

# CIVIL AVIATION (CARRIERS' LIABILITY).

No. 2 of 1959.

An Act relating to Carriage by Air.

[Assented to 21st April, 1959.]

**B**E it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

## PART I.—PRELIMINARY.

Short title.

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

Commencement.

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

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

Parts.

3. This Act is divided into Parts, as follows:—

Part I.—Preliminary (Sections 1–9).

Part II.—Carriage to which the Warsaw Convention and the Hague Protocol apply (Sections 10–19).

Part III.—Carriage to which the Warsaw Convention without the Hague Protocol applies (Sections 20–25).

Part IV.—Other Carriage to which this Act applies (Sections 26–41).

Part V.—Miscellaneous (Sections 42–43).

4.—(1.) The *Carriage by Air Act 1935* is repealed.

Repeal and saving.

(2.) Notwithstanding the last preceding sub-section, the provisions of the *Carriage by Air Act 1935* continue to apply in relation to causes of action that arose before the date of commencement of this section, and Part III. of this Act does not apply in relation to any such cause of action.

5. In this Act, unless the contrary intention appears—

Definitions.

“Australia” includes the Territories of the Commonwealth;

“the Hague Protocol” means the Protocol to amend the Warsaw Convention opened for signature at The Hague on the twenty-eighth day of September, One thousand nine hundred and fifty-five;

“the Warsaw Convention” means the Convention for the Unification of Certain Rules Relating to International Carriage by Air opened for signature at Warsaw on the twelfth day of October, One thousand nine hundred and twenty-nine, and includes the Additional Protocol to that Convention with reference to Article 2 of that Convention.

6. This Act extends to every Territory of the Commonwealth.

Extension to Territories.

7. This Act binds the Crown in right of the Commonwealth or of any State.

Act to bind Crown.

8. Approval is given to ratification by Australia of the Hague Protocol.

Approval of ratification of Hague Protocol.

9.—(1.) Subject to sub-section (3.) of this section, the text of the Warsaw Convention shall, for the purposes of this Act, be deemed to be the text set out in the First Schedule to this Act, being a translation into the English language of the authentic text in the French language of that Convention.

Texts of Conventions.

(2.) Subject to the next succeeding sub-section, the text of the Hague Protocol shall, for the purposes of this Act, be deemed to be the text set out in the Second Schedule to this Act, being a copy of the authentic text in the English language of that Protocol.

(3.) If any inconsistency is shown between the text set out in the First Schedule or the Second Schedule to this Act and the authentic text in the French language of the Warsaw Convention or of the Hague Protocol, as the case may be, the authentic French text prevails.

(4.) A certificate in writing under the hand of the Minister of State for External Affairs that a document to which the certificate is annexed is a true copy of the authentic text in the French language of the Warsaw Convention or of the Hague Protocol is evidence that the document is such a true copy.

**PART II.—CARRIAGE TO WHICH THE WARSAW CONVENTION AND THE HAGUE PROTOCOL APPLY.**

**Definition.** 10. In this Part, "the Convention" means the Warsaw Convention and the Hague Protocol read and interpreted together as one single instrument in accordance with Article XIX. of the Hague Protocol.

**Convention to have force of law.** 11.—(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.

**Liability in respect of death.** 12.—(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 fourteen of this Act, 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 sub-section, the liability is enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of his 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 death or by his personal representative, the liability is enforceable for the benefit of the personal representative of the passenger in his capacity as personal representative.

(5.) For the purposes of sub-section (3.) of this section, the members of the passenger's family shall be deemed to be the wife or husband, parents, step-parents, grandparents, brothers, sisters, half-brothers, half-sisters, children, step-children and grandchildren of the passenger, and, in ascertaining the members

of the passenger's family, an illegitimate person or an adopted person shall be treated as being, or as having been, the legitimate child of his mother and reputed father or, as the case may be, of his adoptors.

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

Liability in respect of injury.

Certain liabilities not excluded.

**14.** 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 in respect of liability of that employer under a law of the Commonwealth or of a State or Territory of the Commonwealth providing for compensation to workmen or employees in respect of accidents arising out of or in the course of their employment; 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.

Proceeds of insurance policies, &c.

**15.** 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;
- (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;
- (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;
- (d) in the case of death, any sum in respect of the acquisition by a spouse or child of the deceased, consequent upon the death, of, or of an interest in, a dwelling used at any time as the home of that spouse or child, 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 the deceased passenger if he had lived after the time at which he died.

Contributory negligence.

**16.—(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 sub-section 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 sub-section 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.

17.—(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.

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

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

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

Evidence of  
certain matters.

- (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.

Jurisdiction of State courts preserved.

19. For the purposes of section thirty-eight of the *Judiciary Act* 1903–1955, an action under the Convention shall be deemed not to be a matter arising directly under a treaty.

PART III.—CARRIAGE TO WHICH THE WARSAW CONVENTION WITHOUT THE HAGUE PROTOCOL APPLIES.

Interpretation.

20.—(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 twenty-two of this Act, to be a High Contracting Party to the Convention is declared, in pursuance of that section, to be bound by the Convention.

