



31 January 2018

Athens Convention
Maritime and Shipping Branch
Department of Infrastructure and Regional Development
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1. Introduction

Carnival Australia welcomes the opportunity to contribute to the consultation process on Australia's possible ratification of the *Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974*, as amended by the 2002 Protocol ('Athens Convention').

Carnival Australia is the largest cruise operator in the Australian market and is focused on creating positive and memorable cruise experiences for our guests. As a responsible operator, we recognise the importance of a fair and transparent framework for consumer protection. Indeed, all Australian passage contracts for Carnival Australia cruise brands fully incorporate the protections of Australian consumer laws.

While ratification of the Athens Convention and determination of the most appropriate liability framework are ultimately matters for the Australian Government, Carnival Australia sees its role as sharing its experience of the operating environment to assist the Department's consideration and its fullest understanding of the matters raised in the discussion paper.

In making this submission, our position is neutral on the Athens Convention but we hope to provide important context in relation to the approach to existing consumer protection frameworks and passenger claims in practice.

2. About Carnival Australia

Carnival Australia is part of the world's largest leisure company, Carnival Corporation & plc, and represents seven leading cruise brands in the Australian and New Zealand market: Carnival Cruise Line, Cunard Line, Holland America Line, P&O Cruises Australia, P&O Cruises World Cruising, Princess Cruises and Seabourn.

Together these brands account for up to 70 per cent of the Australian and New Zealand cruise passenger market, delivering memorable cruise holiday experiences close to home and further abroad.

Carnival Australia is the only cruise organisation to have ships based year round in Australia with P&O Cruises Australia, Princess Cruises and Carnival Cruise Line with an 85-year, 40-

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year and five-year history respectively in this market. Cunard, Holland America Line, Seabourn and P&O UK also have proud histories sailing in this region.

3. Carnival Australia’s commitment to consumer protection

All Australian passage contracts for Carnival Australia cruise brands fully incorporate the protections of Australian consumer laws.

Carnival Australia’s passage contracts which have been developed in consultation with state and federal consumer regulators expressly state:

“Certain laws such as the Competition and Consumer Act 2010 (Cth) and any applicable state based consumer legislation (from here known as ‘consumer laws’), are in place for Your protection. They are designed to ensure our services are provided with due care and skill and are reasonably fit for a cruise holiday. These Booking and Travel Conditions do not alter any protection given to You by consumer laws.”

Carnival Australia takes an expansive approach in relation to the application of Australian consumer laws to cruise holidays. Any cruise which is marketed and sold to Australian consumers will be governed by the Australian passage contract which incorporates the protections of Australian consumer laws. This is the case even if the cruise is wholly international and does not call in any Australian ports. For example, if an Alaskan cruise visiting only Alaskan ports is marketed and sold to an Australian consumer the Australian passage contract will apply.

4. Matters identified by the Department’s discussion paper regarding the current framework in Australia

The Department’s Discussion Paper sets out a number of matters it suggests Australian passengers may face under the current framework. Carnival Australia makes the following comments in relation to those topics to assist the Department in understanding the operating environment.

Matters identified in the discussion paper	Carnival Australia comments
<p>Bringing an action in an Australian court: in many cases the passenger’s contract will contain an exclusive jurisdiction clause that specifies the nation that a claim may be brought, which is often not Australia.</p>	<p>This is not the case for Carnival Australia cruise brands. All Carnival Australia passage contracts permit claims to be brought in Australian courts.</p>
<p>Choice of law: while the passenger may physically purchase a ticket for a cruise in Australia, the cruise terms may say the contract</p>	<p>This is not the case for Carnival Australia cruise brands. All Carnival Australia passage contracts are subject to NSW law.</p>

