In respect of the carriage of passengers a ticket shall be delivered containing:
   (a) an indication of the places of departure and destination;
   (b) if the places of departure and destination are within the Territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
   (c) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage.

2. The passenger ticket shall constitute *prima facie* evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if, with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by paragraph 1 (c) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22.

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SECTION 2—BAGGAGE CHECK

Article 4

1. In respect of the carriage of registered baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a passenger ticket which complies with the provisions of Article 3, paragraph 1, shall contain:

(a) an indication of the places of departure and destination;

(b) if the places of departure and destination are within the Territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;

(c) a notice to the effect that; if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to baggage.

2. The baggage check shall constitute *prima facie* evidence of the registration of the baggage and of the conditions of the contract of carriage. The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if the carrier takes charge of the baggage without a baggage check having been delivered or if the baggage check (unless combined with or incorporated in the passenger ticket which complies with the provisions of Article 3, paragraph 1 (c)) does not include the notice required by paragraph 1 (c) of this Article, he shall not be entitled to avail himself of the provisions of Article 22, paragraph 2.

SECTION 3—DOCUMENTATION RELATING TO CARGO

Article 5

1. In respect of the carriage of cargo an air waybill shall be delivered.

2. Any other means which would preserve a record of the carriage to be performed may, with the consent of the consignor, be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a receipt for the cargo permitting identification of the consignment and access to the information contained in the record preserved by such other means.

3. The impossibility of using, at points of transit and destination, the other means which would preserve the record of the carriage referred to in paragraph

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2 of this Article does not entitle the carrier to refuse to accept the cargo for carriage.

Article 6

1. The air waybill shall be made out by the consignor in three original parts.

2. The first part shall be marked "for the carrier"; it shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

3. The signature of the carrier and that of the consignor may be printed or stamped.

4. If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7

When there is more than one package:

(a) the carrier of cargo has the right to require the consignor to make out separate air waybills;

(b) the consignor has the right to require the carrier to deliver separate receipts when the other means referred to in paragraph 2 of Article 5 are used.

Article 8

The air waybill and the receipt for the cargo shall contain:

(a) an indication of the places of departure and destination;

(b) if the places of departure and destination are within the Territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place; and

(c) an indication of the weight of the consignment.

Article 9

Non-compliance with the provisions of Articles 5 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, none the less, be subject to the rules of this Convention including those relating to limitation of liability.

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Article 10

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by him or on his behalf in the air waybill or furnished by him or on his behalf to the carrier for insertion in the receipt for the cargo or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 5.

2. The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on his behalf.

3. Subject to the provisions of paragraphs 1 and 2 of this Article, the carrier shall indemnify the consignor against all damage suffered by him, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on his behalf in the receipt for the cargo or in the record preserved by the other means referred to in paragraph 2 of Article 5.

Article 11

1. The air waybill or the receipt for the cargo is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.

2. Any statements in the air waybill or the receipt for the cargo relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 12

1. Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. He must not exercise this right of disposition in such a way as to

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prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

3. If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the receipt for the cargo delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the receipt for the cargo.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

Article 13

1. Except when the consignor has exercised his right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage.

2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

Article 14

The consignor and the consignee can respectively enforce all the rights given them by Articles 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract of carriage.

Article 15

1. Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

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2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the receipt for the cargo.

Article 16

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, octroi or police before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, his servants or agents.

2. The carrier is under no obligation to inquire into the correctness or sufficiency of such information or documents.

Chapter III—Liability of the Carrier

Article 17

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

1. The carrier is liable for damages sustained in the event of the destruction or loss of, or damage to, any registered baggage, if the occurrence which caused the damage so sustained took place during the carriage by air.

2. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the occurrence which caused the damage so sustained took place during the carriage by air.

3. However, the carrier is not liable if he proves that the destruction, loss of, or damage to, the cargo resulted solely from one or more of the following:

a) inherent defect, quality or vice of that cargo;
b) defective packing of that cargo performed by a person other than the carrier or his servants or agents;
c) an act of war or an armed conflict;
d) an act of public authority carried out in connexion with the entry, exit or transit of the cargo.

