

Trade & Transport Alert

The interaction between the Civil Aviation (Carriers' Liability) Act and Personal Injuries Proceedings Act

Ailsa Walker Eyre v Emirates [2012] QDC 364

WHAT YOU NEED TO KNOW

- Proceedings were commenced under the *Civil Aviation (Carriers' Liability) Act 1959* (Cth) for damages relating to personal injuries. The defendant, Emirates, sought to have these proceedings struck out on the basis that pre-trial requirements imposed by separate Queensland legislation had not been complied with.
- Justice McGill of the Queensland District Court decided that the plaintiff, Ailsa Walker Eyre, was not required to comply with the requirements of this Queensland legislation prior to commencing the proceedings.

WHAT YOU NEED TO DO

- This decision provides guidance on the conduct of proceedings under the *Civil Aviation (Carriers' Liability) Act 1959* (Cth) both in and beyond Queensland.
- You will need to consider the impact of this decision in any future claims.

On 19 December 2012, Justice McGill of the Queensland District Court handed down the judgment in *Ailsa Walker-Eyre v Emirates* [2012] QDC 364 (a full text copy of this judgment is available from the Queensland Court's website by clicking [here](#)).

The background

The plaintiff was travelling from the United Kingdom to Australia on a plane operated by the defendant. Following landing at Brisbane Airport on 11 January 2010, while waiting to disembark, the plaintiff was struck on the head by luggage falling from an overhead locker as a result of the actions of another passenger. This caused the plaintiff to suffer personal injuries.

On 7 November 2011, the plaintiff filed a claim in the Queensland District Court, claiming damages for personal injuries from the defendant under the *Civil Aviation (Carriers' Liability) Act 1959* (Cth) (the Act).

The Act gives force to the 1999 Montreal Convention (the Convention), which addresses the liability of the carrier and the extent of compensation for damage.

Article 17 of the Convention provides that a "carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking".

The defendant sought to have the claim struck out on the basis that the plaintiff did not comply with the pre-trial requirements in the separate *Personal Injuries Proceedings Act 2002* (Qld) (PIPA).

The parties agreed that the plaintiff had not complied with the requirements of PIPA prior to lodging the claim.

The question therefore before Justice McGill was whether the plaintiff was required to comply with PIPA prior to commencing the proceedings.

The judgment

Justice McGill started his analysis by confirming that PIPA does not apply of its own force because of section 109 of the Australian Constitution.

His Honour identified the relevant question to be whether, and to what extent PIPA is applied by section 79 of the *Judiciary Act 1903* (Cth) (the Judiciary Act).

Section 79(1) of the Judiciary Act provides:

The laws of each State or Territory, including laws relating to procedure, evidence, and the competency of witnesses, shall, except as otherwise provided by the Constitution or the laws of the Commonwealth, be binding on all Courts exercising federal jurisdiction in that State or Territory in all cases to which they are applicable.

The consideration that Justice McGill had regard to was, firstly, whether PIPA is applicable in this case, and secondly, whether the Constitution or the laws of the Commonwealth "otherwise provide".

Does PIPA apply?

Justice McGill noted (in obiter) that if the plaintiff had suffered an injury on an aircraft which had just completed an intra-state journey in Queensland, section 6(5) of PIPA would expressly exclude the applicability of PIPA.

His Honour considered this exclusion strongly suggested a legislative assumption that claims for damages in relation to personal injury under the Act would not be subject to PIPA.

Justice McGill then considered section 59 of PIPA and decided that it is not applicable for the purposes of section 79 of the Judiciary Act. Section 59 of PIPA provides that in certain circumstances, a claimant may commence a proceeding even though the limitation period has ended. This is inconsistent with Article 35 of the Convention (which provided that an action must be brought within two years).

"Otherwise provides"

Justice McGill focused his attention on the Act and the way it operates to decide whether, if the relevant part of PIPA applies, it derogates from the effect of the Act.

His Honour first considered the actual text of the Convention. Article 17 (which imposes liability for damage) exists upon condition only that the death or injury took place on-board the aircraft or in the course of any of the operations of embarking or disembarking.

Justice McGill considered that "only" was key here as it meant that Article 17 is expressed so as to require no other condition for the liability of the carrier. The provisions of PIPA are contrary to this as they impose additional conditions (namely pre-litigation procedures) or securing the leave of the relevant court to commence the proceeding.

Accordingly, his Honour found that bringing the action within the two year period allowed by Article 35 of the Convention was the only pre-requisite for litigation to be brought under Article 17. Imposing further pre-litigation requirements before a plaintiff commences proceedings derogates from the operation of the Act and the Convention.

Justice McGill also considered the reasons why the Act and the Convention "do otherwise provide". His Honour considered this was because the process contained in the Act and the Convention is inconsistent with the operation of the relevant part of PIPA as the Act and the Convention provide a detailed basis for carrier liability, not just in relation to damages for personal injury, but also in relation to other losses in other circumstances and this is part of a scheme designed to provide international harmonisation of liability.

His Honour was of the opinion that it would derogate from the overall scheme of the Convention as adopted by the Act if a Queensland law imposed, only for Queensland, the pre-litigation requirements of PIPA.

Contacts



Shane Bosma
Special Counsel
Brisbane
T: +61 7 3259 7017
E: shane.bosma@ashurst.com



Paul Newman
Partner
Brisbane
T: +61 7 3259 7061
E: paul.newman@ashurst.com



David Morgans
Lawyer
Brisbane
T: +61 7 3259 7385
E: david.morgans@ashurst.com

This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions. For more information please contact us at aus.marketing@ashurst.com.

Ashurst Australia (ABN 75 304 286 095) is a general partnership constituted under the laws of the Australian Capital Territory carrying on practice under the name "Ashurst" under licence from Ashurst LLP, a limited liability partnership registered in England and Wales. Further details about the Ashurst group can be found at www.ashurst.com.

© Ashurst Australia 2013. No part of this publication may be reproduced by any process without prior written permission from Ashurst. Enquiries may be emailed to aus.marketing@ashurst.com. Ref: 224388828.01