

CIVIL AVIATION (CARRIERS' LIABILITY).

No. 38 of 1962.

An Act to amend the *Civil Aviation (Carriers' Liability) Act 1959*.

[Assented to 28th May, 1962.]

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

1.—(1.) This Act may be cited as the *Civil Aviation (Carriers' Liability) Act 1962*. Short title and citation.

(2.) The *Civil Aviation (Carriers' Liability) Act 1959** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Civil Aviation (Carriers' Liability) Act 1959-1962*.

2.—(1.) Sections one, two, six and nine of this Act shall come into operation on the day on which this Act receives the Royal Assent and the other sections of this Act shall come into operation on a date to be fixed by Proclamation. Commencement.

(2.) The sub-section added to section sixteen of the Principal Act by section six of this Act shall come into operation on the day on which Part II. of the Principal Act comes into operation, but the sub-section so added shall, for the purposes of section twenty-four of the Principal Act as amended by this Act, be taken to be included in the provisions of section sixteen of the Principal Act as so amended as from the commencement of section six of this Act.

3. Section

* Act No. 2, 1959.

Parts.

3. Section three of the Principal Act is amended by omitting the words—

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

and inserting in their stead the words—

“ Part IIIA.—Carriage to which the Guadalajara Convention applies (Sections 25A–25C).

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

Definitions.

4. Section five of the Principal Act is amended by inserting after the definition of “ Australia ” the following definition:—

“ ‘ 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 the eighteenth day of September, One thousand nine hundred and sixty-one;”.

Texts of Conventions.

5. Section nine of the Principal Act is amended—

(a) by omitting from sub-section (2.) the words “ the next succeeding sub-section ” and inserting in their stead the words “ this section ”;

(b) by omitting sub-section (3.) and inserting in its stead the following sub-sections:—

“ (2A.) Subject to this section, the text of the Guadalajara Convention shall, for the purposes of this Act, be deemed to be the text set out in the Third Schedule to this Act, being a copy of the authentic text in the English language of that Convention.

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

(c) by omitting from sub-section (4.) the words “ or of the Hague Protocol ” and inserting in their stead the words “, the Hague Protocol or the Guadalajara Convention ”.

6. Section

6. Section sixteen of the Principal Act is amended by adding at the end thereof the following sub-section:—

Contributory negligence.

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

7. After Part III. of the Principal Act the following Part is inserted:—

“PART IIIA.—CARRIAGE TO WHICH THE GUADALAJARA CONVENTION APPLIES.

“25A. The provisions of the Guadalajara Convention have, subject to Parts II. and III. of this Act 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.

Provisions of Convention to have force of law.

“25B. In relation to carriage to which the Guadalajara Convention applies, references in Part II. (other than section eleven) and in Part III. (other than section twenty-one) 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.

Modification of Parts II. and III.

“25C.—(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.

Evidence of certain matters.

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

8. Section twenty-seven of the Principal Act is amended by omitting from sub-section (1.) all the words after paragraph (d) and inserting in their stead the words—

Application of Part IV.

“not being carriage to which the Warsaw Convention, the Hague Protocol or the Guadalajara Convention applies”.

9. Section thirty-nine of the Principal Act is amended by adding at the end thereof the following sub-section:—

Contributory negligence.

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

10. The

**Third
Schedule.**

10. The Principal Act is amended by adding at the end thereof the following Schedule:—

“ THIRD SCHEDULE.

Section. 9 (2A.)

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.

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

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.

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, 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

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.

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.

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.]