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4. The carriage by air within the meaning of the preceding paragraphs of this Article comprises the period during which the baggage or cargo is in the charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.

5. The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

Article 20

In the carriage of passengers and baggage, and in the case of damage occasioned by delay in the carriage of cargo, the carrier shall not be liable if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures.

Article 21

1. In the carriage of passengers and baggage, if the carrier proves that the damage was caused by or contributed to by the negligence of the person suffering the damage the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

2. In the carriage of cargo, if the carrier proves that the damage was caused by or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he derives his rights, the carrier shall be wholly or partly exonerated from his liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.

Article 22

1. In the carriage of persons the liability of the carrier for each passenger is limited to the sum of two hundred and fifty thousand francs. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed two hundred and fifty thousand francs.

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Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

2. (a) In the carriage of registered baggage, the liability of the carrier is limited to a sum of two hundred and fifty francs per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the passenger's or consignor's actual interest in delivery at destination.

(b) In the carriage of cargo, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the consignor's actual interest in delivery at destination.

(c) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to five thousand francs per passenger.

4. The limits prescribed in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

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5. The sums mentioned in francs in this Article shall be deemed to refer to a currency unit consisting of sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into national currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgment.

6. The sums mentioned in terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party.

Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 2 (b) of Article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of two hundred and fifty monetary units per kilogramme. The monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. This sum may be converted into the national currency concerned in round figures. The conversion of this sum into the national currency shall be made according to the law of the State concerned.

Article 23

1. Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

2. Paragraph 1 of this Article shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

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Article 24

1. In the carriage of passengers and baggage, any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention, without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights.

2. In the carriage of cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and limits of liability set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. Such limits of liability constitute maximum limits and may not be exceeded whatever the circumstances which gave rise to the liability.

Article 25

In the carriage of passengers and baggage, the limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.

Article 25A

1. If an action is brought against a servant or agent of the carrier arising out of damage to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22.

2. The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.

3. In the carriage of passengers and baggage, the provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 26

1. Receipt by the person entitled to delivery of baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage.

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2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal.

3. Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

4. Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his estate.

Article 28

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.

2. Questions of procedure shall be governed by the law of the Court seised of the case.

Article 29

1. The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

2. The method of calculating the period of limitation shall be determined by the law of the Court seised of the case.

Article 30

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, baggage or cargo is subjected to the rules set

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out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

2. In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, or damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Article 30A

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

Chapter IV—Provisions Relating to Combined Carriage

Article 31

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

Chapter V—General and Final Provisions

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the

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carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28.

Article 33

Except as provided in paragraph 3 of Article 5, nothing in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage or from making regulations which do not conflict with the provisions of this Convention.

Article 34

The provisions of Articles 3 to 8 inclusive relating to documents of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

Article 35

The expression "days" when used in this Convention means current days not working days.

Article 36

The Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

Article 40A

1. In Article 37, paragraph 2 and Article 40, paragraph 1, the expression *High Contracting Party* shall mean *State*. In all other cases, the expression *High Contracting Party* shall mean a State whose ratification of or adherence to the Convention has become effective and whose denunciation thereof has not become effective.

2. For the purposes of the Convention the word *territory* means not only the metropolitan territory of a State but also all other territories for the foreign relations of which that State is responsible.

Article 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this Convention to call for the assembling of a new international Conference in order to consider any improvements which may be

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made in this Convention. To this end he will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such Conference.

Additional Protocol

(*with reference to Article 2*)

The High Contracting Parties reserve to themselves the right to declare at the time of ratification or of accession that the first paragraph of Article 2 of this Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority.

REMAINING OPERATIVE PROVISIONS OF THE HAGUE PROTOCOL

Article XIX

As between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument and shall be known as the *Warsaw Convention as amended at The Hague, 1955*.

Article XXVI

No reservation may be made to this Protocol except that a State may at any time declare by a notification addressed to the Government of the People's Republic of Poland that the Convention as amended by this Protocol shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft, registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities.