Provisions of Convention to have force of law.

21.—(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.

Evidence of certain matters.

22.—(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 himself of the provisions of the Additional Protocol to the Convention.

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

(3.) A notice published by the Governor-General in the *Gazette*, before the date of commencement of this Part, under sub-section (3.) of section three 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. 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.

Conversion of francs.

24. The provisions of sections twelve to seventeen (inclusive) of this Act, except sub-section (11.) of section twelve, apply for the purposes of this Part as if contained in this Part.

Adoption of certain provisions of Part II.

25.—(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.

Duration of Part.

(2.) Upon the date fixed in pursuance of the last preceding sub-section, this Part shall be deemed to be repealed and the provisions of section eight of the *Acts Interpretation Act 1901-1957* shall apply as if this Part had been repealed by an Act other than this Act.

#### PART IV.—OTHER CARRIAGE TO WHICH THIS ACT APPLIES.

26.—(1.) In this Part, unless the contrary intention appears—

Definitions.

“airline licence” means an airline licence in force under the Air Navigation Regulations;

“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;

“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;

“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 1920-1950*, and includes those Regulations as in force by virtue of a law of a State.



(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 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, that contract shall be deemed to be a contract of carriage providing for that carriage.

Application  
of Part.

27.—(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 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;
- (b) between a place in a Territory of the Commonwealth and a place in Australia outside that Territory;
- (c) between a place in a Territory of the Commonwealth and another place in that Territory; or
- (d) between a place in Australia and a place outside Australia, not being carriage to which the Warsaw Convention, or the Warsaw Convention as affected by the Hague Protocol, applies.

(2.) Where the carrier is the Australian National Airlines Commission, this Part applies in relation to carriage between a place in a State and a place in the same State in like manner as it applies in relation to carriage between a place in a State and a place in another State.

(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 of the Commonwealth (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. 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.

Liability of the carrier for death or injury.

29.—(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 he and his servants and agents took all necessary measures to avoid the destruction, loss or injury or that it was impossible for him or them to take such measures.

Liability of the carrier in respect of baggage.

(2.) For the purposes of the last preceding sub-section but subject to the next succeeding sub-section, 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 thirty-nine of this Act 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 was not responsible for the damage.

(5.) Where, in relation to carriage referred to in sub-section (4.) of section twenty-seven of this Act, 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 baggage was not in his charge at the time of the destruction, loss or injury) are jointly and severally subject to that liability.

Complaint  
to be made in  
respect of  
baggage.

30.—(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 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 sub-section within the time fixed by that sub-section, where the court is satisfied that it is just and equitable to do so by reason of special circumstances.

(4.) Sub-section (2.) of this section does not apply in relation to an action in respect of which leave has been granted under the last preceding sub-section.

Limitation of  
liability.

31.—(1.) Subject to the regulations relating to passenger tickets, the liability of the carrier under this Part in respect of each passenger, by reason of his injury or death, is limited to the sum of Seven thousand five hundred pounds or such higher sum as is specified in the contract of carriage.

(2.) Subject to the regulations relating to baggage checks, the liability of the carrier under this Part in respect of the

baggage of any one passenger, being baggage that is or includes registered baggage, is limited to the sum of One hundred pounds or such higher sum as is specified in the contract of carriage.

(3.) The liability of the carrier under this Part in respect of the baggage, other than registered baggage, of any one passenger is limited to the sum of Ten pounds or such higher sum as is specified in the contract of carriage.

32.—(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.

Contracting out.

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

33.—(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 proves that he acted within the scope of his employment or authority, is entitled to avail himself of the limits of liability, if any, which the carrier himself would be entitled to invoke under section thirty-one of this Act in an action against him in respect of that damage.

Servants and agents of carrier.

(2.) The aggregate of the amounts recoverable from the carrier, his servants and agents shall not exceed the limits referred to in the last preceding sub-section.

(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. The right of a person to damages under this Part is extinguished if an action is not brought by him or for his 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—

Limitation of actions.

(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.—(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).

Liability in respect of death.

(2.) Subject to section thirty-seven of this Act, 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 sub-section, the liability is enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of his 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 death or by his personal representative, the liability is enforceable for the benefit of the personal representative of the passenger in his capacity as personal representative.

(5.) For the purposes of sub-section (3.) of this section, the members of the passenger's family shall be deemed to be the wife or husband, parents, step-parents, grandparents, brothers, sisters, half-brothers, half-sisters, children, step-children and grandchildren of the passenger, and, in ascertaining the members of the passenger's family, an illegitimate person or an adopted person shall be treated as being, or as having been, the legitimate child of his mother and reputed father or, as the case may be, of his adoptors.

(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.

(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 sub-section, 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. 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.

Liability in respect of injury.

37. Nothing in this Part shall be deemed to exclude any liability of a carrier—

Certain liabilities not excluded.

- (a) to indemnify an employer of a passenger in respect of liability of that employer under a law of the Commonwealth or of a State or Territory of the Commonwealth providing for compensation to workmen or employees in respect of accidents arising out of or in the course of their employment; 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.

