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Customs Trade and Transport Law E-alert

Montreal Convention

In previous e-alerts we have reported that the Australian Government had decided to accede to the Convention for the Unification of Certain Rules For International Carriage by Air signed in Montreal in 1999 ("*Montreal Convention*"). The *Montreal Convention* formally applies to Australia from 24 January 2009 which is also the date that the relevant amending legislation takes effect.

What is the *Montreal Convention*?

The *Montreal Convention* puts in place a framework for determining the liability of air carriers for injury or death of a passenger, loss or damage to luggage or cargo and damaged caused by or 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 was the Convention that 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 The *Warsaw Convention* also used terminology and language which is now outdated.

In order to update the *Warsaw Convention* it was amended several times. However, not all signatories to the original Convention ratified all amendments. This created difficulties and uncertainty in determining which version of the *Warsaw Convention* applied.

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

When will it apply?

The *Montreal Convention* will apply to international carriage in which 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.

Countries that are yet to adopt the *Montreal Convention* include India, Indonesia and Thailand. Where the flight is to or from a country that has not adopted the *Montreal Convention* the applicable version of the *Warsaw Convention* will continue to 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 major difference between the *Warsaw Convention* and the *Montreal Convention* is 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 of liability is unlimited and does not require the injured party to prove fault. However, the carrier can avoid liability by proving that the damage was not due to their negligence or was due solely to the negligence or other wrongful act or omission of a third party.

Liability for damage caused by delay of a passenger is limited to 4,150 SDRs (approximately AUD\$9,500).

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*.

A further major change is the requirement that liability limits be reviewed every 5 years. This means the liability limits can be increased to account for inflation without the *Montreal Convention* having to be amended.

Other changes include:

- in addition to the options available under the *Warsaw Convention*, a claim for damages may 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 a premises; and
- allowing for simplified documentation including electronic ticketing.

What you need to do?

With increasing liability limits, carriers will 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 carriers' 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 terms and conditions and provide that liability limits are in accordance with 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. Conversely, potential claimants should be aware that liability limits do not apply to acts by the carrier that are deemed wilful or deliberate.

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