REMAINING OPERATIVE PROVISIONS OF THE MONTREAL NO. 3 PROTOCOL

Montreal Protocol No. 4

to amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955

THE GOVERNMENTS UNDERSIGNED

CONSIDERING that it is desirable to amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at

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Warsaw on 12 October 1929 as amended by the Protocol done at The Hague on 28 September 1955,

HAVE AGREED as follows:

Chapter I—Amendments to the Convention

[*omitted*]

Chapter II—Scope of Application of the Convention as Amended

Article XIV

The Warsaw Convention as amended at The Hague in 1955 and by this Protocol shall apply to international carriage as defined in Article 1 of the Convention, provided that the places of departure and destination referred to in that Article are situated either in the territories of two parties to this Protocol or within the territory of a single party to this Protocol with an agreed stopping place in the territory of another State.

Chapter III—Final Clauses

Article XV

As between the Parties to this Protocol, the Warsaw Convention as amended at The Hague in 1955 and this Protocol shall be read and interpreted together as one single instrument and shall be known as the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*.

Article XVI

Until the date on which this Protocol comes into force in accordance with the provisions of Article XVIII, it shall remain open for signature by any State.

Article XVII

1. This Protocol shall be subject to ratification by the signatory States.

2. Ratification of this Protocol by any State which is not a Party to the Warsaw Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*.

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3. The instruments of ratification shall be deposited with the Government of the Polish People's Republic.

Article XVIII

1. As soon as thirty signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the ninetieth day after the deposit of the thirtieth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.

2. As soon as this Protocol comes into force it shall be registered with the United Nations by the Government of the Polish People's Republic.

Article XIX

1. This Protocol, after it has come into force, shall be open for accession by any non-signatory State.

2. Accession to this Protocol by any State which is not a Party to the Warsaw Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*.

3. Accession shall be effected by the deposit of an instrument of accession with the Government of the Polish People's Republic and shall take effect on the ninetieth day after the deposit.

Article XX

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the Polish People's Republic.

2. Denunciation shall take effect six months after the date of receipt by the Government of the Polish People's Republic of the notification of denunciation.

3. As between the Parties to this Protocol, denunciation by any of them of the Warsaw Convention in accordance with Article 39 thereof or of The Hague Protocol in accordance with Article XXIV thereof shall not be construed in any way as denunciation of the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*.

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Article XXI

1. Only the following reservations may be made to this Protocol:
   a) a State may at any time declare by a notification addressed to the Government of the Polish People's Republic that the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*, shall not apply to the carriage of persons, baggage and cargo for its military authorities on aircraft, registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities; and
   b) any State may declare at the time of ratification of or accession to the Additional Protocol No. 3 of Montreal, 1975, or at any time thereafter, that it is not bound by the provisions of the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*, in so far as they relate to the carriage of passengers and baggage. Such declaration shall have effect ninety days after the date of receipt of the declaration by the Government of the Polish People's Republic.

2. Any State having made a reservation in accordance with the preceding paragraph may at any time withdraw such reservation by notification to the Government of the Polish People's Republic.

Article XXII

The Government of the Polish People's Republic shall promptly inform all States Parties to the Warsaw Convention or to that Convention as amended, all signatory or acceding States to the present Protocol, as well as the International Civil Aviation Organization, of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of coming into force of this Protocol, and other relevant information.

Article XXIII

As between the Parties to this Protocol which are also Parties to the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (hereinafter referred to as the "Guadalajara Convention") any reference to the "Warsaw Convention" contained in the Guadalajara Convention shall include reference to the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*, in cases where the carriage under the agreement referred to in Article 1, paragraph b) of the Guadalajara Convention is governed by this Protocol.

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Article XXIV

If two or more States are Parties both to this Protocol and to the Guatemala City Protocol, 1971, or to the Additional Protocol No. 3 of Montreal, 1975, the following rules shall apply between them:

a) the provisions resulting from the system established by this Protocol, concerning cargo and postal items, shall prevail over the provisions resulting from the system established by the Guatemala City Protocol, 1971, or by the Additional Protocol No. 3 of Montreal, 1975;

b) the provisions resulting from the system established by the Guatemala City Protocol, 1971, or by the Additional Protocol No. 3 of Montreal, 1975, concerning passengers and baggage, shall prevail over the provisions resulting from the system established by this Protocol.