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<p>is subject to the laws of a foreign nation. If the claimant does not challenge the issue (at their own cost through litigation), or if they are unsuccessful and the court determines the appropriate law is the foreign law, the claimant may be entitled to less (if any) compensation that the claimant would have otherwise been entitled to under Australian law.</p>	
<p>How liability is to be proven: if the matter is heard in Australia or in a nation that is not a Member State to the Athens Convention, the Claimant would need to prove the Carrier's fault or negligence for shipping-related incidents causing personal injury or death.</p>	<p>Carnival Australia notes that shipping related incidents (defined under the Athens Convention as shipwreck, capsized, collision or stranding of the ship, explosion or fire in the ship or defect in the ship) are extremely rare. The safety and security of our guests is paramount and we operate in a highly regulated environment. Shipping related incident claims are not representative of the nature of passenger claims Carnival Australia generally receives.</p>
<p>How much can be recovered: there are no defined limits to compensation that passengers can claim, which can cause uncertainty. The outcome will be subject to the laws in the nation or the Australian state/territory where the claim is heard. This also exposes Carriers and their insurance companies to a great deal of uncertainty.</p>	<p>Carnival Australia agrees there is no singular defined limit in relation to compensation passengers may claim. Indeed, under existing Australian consumer laws, it is not permissible for suppliers of goods and services to cap liability in the event of certain breaches.</p> <p>In assessing claims for compensation, Carnival Australia is guided by relevant Australian case law.</p>
<p>The ability to recover payment: As there is no compulsory requirement for ships to have insurance for passenger claims, or a legal presence in Australia, passengers are potentially exposed to the risk of a Carrier not being able to pay compensation (or avoiding payment), even if a claim is successful, as the compensation may exceed the carriers assets (the Carrier may be a</p>	<p>This is not the case for Carnival Australia cruise brands. All Carnival Australia vessels carry insurance in relation to passenger claims and Carnival Australia accepts service of claims in Australia.</p>

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<p>'one ship company' or have assets in another country). Further, even if the Carrier has insurance, passengers are not able to sue the insurer directly, and thus may not have access to insurance funds (especially where the insurer only reimburses the Carrier after (and only to the extent that) the Carrier makes a payment in response to a claim.</p>	<p>In addition, the majority of Carnival Australia ships homeported in Australia carry Passenger Liability Regulation (PLR) insurance consistent with compulsory insurance requirements under the Athens Convention.</p>
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5. Carnival Australia's approach to passenger claims

Carnival Australia carried an unprecedented one million Australian and New Zealand passengers on its ships alone last year (October 2016 to October 2017). These were guests booked on locally-based ships as well as globally. Relative to the number of passengers carried, Carnival Australia receives a low volume of passenger claims.

The vast majority of claims received are resolved informally and efficiently, without court intervention. Carnival Australia's approach to the resolution of claims is more holistic than an exacting legal calculation of liability. As a customer-centric organisation, a range of factors are taken into consideration in an effort to achieve mutual and reasonable outcomes.

Despite complexities in relation to the operation of current liability frameworks, in our experience, passenger claims are predominantly capable of swift and sensible resolution.

While ratification of the Athens Convention may present a useful codification of liability principles, its impact in practice is likely to be limited because of the comprehensive nature of Australian consumer law.

6. Further considerations

Carnival Australia notes that the Athens Convention applies only to international carriage. We see no clear rationale for a liability regime which differentiates between Australian passengers on a domestic cruise and Australian passengers on an international cruise. For this reason we apply the Australian passage contract incorporating Australian consumer laws to both domestic and international cruises marketed to Australian consumers.

Ratification of the Athens Convention and determination of the most appropriate liability framework are ultimately matters for the Australian government. Carnival Australia encourages a practical consideration of the issues informed by the context provided in this submission.

In summary, we make the key points:

- Australian Consumer Law applies to Australian consumers who purchase cruise holidays and is already fully incorporated into Carnival Australia's passage contracts

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- Carnival Australia allows claims to be brought in Australia
- Carnival Australia ships carry insurance for passenger claims
- Carnival Australia considers a range of factors when resolving passenger claims

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