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

Proceeds of insurance policies, &c.

- (a) a sum paid or payable on the death of, or injury to, a passenger under a contract of insurance;
- (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;
- (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;
- (d) in the case of death, any sum in respect of the acquisition by a spouse or child of the deceased, consequent upon the death, of, or of an interest in, a dwelling used at any time as the home of that spouse or child, 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 had lived beyond the time at which he died.

39.—(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.

Contributory negligence.

(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 sub-section 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.

(4.) If the damages as reduced in accordance with the last preceding sub-section 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.

Regulations relating to passenger tickets and baggage checks.

40. 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 thirty-one of this Act (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.

Application of Part to cargo.

41. The regulations may provide for applying, with such exceptions, adaptations and modifications as are prescribed, the provisions of the Warsaw Convention and the Hague Protocol 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 Warsaw Convention, as replaced by Article XI. of the Hague Protocol, shall have the effect of limiting the liability of the carrier to a sum less than the sum to which his liability would be limited if those provisions were applied without adaptation or modification.

#### PART V.—MISCELLANEOUS.

Stowaways.

42.—(1.) Where a person travels in an aircraft without the consent of the carrier and Part II., Part III. or Part IV. of this Act would apply in relation to the carriage of that person if he were a passenger carried under a contract for his carriage for reward between the place where he boarded the aircraft and his place of disembarkation, the liability (if any) of the carrier, or of his servants or agents, in respect of that person and his 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 he 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 boards the aircraft or, if he 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.

43. The Governor-General may make regulations, Regulations. 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, the Warsaw Convention or the Warsaw Convention as affected by the Hague Protocol.

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## THE SCHEDULES.

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### FIRST SCHEDULE.

Section 9 (1.).

#### CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR.

##### 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 transshipment, 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.

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



FIRST SCHEDULE—*continued.*

## 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;
- (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.

FIRST SCHEDULE—*continued.*

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

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;
- (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

FIRST SCHEDULE—*continued.*

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 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.

*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.

*FIRST SCHEDULE—continued.*

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.*

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 seized 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.

*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.

## FIRST SCHEDULE—continued.

## 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 seized 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.

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 seized 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 seized 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.

FIRST SCHEDULE—*continued.*

## 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.

*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.

FIRST SCHEDULE—*continued.*

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.

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.]*

## SECOND SCHEDULE.

Section 9 (2).

## 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:

## CHAPTER I.—AMENDMENTS TO THE CONVENTION.

*Article I.*

In Article 1 of the Convention—

a) paragraph 2 shall be deleted and replaced by the following:—

“ 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 transshipment, 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.”

b) paragraph 3 shall be deleted and replaced by the following:—

“ 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.”

*Article II.*

In Article 2 of the Convention—

paragraph 2 shall be deleted and replaced by the following:—

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

*Article III.*

In Article 3 of the Convention—

a) paragraph 1 shall be deleted and replaced by the following:—

“ 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.”



SECOND SCHEDULE—*continued.*

b) paragraph 2 shall be deleted and replaced by the following:—

“ 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.”

## Article IV.

In Article 4 of the Convention—

a) paragraphs 1, 2 and 3 shall be deleted and replaced by the following:—

“ 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.”

b) paragraph 4 shall be deleted and replaced by the following:—

“ 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.”

## Article V.

In Article 6 of the Convention—

paragraph 3 shall be deleted and replaced by the following:—

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

## Article VI.

Article 8 of the Convention shall be deleted and replaced by the following:—

“ 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.”

SECOND SCHEDULE—*continued.**Article VII.*

Article 9 of the Convention shall be deleted and replaced by the following:—

“ 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 VIII.*

In Article 10 of the Convention—

paragraph 2 shall be deleted and replaced by the following:—

“ 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.”

*Article IX.*

To Article 15 of the Convention—

the following paragraph shall be added:—

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

*Article X.*

Paragraph 2 of Article 20 of the Convention shall be deleted.

*Article XI.*

Article 22 of the Convention shall be deleted and replaced by the following:—

*“ 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 that 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 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.

SECOND SCHEDULE—*continued.*

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."

*Article XII.*

In Article 23 of the Convention, the existing provision shall be renumbered as paragraph 1 and another paragraph shall be added as follows:—

" 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 XIII.*

In Article 25 of the Convention—

paragraphs 1 and 2 shall be deleted and replaced by the following:—

" 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 XIV.*

After Article 25 of the Convention, the following article shall be inserted:—

*" Article 25 A*

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. 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 XV.*

In Article 26 of the Convention—

paragraph 2 shall be deleted and replaced by the following:—

" 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."

*Article XVI.*

Article 34 of the Convention shall be deleted and replaced by the following:—

" 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."

## SECOND SCHEDULE—continued.

## Article XVII.

After Article 40 of the Convention, the following Article shall be inserted:—

## “ Article 40 A

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.”

## 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.

## 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.

SECOND SCHEDULE—*continued.*

*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.

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.

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.

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