Article XXV

This Protocol shall remain open for signature until 1 January 1976 at the Headquarters of the International Civil Aviation Organization and thereafter until it comes into force in accordance with Article XVIII at the Ministry for Foreign Affairs of the Polish People's Republic. The International Civil Aviation Organization shall promptly inform the Government of the Polish People's Republic of any signature and the date thereof during the time that the Protocol shall be open for signature at the Headquarters of the International Civil Aviation Organization.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.
DONE AT MONTREAL on the twenty-fifth day of September of the year One Thousand Nine Hundred and Seventy-five in four authentic texts in the English, French, Russian and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Warsaw Convention of 12 October 1929 was drawn up, shall prevail.

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Notes to the *Civil Aviation (Carriers' Liability) Act 1959*

Note 1

The *Civil Aviation (Carriers' Liability) Act 1959* as shown in this compilation comprises Act No. 2, 1959 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 24 March 1998 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Civil Aviation (Carriers' Liability) Act 1959	2, 1959	21 Apr 1959	Part II (ss. 10–19): 1 Nov 1963 (*see Gazette* 1963, p. 3776) Part IV (ss. 26–41): 1 July 1959 (*see Gazette* 1959, p. 1831) Remainder: Royal Assent	
Civil Aviation (Carriers' Liability) Act 1962	38, 1962	28 May 1962	Ss. 1, 2, 6 and 9: Royal Assent Remainder: 1 May 1964 (*see Gazette* 1964, p. 1569)	S. 2(2)
Statute Law Revision (Decimal Currency) Act 1966	93, 1966	29 Oct 1966	1 Dec 1966	—
Civil Aviation (Carriers' Liability) Act 1970	54, 1970	25 June 1970	1 Aug 1970 (*see Gazette* 1970, p. 4972)	S. 8
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
Administrative Changes (Consequential Provisions) Act 1976	91, 1976	20 Sept 1976	20 Sept 1976 *(a)*	S. 4
Civil Aviation (Carriers' Liability) Amendment Act 1976	126, 1976	24 Nov 1976	24 Nov 1976	S. 3(2)

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Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Civil Aviation (Carriers' Liability) Amendment Act 1982	71, 1982	6 Sept 1982	S. 3: 1 Feb 1983 (*see Gazette* 1983, No. G3, p.220) S. 4: 24 Sept 1982 (*see Gazette* 1982, No. G38, p. 3) Remainder: Royal Assent	S. 4(2)
Statute Law (Miscellaneous Provisions) Act (No. 1) 1983	39, 1983	20 June 1983	S. 3: 18 July 1983 *(b)*	S. 7(1)
Australian Airlines (Conversion to Public Company) Act 1988	6, 1988	9 Mar 1988	Ss. 15, 16, 52(2), 55, 57, 60 and 69(2): 30 Apr 1988 (*see Gazette* 1988, No. S117) S. 52(1): 29 June 1988 *(c)* S. 52(3): 30 Apr 1988 Remainder: Royal Assent	—
Civil Aviation Act 1988	63, 1988	15 June 1988	Part III (ss. 17–32), s. 98, Part IX (s. 99) and Part X (ss. 100–103): 1 July 1988 (*see Gazette* 1988, No. S189) Remainder: Royal Assent	S. 100(1)–(3)
Civil Aviation (Carriers' Liability) Amendment Act 1991	189, 1991	11 Dec 1991	Ss. 9, 11(1) and 13(1): *(ca)* Ss. 10, 11(2) and 13(2): 22 June 1998 (*see Gazette* 1998 No. S288) Remainder: Royal Assent	S. 2(2) (rep. by 111, 2009, Sch. 1 [item 8])
as amended by				
Statute Stocktake (Regulatory and Other Laws) Act 2009	111, 2009	16 Nov 2009	Schedule 1 (items 8–10): 17 Nov 2009	—
Qantas Sale Act 1992	196, 1992	21 Dec 1992	Schedule (Part 2): 10 Mar 1993 (*see Gazette* 1993, No. GN17) *(d)*	—
Transport and Communications Legislation Amendment Act (No. 2) 1993	5, 1994	18 Jan 1994	S. 3 (item 43): Royal Assent *(e)*	—

