

# Industry should check the differences between Warsaw and Montreal rules

**SINCE 24 January 2008, the Convention for the Unification of Certain Rules For International Carriage by Air signed in Montreal in 1999 (Montreal Convention) has governed the liability of air carriers in respect of most international carriage to and from Australia.**

## What is the Montreal Convention?

The Montreal Convention sets out a framework for determining the liability of air carriers for injury or death of a passenger, loss or damage to luggage or cargo and damage caused by a delay in the transport of passengers, luggage or cargo which occurs during the course of international carriage.

The need for the Montreal Convention stems from the inadequacy of the Convention for the Unification of Certain Rules Relating to International Carriage by Air (Warsaw Convention) which originally determined carriers' liability. The Warsaw Convention, having been first signed in 1929, reflects an era in which the young aviation industry required protection from potentially ruinous compensation claims.

The Warsaw Convention was amended several times. However, not all signatories to the original Convention ratified all amendments. This created difficulties in determining which version of the Warsaw Convention applied.

The Montreal Convention addresses these problems by raising carriers' liability limits, presenting the liability framework in a single consistent Convention and updating the terminology used.

## When does it apply?

The Montreal Convention will apply to international carriage where the country of departure and the country of destination have both adopted the Convention. Most of Australia's major trading partners have already adopted the Montreal Convention, including the US, China, the EU, New Zealand and Japan.

Where the flight is to or from a country that has not adopted the Montreal Convention (such as India, Indonesia or

Thailand), the applicable version of the Warsaw Convention will apply.

In respect of cargo, the Montreal Convention applies during the period the cargo is in the charge of the carrier and extends to carriage by land, sea or inland waterway within an airport and in other limited circumstances.

In respect of passengers, the Montreal Convention applies to accidents which take place on board an aircraft or in the course of embarking or disembarking.

The Montreal Convention will not affect domestic carriage.

## What has changed?

The Montreal Convention introduces a 2 tiered liability framework in respect of injuries to, or death of, a passenger. The first tier is up to 100,000 Special Drawing Rights (SDRs) (approximately AUD\$230,000). The first tier is a strict liability tier and liability of the carrier can only be reduced in the case of contributory negligence by the passenger.

The second tier is unlimited. However, the carrier can avoid liability by proving that the damage was not due to its negligence or was due solely to the negligence or other wrongful act or omission of a third party.

Liability for destruction, loss, damage or delay to baggage is limited to 1,000 SDRs (approximately AUD\$2,300) unless the passenger has made a special declaration of interest at the time of checking the luggage.

Liability for destruction, loss, damage or delay to cargo is set at 17 SDRs (approximately AUD\$39) per kilogram unless the consignor made a special declaration of interest at the time the cargo was handed over to the carrier. This is the same limit as under some versions of the Warsaw Convention, but is greater than under the original Warsaw Convention.

Other changes include:

- the requirement that liability limits be reviewed every five years. This means the liability limits can be increased to account for inflation;



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- the ability for a damages claim to be brought in the country where the passenger resides at the time of the accident if it is a country from which the carrier operates and where it has premises; and
- allowing for simplified documentation including electronic ticketing.

## What you need to do

With increasing liability limits, carriers need to consider the adequacy of their existing insurance cover.

The Montreal Convention will apply regardless of whether reference to the Convention is made in a carrier's terms and conditions. However, it is possible for carriers to agree to higher limits of liability. It is therefore important for carriers to ensure that they do not, through their terms and conditions, unintentionally agree to higher liability limits than those prescribed by the Montreal Convention. One method to ensure this is to reference the Montreal Convention in the carrier's terms and conditions and provide that liability limits are in accordance with the limits set in the Convention.

Carriers should also be aware that liability in relation to delays and damage to cargo is not strict and that in the event of a claim, there may be defences available. Carriers should also be aware that liability limits do not apply to acts by the carrier that are deemed wilful or deliberate.