

Joint Position Paper

23 August 2023

No. QUD 183 of 2023

Federal Court of Australia
District Registry: Queensland
Division: General

DEBRAH JACKSON

Applicant

CARNIVAL PLC (ARBN 23 107 998 443)

Respondent

Issue	Applicant's Position	Respondent's Position
Description of class members	The Group Members are persons who were passengers on the Cruise and were "consumers" within the meaning of Schedule 2 of the <i>Competition and Consumer Act 2010 (Cth)</i> ¹	<p>The respondent believes that there are approximately 1,420 passengers that will fall within the pleaded "group member" definition.</p> <p>Enquiries in relation to whether there are overseas passengers who may have contracted on overseas terms that include an exclusive jurisdiction clause nominating a foreign court, an agreement to arbitrate or class waiver are continuing. Also, subject to its consideration of those terms, the respondent will apply to stay the claims of such passengers. Such an application for a stay may be brought prior to the filing of the defence, but appropriate orders amending the timetable can be applied for if that arises.</p>
A timetable for the delivery of a defence	The Applicant filed an Amended Statement of Claim (ASOC) on 8 August 2023. A draft order providing for the filing of the Defence is attached hereto.	<p>The draft order provided by the respondent provides for a defence to be filed by 5 October 2023.</p> <p>The respondent will consider the applicant's amended statement of claim and undertake necessary factual</p>

¹ Para 7 Amended Statement of Claim (ASOC)

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		investigations. If an application for a stay in respect of overseas passengers is filed prior to the filing of the defence appropriate orders amending the timetable can be applied for if that is necessary.
Pleading issues	The Respondent contends that the ASOC is deficient because it fails to comply with s33C of the <i>Federal Court of Australia Act 1976</i> (Cth) (FCA) in that it does not plead the claims of group members. The Applicant denies this and the draft order makes provision for the Respondent to make any application in this regard.	<p>The respondent's had requested that the applicant file a further amended statement of claim addressing the failure to plead the claims of group members. The respondent considered that it would be consistent with case management objectives for this to be dealt with prior to the respondent filing a defence. The applicant has declined to do so. The respondent has put the applicant on notice of the defects in relation to failing to plead group member claims.</p> <p>The draft order provides for the respondent to file an application in relation to these. The respondent has placed the applicant on notice that it may, alternatively, raise such issues in its defence.</p> <p>The respondent otherwise proposes to consider its position in relation to a declassing application under s 33N after pleadings have closed.</p>
Discovery	Discovery can be revisited at the second case management hearing once pleadings are closed	The respondent agrees that these matters can be considered once any pleading disputes have been resolved or pleadings have closed.
The financial basis upon which the class action is being conducted	The Applicant is unfunded. The Applicant's solicitors firm (Marbesa Pty Ltd t/a Carter Capner) have indemnified the Applicant in relation to adverse costs and security for costs. There is no funding agreement and no insurance agreement.	<p>The applicant has confirmed that the class action is not funded by a litigation funder and there is no insurance agreement.</p> <p>The parties agree that the applicant's solicitors will provide security. The issue of security for costs is addressed further below</p>
Whether any competing class action has been filed or has been foreshadowed	Not to the knowledge of the Applicant or its solicitors.	The respondent agrees with the applicant's position.
Security for costs	The Applicant's solicitors have written to the Respondent's solicitors confirming the Applicant's indemnification for orders for security. There is no dispute that security will be	The respondent considers that the principal issue in dispute in relation to security for costs is the quantum of security, although an issue may arise

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	<p>ordered to be provided but there may be a dispute about quantum. The draft orders provide for an application in this regard in the event the parties cannot resolve the matter between themselves.</p>	<p>about the form of security depending on what is offered by the applicant.</p> <p>The respondent intends to confer with the applicant further in relation to this issue.</p> <p>An order for the filing of a security for costs application by the respondent, if no agreement is reached, has been included in the draft order provided by the respondent.</p>
<p>Management of the likely justiciable issues</p>	<p>This can be deferred to the close of pleadings.</p>	<p>The respondent agrees and reserves its right to make further interlocutory applications if they become appropriate. It also reserves its rights in relation to the formulation of the common questions.</p>
<p>Timetable of interlocutory applications</p>	<p>The draft orders proposed make provision for interlocutory application for security for costs and strike-out.</p>	<p>The respondent agrees with the applicant, save that the potential strike out application would be in relation to the failure to plead group member claims. The respondent nonetheless reserves its rights to allege that the pleading of such claims are defective even if it does not bring an application by this time, and the applicant has been placed on notice of this position.</p>
<p>Timetabling of further case management hearings</p>	<p>The Applicant proposes this occur after the close of pleadings.</p>	<p>The respondent agrees that this should occur after the close of pleadings.</p>
<p>Expert evidence</p>	<p>Expert evidence will be necessary.</p>	<p>The respondent agrees that expert evidence will be necessary.</p> <p>The timetable for service of such evidence should occur after the close of pleadings and completion of discovery.</p>
<p>Stay of proceedings</p>	<p>There is no present basis for a stay.</p>	<p>The respondent exclude the possibility that there may be passengers who have contracted on overseas terms as outlined above in relation to the description of group members. Inquiries in this regard remain ongoing. The respondent reserves the right to bring a stay application in respect of such passengers if such overseas terms are identified.</p>