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Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Transport Legislation Amendment Act (No. 2) 1995	89, 1995	20 July 1995	S. 3 (item 26): 20 Jan 1996 *(f)*	—
Transport Legislation Amendment Act 1995	95, 1995	27 July 1995	S. 3 (Part E [items 1–8]): Royal Assent *(g)*	—
Civil Aviation Legislation Amendment Act 1998	1, 1998	24 Mar 1998	Schedule 1: Royal Assent *(h)*	Sch. 1 (item 13) [*see* Table A]
Aviation Legislation Amendment Act (No. 1) 1998	95, 1998	23 July 1998	Schedule 4: Royal Assent *(i)*	—
Transport and Regional Services Legislation Amendment (Application of Criminal Code) Act 2001	143, 2001	1 Oct 2001	2 Oct 2001	S. 4 [*see* Table A]
Insurance and Aviation Liability Legislation Amendment Act 2002	96, 2002	10 Nov 2002	Schedule 1 (items 1–4): 23 July 1998 (*see* s. 2) Remainder: Royal Assent	—
Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Act 2006	102, 2006	16 Sept 2006	Schedule 1 (items 39, 40): 30 Mar 2007 (*see* F2007L00796)	—
Australian Citizenship (Transitionals and Consequentials) Act 2007	21, 2007	15 Mar 2007	Schedules 1–3: 1 July 2007 (*see* s. 2(1) and F2007L01653) Remainder: Royal Assent	—
Statute Law Revision Act 2008	73, 2008	3 July 2008	Schedule 4 (items 118–147): 4 July 2008	—
Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008	79, 2008	12 July 2008	Schedule 1 (items 1–10) and Schedule 2: 24 Jan 2009 (*see* F2008L04662)	—
as amended by				
Aviation Legislation Amendment (International Airline Licences and Carriers' Liability Insurance) Act 2008	87, 2008	20 Sept 2008	Schedule 2 (item 54): (*see* 87, 2008 below)	—

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Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Aviation Legislation Amendment (International Airline Licences and Carriers' Liability Insurance) Act 2008	87, 2008	20 Sept 2008	Schedule 2 (items 29–48, 49(4), (7), 50(2), (3)): 20 Mar 2009 Schedule 2 (items 52, 53): *(j)* Schedule 2 (item 54): *(j)*	Sch. 2 (items 48, 49(4), (7), 50(2), (3), 53) [*see* Table A]
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008	144, 2008	9 Dec 2008	Schedule 11 (items 1, 2): *(k)* Schedule 11 (items 3–7): *(k)* Schedule 11 (items 8–13, 13A, 14, 14A): 10 Dec 2008	—
Statute Stocktake (Regulatory and Other Laws) Act 2009	111, 2009	16 Nov 2009	Schedule 1 (item 7): 17 Nov 2009	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 1 (items 11–14): Royal Assent Schedule 6 (items 20, 21): 19 Apr 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 360, 361) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11) [*see* Table A]
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Schedule 1 (items 29, 30): Royal Assent	—

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Act Notes

(a) The *Civil Aviation (Carriers' Liability) Act 1959* was amended by section 3 only of the *Administrative Changes (Consequential Provisions) Act 1976*, subsection 2(7) of which provides as follows:

(7) The amendments of each other Act specified in the Schedule made by this Act shall be deemed to have come into operation on 22 December 1975.

(b) The *Civil Aviation (Carriers' Liability) Act 1959* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

(c) Subsection 2(3) of the *Australian Airlines (Conversion to Public Company) Act 1988* provides as follows:

(3) Subsection 52(1) shall come into operation on the day after subsection 11(3) is complied with.

The date on which the Australian Airlines Limited certified that the requirements of subsection 11(3) had been complied with was 28 June 1988.

(ca) The proposed amendments of the *Civil Aviation (Carriers' Liability) Act 1959* made by the *Civil Aviation (Carriers' Liability) Amendment Act 1991* were repealed by the *Statute Stocktake (Regulatory and Other Laws) Act 2009* before a date was fixed for their commencement.

