CARTER NEWELL

Asia Pacific Carriers' Liability Guide

1st edition

CARTER NEWELL

Our approach is to be recognised as a premier provider of specialist legal services across Australia and internationally by being the best we can be for our clients and ourselves

Carter Newell Lawyers is a leading Queensland based law firm that provides expert advice to Australian and international corporate clients in our key specialist practice areas of:

- Insurance
- Construction & Engineering
- Resources
- Corporate
- Commercial Property
- Litigation & Dispute Resolution
- Aviation

Within each of these core areas we have dedicated experts who are committed to and passionate about their field and have extensive experience and knowledge.

Our Awards

- 2012 Winner ALB Australasian Law Awards – Brisbane Law Firm of the Year
- 2012 Winner Disability Employment Award – AHRI Diversity Awards
- 2011 Winner ALB Employer of Choice Blue Award
- 2011 Finalist BRW Client Choice Award for Best Law Firm in Australia (open to firms with revenue under $50M per year)
- 2011 Finalist ALB Australasian Law Awards – Brisbane Law Firm of the Year
- 2010 Finalist BRW Client Choice Award for Best Law Firm in Australia (open to firms with revenue under $50M per year)
- 2010 Finalist ALB Australasian Law Awards – Brisbane Law Firm of the Year
- 2010 Finalist Lawtech Awards for Innovation in Legal IT
- 2009 Independently recognised as a leading Brisbane firm in the practice areas of Insurance | Building & Construction | Mergers & Acquisitions | Energy & Resources
- 2009 Finalist Brisbane Lord Mayor's Business Awards
- 2009 Finalist ALB Australasian Law Awards – Brisbane Law Firm of the Year
- 2008 Winner ALB Australasian Law Awards – Brisbane Law Firm of the Year
- 2008 Winner Employer of Choice Queensland Law Society
- 2008 Finalist BRW Client Choice Award for Best Law Firm in Australia (open to firms with revenue under $50M per year)
- 2008 Independently recognised as a leading Brisbane firm in the practice areas of Insurance | Building & Construction | Mergers & Acquisitions | Energy & Resources
- 2007 Finalist BRW Client Choice Award for Best Law Firm in Australia (open to firms with revenue under $50M per year)
- 2007 Finalist ALB Australasian Law Awards – Brisbane Law Firm of the Year
- 2006 Winner BRW Client Choice Award for Best Law Firm in Australia (open to firms with revenue under $50M per year)
- 2005 Winner ALPMA/Locus Innovation Awards for innovative CN|Direct
- 2005 Finalist BRW Client Choice Award for Best Law Firm in Australia (open to firms with revenue under $50M per year)

Asia Pacific Carriers' Liability Guide

Contributors

Paul Hopkins
Glenn Biggs
Shannon O'Hara
Christian Breen
Sadia Stathis
Dani-elle Davidson
Marnie Carroll
Lauren Rickersey
Jordan Bird
Joseph Brighouse
Hannah Fox
Tom Long
Cameron Rodgers

CARTER NEWELL

Carter Newell Publications
Brisbane • Sydney • Melbourne

TABLE OF CONTENTS PAGE

Preface vii
Application of Customary Law ix
Table of Cases xi
Table of Statutes xiii
Country Codes xviii

COOK ISLANDS

Location 1
Introduction 2
Airports 2
Civil Aviation in the Cook Islands 3
Local Aviation Authorities 3
Domestic Carriers Liability Legislation 3
System of Law 6
Application of Customary Laws 6
Court System 6
Status of International Law Instruments 7

FEDERATED STATES OF MICRONESIA

Location 9
Introduction 10
Airports 10
Civil Aviation in the Federated States of Micronesia 10
Local Aviation Authorities 10
Domestic Carriers Liability Legislation 11
System of Law 16
Application of Customary Laws 18
Court System 19
Status of International Law Instruments 19
Case Law 19

INDEPENDENT STATE OF PAPUA NEW GUINEA

Location 21
Introduction 22
Airports 22
Civil Aviation in the Independent State of Papua New Guinea 24
Local Aviation Authorities 24
Domestic Carriers Liability Legislation 24
System of Law 30
Application of Customary Laws 30
Court System 36
Status of International Law Instruments 36

INDEPENDENT STATE OF SAMOA

Location 39
Introduction 40
Airports 40
Civil Aviation in the Independent State of Samoa 40
Local Aviation Authorities 41
Domestic Carriers Liability Legislation 41
System of Law 44
Application of Customary Laws 44
Court System 44
Status of International Law Instruments 44
Case Law 45

TABLE OF CONTENTS PAGE

KINGDOM OF TONGA

Location 47
Introduction 48
Airports 48
Civil Aviation in the Kingdom of Tonga 49
Local Aviation Authorities 49
Domestic Carriers Liability Legislation 49
System of Law 52
Application of Customary Laws 52
Court System 53
Status of International Law Instruments 53
Case Law 53

