

AVIATION LAW ALERT

JANUARY 2007

AVIATION ACCIDENTS AND THE PERSONAL INJURIES PROCEEDINGS ACT 2002

Aircraft operated by the holder of a charter licence or airline licence undertaking commercial transport operations involving a contract for carriage of passengers by aircraft have their liability for injury to their passengers regulated by legislation. For commercial carriage of passengers within Queensland, the *Civil Aviation (Carrier's Liability) Act 1964* applies. For commercial transport operations involving the carriage of passengers internationally to or from Australia, the *Civil Aviation (Carrier's Liability) Act 1959* applies.

The effect of the legislation is to adopt international standards of a uniform nature for aviation liabilities by adopting the principles set out in the Warsaw Convention of 1929. The legislation abolishes common law rights to sue in negligence or contract for these contracts of carriage and sets a maximum on the sum recoverable per passenger for personal injury or death. It also sets a two year limitation period for claim recovery and makes the carrier absolutely liable for bodily injury to a passenger from an accident which took place on board an aircraft or in the course of the operations of embarking or disembarking.

In June 2002, the *Personal Injuries Proceedings Act (Qld)* received royal assent. That legislation introduced a pre-proceedings process for the resolution of claims for damages for personal injury and death. Section 6 of the *Personal Injuries Proceedings Act* prescribes that the Act applies in relation to all personal injury arising out of an incident whether happening before, on or after 18 June 2002.

Since the commencement of the legislation, questions have arisen as to the extent to which the *Personal Injuries Proceedings Act 2002* may affect carrier liability to passengers injured in the course of commercial operations of the aircraft either domestically or internationally.

Two actions have been dealt with by the Court since the introduction of the Act.

Section 6(2) of the *Personal Injuries Proceedings Act 2002* identifies a series of circumstances in which the Act will not apply to a personal injury. Section 6(5) of the *Personal Injuries Proceedings Act 2002* specifies that the Act *does not affect the seeking or recovery or award of damages in relation to personal injury under any of the following - the Civil Aviation (Carrier's Liability) Act 1964 including the applied provisions as defined under that Act.*

In Liddington & Ors -v- Lloyd Helicopters Pty Limited & Anor an Application was brought pursuant to section 43 of the *Personal Injuries*

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Proceedings Act 2002 for leave to commence a proceeding on the eve of the expiration of the limitation period for an aviation accident. The claim of the plaintiffs related to an incident involving the death of two persons on board a helicopter which crashed on a flight from Mackay to Hamilton Island on 17 October 2003. As the *Civil Aviation (Carrier's Liability) Act 1964* principally adopts the Commonwealth legislation, the plaintiff's concern was that the applicable limitation period was of two year duration as opposed to the usual three years for personal injury claims in Queensland.

The plaintiffs claims involved both claims for dependency and nervous shock. None of the plaintiffs were passengers on the aircraft. However, the liability of a carrier for the death of a passenger would extend to the claim for dependency and as such the dependency claim was capable of falling within the ambit of the *Civil Aviation (Carrier's Liability) Act 1964*.

The respondents consented to the Application for leave pursuant to section 43. The question of whether the claims for nervous shock brought by non passengers fell within the ambit of the *Civil Aviation (Carrier's Liability) Acts* was not specifically addressed in the Judgment. In addition some of the claims related to death of crew, and not passengers. The District Court decided to grant leave pursuant to section 43 notwithstanding it was not absolutely clear that the circumstances were really ones of urgency.

If the nervous shock claims did not fall within the ambit of the Civil Aviation (Carrier's Liability) legislation then the Court would in effect have been granting leave to commence a proceeding a year sooner than would ordinarily be required. The Court however decided to treat the circumstances as one in which the Court determined that it was "content to treat the circumstances as ones in which the expiry of the limitation period was imminent".

Reasons were not given by the Court concerning the extent to which section 6(5) of the *Personal Injuries Proceedings Act 2002* affected the claim. Principally, the Court granted leave pursuant to section 43 of the *Personal Injuries Proceedings Act* which suggests that the Court was satisfied that processes associated with the Act applied to the claims. It remains uncertain what is meant by PIPA not affecting *the seeking or the recovery or award of damages in relation to personal injury under the Civil Aviation (Carrier's Liability) Act 1964 (section 6(5) of PIPA)*. If the term *seeking damages* within the ambit of PIPA is given the same interpretation that *seeking damages* is given within the Workers' Compensation legislation then it is arguable that the requirements of the *Personal Injuries Proceedings Act* need not be complied with at all in relation to personal injury claims arising from commercial aviation carriage of passengers in respect to domestic travel within Queensland.

To date, no decisions have been forthcoming from the Court directly

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dealing with the extent to which PIPA affects civil aviation liabilities for personal injuries, involving commercial carriage of passengers. PIPA will of course apply to those claims not involving operation of the *Civil Aviation (Carrier's Liability) Act*.

The position is clearer in respect to carriage involving the operation of commonwealth legislation. On 1 November 2006 the District Court of Queensland delivered Judgment in the matter of Poonkam -v- Royal Brunei Airlines [2006] QTC 374. In that case, the plaintiff commenced a claim for personal injury arising as a consequence of international travel from Brisbane via Brunei to Bangkok. The passenger ticket also contemplated a return journey to Brisbane. The plaintiff alleged to sustain injury during transit in Brunei and during her passage through immigration in Bangkok. The plaintiff asserted that the respondent/ defendant had made assurances that a stroller would be provided to assist with the transit of her son and that its failure to do so constituted a breach of contract for which the airline was liable.

The plaintiff filed an Application seeking an extension of time to commence proceedings under section 59 of the *Personal Injuries Proceedings Act 2002*. The carrier contested the Application principally on two grounds. The first was that the *Civil Aviation (Carrier's Liability) Act 1959 (Cth)* applied to the claim resulting in any other cause of action for personal injury being extinguished by that Act. Secondly, the carrier argued that the two year limitation period under the *Civil Aviation (Carrier's Liability) Act 1959 Cth* had expired. In interpreting section 36 of the *Civil Aviation (Carrier's Liability) Act 1959 Cth*, the Court also applied the House of Lords decision of Sidhu -v- British Airways PLC [1997] 1 All ER 193. It also recognised the recent approval of that English authority by the High Court of Australia in Povey -v- Qantas Airways Limited (2005) 216 ALR 427.

The District Court of Queensland concluded that the applicant plaintiff's claim could only be brought under the *Civil Aviation (Carrier's Liability) Act 1959* as that Act expressly excluded liability under any other law. The Court considered *there is no utility in extending time under the Personal Injuries Proceedings Act 2002* as the limitation period imposed by the *Civil Aviation (Carrier's Liability) Act* had expired and the applicant's claim could only have been brought under that Act.

In the course of the Judgment, the Court also drew attention to the fact that the applicant plaintiff's claim against the carrier was grounded in contract and not a claim expressing a cause of action arising under the *Civil Aviation (Carrier's Liability) Act*.

Comment

The *Civil Aviation (Carrier's Liability) Act 1959 (Cth)* grants to State Courts jurisdiction to hear matters regulated under that Act. The extent to which the *Personal Injuries Proceedings Act 2002* is required to be

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complied with in relation to domestic commercial travel by a passenger with a licensed carrier remains uncertain. The Court is yet to consider in detail the extent to which section 6(5) of the *Personal Injuries Proceedings Act 2002* excludes the *Civil Aviation (Carrier's Liability) Act 1964* claims from the procedures required under the *Personal Injuries Proceedings Act 2002*.

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