(d) The *Civil Aviation (Carriers' Liability) Act 1959* was amended by the Schedule (Part 2) only of the *Qantas Sale Act 1992*, subsection 2(2) of which provides as follows:

(2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

(e) The *Civil Aviation (Carriers' Liability) Act 1959* was amended by the Schedule (item 43) only of the *Transport and Communications Legislation Amendment Act (No. 2) 1993*, subsection 2(1) of which provides as follows:

(1) Subject to subsections (2) to (10) (inclusive), this Act commences on the day on which it receives the Royal Assent.

(f) The *Civil Aviation (Carriers' Liability) Act 1959* was amended by the *Transport Legislation Amendment Act (No. 2) 1995*, subsections 2(2) and (3) of which provide as follows:

(2) The items in the Schedule (other than items 23 and 30) commence on a day or days to be fixed by Proclamation.

(3) If an item in the Schedule (other than item 23 or 30) does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

(g) The *Civil Aviation (Carriers' Liability) Act 1959* was amended by the *Transport Legislation Amendment Act 1995*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(h) The *Civil Aviation (Carriers' Liability) Act 1959* was amended by Schedule 1 only of the *Civil Aviation Legislation Amendment Act 1998*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(i) The *Civil Aviation (Carriers' Liability) Act 1959* was amended by Schedule 4 only of the *Aviation Legislation Amendment Act (No. 1) 1998*, subsection 2(5) of which provides as follows:

(5) The remaining provisions of this Act (including items 9, 10 and 11 of Schedule 1) commence on the day on which this Act receives the Royal Assent.

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Act Notes

(j) Subsection 2(1) (items 3–5) of the *Aviation Legislation Amendment (International Airline Licences and Carriers' Liability Insurance) Act 2008* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
3. Schedule 2, Part 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	20 March 2009
4. Schedule 2, items 51, 52 and 53	The later of: (a) immediately after the commencement of the provision(s) covered by table item 3; and (b) the commencement of Schedule 1 to the *Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008*. However, the provision(s) covered by this table item do not commence at all if the event mentioned in paragraph (b) does not occur.	20 March 2009 (paragraph (a) applies)
5. Schedule 2, item 54	Immediately before the commencement of Schedule 1 to the *Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008*. However, if that Schedule commences before the provision(s) covered by table item 3, the provision(s) covered by this table item do not commence at all.	Does not commence

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Act Notes

(k) Subsection 2(1) (items 30 and 31) of the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
30. Schedule 11, Part 1	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 2 to the *Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Amendments) Act 2008.*	24 January 2009 (*see* F2008L04662) (paragraph (b) applies)
31. Schedule 11, Part 2	The day after this Act receives the Royal Assent. However, the provision(s) do not commence at all if Schedule 2 to the *Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Amendments) Act 2008* does not commence on or before the day after this Act receives the Royal Assent.	Does not commence

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part I	
S. 2	am. No. 126, 1976
S. 3	am. No. 38, 1962 rep. No. 216, 1973
S. 4	rep. No. 216, 1973
S. 5	am. No. 38, 1962; No. 216, 1973; No. 126, 1976; No. 6, 1988; No. 189, 1991; No. 196, 1992; No. 96, 2002; No. 21, 2007; Nos. 79 and 144, 2008; Nos. 5 and 46, 2011
S. 5A	ad. No. 143, 2001
S. 6	am. No. 216, 1973
S. 7	rs. No. 1, 1998
S. 8	rs. No. 189, 1991 am. No. 79, 2008; No. 111, 2009; No. 5, 2011
S. 9	am. No. 38, 1962; Nos. 91 and 126, 1976 rs. No. 189, 1991
Part IA	
Part IA	ad. No. 79, 2008
Ss. 9A–9H	ad. No. 79, 2008
Ss. 9J–9L	ad. No. 79, 2008
Part II	
S. 10	rs. No. 189, 1991
S. 11A	ad. No. 95, 1995 am. No. 95, 1998; No. 96, 2002
S. 12	am. No. 126, 1976; No. 95, 1998; Nos. 73, 79 and 144, 2008
S. 14	am. No. 54, 1970; No. 216, 1973
S. 15	am. Nos. 73, 79 and 144, 2008
S. 16	am. No. 38, 1962; No. 126, 1976
S. 19	am. No. 126, 1976; No. 39, 1983
Part III	
S. 20	am. No. 126, 1976
S. 21A	ad. No. 95, 1995 am. No. 95, 1998; No. 96, 2002
S. 22	am. No. 126, 1976; No. 73, 2008
S. 24	am. No. 126, 1976
S. 24A	ad. No. 189, 1991
S. 25	am. No. 126, 1976; No. 39, 1983; No. 46, 2011
Part IIIA	
Part IIIA	ad. No. 38, 1962
Ss. 25A, 25B	ad. No. 38, 1962 am. No. 126, 1976; No. 189, 1991
S. 25C	ad. No. 38, 1962

