

Trade & Transport Alert

Changes to air carrier liability, aviation insurance requirements and claims for damage by aircraft

WHAT YOU NEED TO KNOW

On 31 March 2013, the changes to the *Aviation Legislation Amendment (Liability and Insurance) Act 2012* (Cth) will come into force. These changes impact each of the *Civil Aviation (Carrier's Liability) Act 1959* (Cth) and the *Damage by Aircraft Act 1999* (Cth) and include:

- increasing the passenger liability limit and insurance requirements from \$500,000 to \$725,000;
- limiting the ability of claimants to seek compensation for mental injuries unless they have also suffered other personal injuries, material loss or damage or destruction to their personal property; and
- contributory negligence will be considered in claims brought under the *Damage by Aircraft Act 1999* (Cth).

WHAT YOU NEED TO DO

- Risk management systems will need to be updated to reflect the increased liabilities. In particular, you need to ensure that your insurance satisfies the new requirements and increased liability.
- You also need to be aware that there will be changes to proceedings brought under the *Damage by Aircraft Act 1999* (Cth) for events that occur after these changes take effect, particularly in relation to who can claim, whether there is any contributory negligence on the part of the claimant and your rights to claim contribution.

Aviation Legislation Amendment (Liability and Insurance Act 2012

On **31 March 2013** the changes introduced in the *Aviation Legislation Amendment (Liability and Insurance) Act 2012* (Cth) ("the Amendment Act") will commence (available from the ComLaw website by clicking [here](#)). The Amendment Act amends each of the *Civil Aviation (Carrier's Liability) Act 1959* (Cth) and the *Damage by Aircraft Act 1999* (Cth).

These amendments reflect proposals contained in the National Aviation Policy White Paper released on 16 December 2009 (this White Paper is available from the Department of Infrastructure and Transport's website by clicking [here](#)).

Proposed changes

The changes proposed in the Amendment Act include the following:

- increasing the liability limit and the insurance requirement of a domestic carrier for

passengers from \$500,000 to \$725,000 under the *Civil Aviation (Carrier's Liability) Act 1959* (Cth);

- replacing the reference to "personal injury" with "bodily injury" so that the wording used in the *Civil Aviation (Carrier's Liability) Act 1959* (Cth) is consistent with the wording in paragraph 1 of Article 17 of the Convention for the Unification of Certain Rules for International Carriage by Air (otherwise known as the "1999 Montreal Convention", which represents the current international benchmark for determining the liability of air carriers for the delay, injury or death of passengers and the loss or damage to cargo);
- regulations made under the *Civil Aviation (Carrier's Liability) Act 1959* (Cth) relating to the carriage of cargo may provide that provisions from the 1999 Montreal Convention apply instead of the

Montreal No. 4 Convention (an instrument made in 1975 to supplement the Warsaw Convention of 1929), meaning that the tiered approach to a carrier's liability for the destruction, loss, damage or delay to baggage and the periodical review of liability limits prescribed in the 1999 Montreal Convention can be utilised in any such regulations;

- limiting the ability of claimants to seek compensation under the *Damage by Aircraft Act 1999* (Cth) for mental injuries unless they

have also suffered other personal injuries, material loss or damage or destruction to personal property;

- parties found liable under the *Damage by Aircraft Act 1999* (Cth) are able to seek a right of contribution against persons who are jointly or severally liable or who cause or contribute to the injury, loss or damage; and
- contributory negligence on the part of the claimant will be considered when compensation claims are brought under the *Damage by Aircraft Act 1999* (Cth).

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