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Table of Amendments

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Provision affected	How affected
Part IIIC	
Part IIIC	ad. No. 189, 1991
Ss. 25J–25N	ad. No. 189, 1991
Part IV	
S. 26	am. No. 54, 1970; No. 71, 1982; No. 39, 1983; No. 63, 1988; No. 95, 1995; No. 102, 2006; Nos. 79 and 87, 2008
S. 27	am. No. 38, 1962; No. 54, 1970; No. 216, 1973; No. 6, 1988; No. 189, 1991; No. 196, 1992; No. 79, 2008
Ss. 29, 30	am. No. 126, 1976; No. 73, 2008
S. 31	am. No. 93, 1966; No. 54, 1970; No. 126, 1976 rs. No. 71, 1982 am. No. 95, 1995; No. 73, 2008
S. 33	am. No. 126, 1976; No. 73, 2008
S. 34	am. No. 73, 2008
S. 35	am. No. 126, 1976; No. 95, 1998; Nos. 73, 79 and 144, 2008
S. 37	am. No. 54, 1970; No. 216, 1973
S. 38	am. Nos. 73, 79 and 144, 2008
S. 39	am. No. 38, 1962; No. 126, 1976
S. 40	am. No. 126, 1976
S. 41	am. No. 189, 1991; No. 73, 2008
Part IVA	
Part IVA	ad. No. 89, 1995
Division 1	
Heading to Div. 1 of Part IVA	ad. No. 87, 2008
S. 41A	ad. No. 89, 1995 am. No. 79, 2008
S. 41B	ad. No. 89, 1995 am. No. 1, 1998; No. 79, 2008 rs. No. 87, 2008 am. No. 87, 2008
Heading to s. 41C	rs. No. 87, 2008
S. 41C	ad. No. 89, 1995 am. No. 1, 1998; Nos. 79 and 87, 2008
S. 41CA	ad. No. 1, 1998 rep. No. 87, 2008
S. 41D	ad. No. 89, 1995
Division 2	
Heading to Div. 2 of Part IVA	ad. No. 87, 2008
S. 41E	ad. No. 89, 1995 am. No. 1, 1998; No. 87, 2008
S. 41F	ad. No. 89, 1995 am. No. 143, 2001
Ss. 41G, 41H	ad. No. 89, 1995
S. 41J	ad. No. 89, 1995 am. No. 1, 1998; No. 87, 2008

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Table of Amendments

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Provision affected	How affected
Division 3	
Heading to Div. 3 of Part IVA	ad. No. 87, 2008
S. 41JA	ad. No. 87, 2008
Heading to s. 41K	rs. No. 87, 2008
S. 41K	ad. No. 89, 1995 am. No. 1, 1998; No. 87, 2008
Division 4	
Heading to Div. 4 of Part IVA	ad. No. 87, 2008
S. 41L	ad. No. 89, 1995 rs. No. 1, 1998 am. No. 87, 2008
S. 41M	ad. No. 1, 1998
Part V	
S. 41N	ad. No. 1, 1998
S. 42	am. No. 126, 1976; No. 189, 1991; Nos. 73 and 79, 2008
S. 43	am. No. 189, 1991
Heading to The Schedules	rep. No. 126, 1976
Heading to Schedules	ad. No. 126, 1976
Schedule 1A	
Schedule 1A	ad. No. 79, 2008
Schedule 1	
Heading to the First Schedule	rep. No. 126, 1976
Heading to Schedule 1	ad. No. 126, 1976
Note to Schedule 1 heading	rs. No. 79, 2008
Schedule 2	
Heading to the Second Schedule	rep. No. 126, 1976
Heading to Schedule 2	ad. No. 126, 1976
Note to Schedule 2 heading	rs. No. 79, 2008
Schedule 2	rs. No. 189, 1991
Schedule 3	
Heading to the Third Schedule	rep. No. 126, 1976
Heading to Schedule 3	ad. No. 126, 1976
Note to Schedule 3 heading	rs. No. 79, 2008
Third Schedule	ad. No. 38, 1962
Note to Schedule 4 heading	rs. No. 79, 2008 rep. No. 5, 2011
Schedule 4	ad. No. 189, 1991 rep. No. 5, 2011

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Schedule 5	
Note to Schedule 5 heading	rs. No. 79, 2008
Schedule 5	ad. No. 189, 1991 am. No. 136, 2012

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Note 2

Subsection 25(1)—As at 12 October 2012, no Proclamation had been published in the *Gazette* and no denunciation by Australia of the Warsaw Convention had been made.

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Table A

Application, saving or transitional provisions

Civil Aviation Legislation Amendment Act 1998 (No. 1, 1998)

Schedule 1

13 Modification of regulations

(1) Any regulations that were in force immediately before the commencement of this Schedule for the purposes of Part IVA of the *Civil Aviation (Carriers' Liability) Act 1959* as in force at that time have effect as if references in those regulations to the Minister were references to CASA.

(2) Subitem (1) does not prevent regulations that have effect as mentioned in that subitem from being amended or repealed by further regulations made under the *Civil Aviation (Carriers' Liability) Act 1959*.

Transport and Regional Services Legislation Amendment (Application of Criminal Code) Act 2001 (No. 143, 2001)

4 Application of Amendments

(1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

(2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Aviation Legislation Amendment (International Airline Licences and Carriers' Liability Insurance) Act 2008 (No. 87, 2008)

Schedule 2

48 Definition

In this Division:

commencement time means the time at which this Part commences.

49 Application provisions

(4) The amendments made by items 19, 20, 21, 22, 24, 26 and 29 of this Schedule apply in relation to a flight or operation:

(a) conducted or carried out at or after the commencement time; and

(b) covered by an AOC issued before, at or after the commencement time.

(7) The amendments made by items 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42 and 43 of this Schedule apply in relation to a passenger-carrying operation engaged in, or proposed to be engaged in, at or after the commencement time.

50 Saving provisions

(2) If, immediately before the commencement time, a notice given under subsection 41C(1) or 41CA(1) of the *Civil Aviation (Carriers' Liability) Act 1959* was in force, the notice has effect, from the commencement time, as if it had been given under section 41JA of that Act as amended by this Part.

(3) If, immediately before the commencement time, regulations made for the purposes of paragraph 41K(a), (b) or (c) of the *Civil Aviation (Carriers' Liability) Act 1959* were in force, the regulations have effect, from the commencement time, as if they had been made for the purposes of that paragraph as in force at the commencement time.

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Table A

53 Saving provision

(1) In this item:

Part 1 commencement time means the time at which Part 1 of this Schedule commences.

Part IA notice means a notice given under subsection 41C(1) or 41CA(1) of the *Civil Aviation (Carriers' Liability) Act 1959*, as in force before the Part 1 commencement time, in relation to carriage to which Part IA of that Act applies.

(2) If, immediately before the Part 1 commencement time, a Part IA notice was in force, the notice has effect, from the commencement of this item, as if it had been given under section 41JA of that Act as in force at the commencement of this item.

Acts Interpretation Amendment Act 2011 (No. 46, 2011)

Schedule 3

10 Saving—appointments

The amendments made by Schedule 2 do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.

11 Transitional regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedules 1 and 2.

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