NEW ZEALAND

Location 57
Introduction 58
Airports 58
Civil Aviation in New Zealand 60
Local Aviation Authorities 61
Domestic Carriers Liability Legislation 61
System of Law 66
Application of Customary Laws 66
Court System 66
Status of International Law Instruments 67
Case Law 67

REPUBLIC OF INDONESIA (INCLUDING BALI AND WEST PAPUA)

Location 71
Introduction 72
Airports 72
Civil Aviation in the Republic of Indonesia 74
Local Aviation Authorities 75
Domestic Carriers Liability Legislation 75
System of Law 82
Application of Customary Laws 83
Court System 83
Status of International Law Instruments 84

REPUBLIC OF KIRIBATI

Location 85
Introduction 86
Airports 86
Civil Aviation in the Republic of Kiribati 87
Local Aviation Authorities 87
Domestic Carriers Liability Legislation 87
System of Law 92
Application of Customary Laws 92
Court System 92
Status of International Law Instruments 92
Case Law 92

TABLE OF CONTENTS PAGE

REPUBLIC OF NAURU

Location 93
Introduction 94
Airports 94
Civil Aviation in the Republic of Nauru 94
Local Aviation Authorities 94
Domestic Carriers Liability Legislation 95
System of Law 97
Application of Customary Laws 97
Court System 97
Status of International Law Instruments 98

REPUBLIC OF THE FIJI ISLANDS

Location 99
Introduction 100
Airports 100
Civil Aviation in the Republic of the Fiji Islands 101
Local Aviation Authorities 101
Domestic Carriers Liability Legislation 101
System of Law 109
Application of Customary Laws 110
Court System 110
Status of International Law Instruments 111

REPUBLIC OF THE MARSHALL ISLANDS

Location 113
Introduction 114
Airports 114
Civil Aviation in the Republic of the Marshall Islands 115
Local Aviation Authorities 116
Domestic Carriers Liability Legislation 116
System of Law 116
Application of Customary Laws 117
Court System 117
Status of International Law Instruments 117

REPUBLIC OF VANUATU

Location 119
Introduction 120
Airports 120
Civil Aviation in the Republic of Vanuatu 121
Local Aviation Authorities 121
Domestic Carriers Liability Legislation 122
System of Law 124
Application of Customary Laws 125
Court System 125
Status of International Law Instruments 125
Case Law 126

TABLE OF CONTENTS PAGE

SOLOMON ISLANDS

Location 127
Introduction 128
Airports 128
Civil Aviation in the Solomon Islands 129
Local Aviation Authorities 130
Domestic Carriers Liability Legislation 130
System of Law 133
Application of Customary Laws 134
Court System 134
Status of International Law Instruments 134

TUVALU

Location 135
Introduction 136
Airports 136
Civil Aviation in Tuvalu 136
Local Aviation Authorities 136
Domestic Carriers Liability Legislation 136
System of Law 140
Application of Customary Laws 140
Court System 140
Status of International Law Instruments 140

APPENDIX 1. INTERNATIONAL CONVENTIONS TABLE 141

APPENDIX 2. SUMMARY OF INTERNATIONAL CONVENTIONS 142

PREFACE

Carriage by air in the South Pacific region can be best summed up as complicated and volatile, but also fundamentally necessary to both the regional and world economy. The very isolation of the many small communities that make air travel so important in this region, also makes efficient, cost effective and competitive carriage problematic. Limited island economies can sometimes find it difficult to fund the significant capital costs of an airline, let alone suitable airports. While there is often high demand for domestic and inter-island services, carriers can be controlled by external forces critical of opening routes to competitive market forces. Many enterprises have struggled and some failed as a result. Confluence between South Pacific nations remains a somewhat overwhelming task to establish common structures for the provision of air services, let alone a joint carrier. Yet in spite of these hurdles, and in spite of all the volatility in corporate, government and market forces, aviation remains a viable and essential industry for the region.

For Australians, the proximity of the South Pacific represents opportunities in business, tourism and in aviation regulation. CASA continues to support the Council of the Pacific Aviation Safety Office by providing technical advice and access to training courses, by attending working groups with specific member nations, and providing, operating and organising targeted programs aimed at enhancing safety standards through better safety inspectors and investigators[1]. Tourism continues to drive much of the international inbound access to the South Pacific, with code-sharing and low cost airlines attractive options. While tourism is a major factor for aviation in this region, it too suffers from seasonal instability in pricing and travel patterns.

The upshot is an aviation market for which domestic and international services are essential, but the volatility and unpredictability present a risky financial equation. This balance of risk not only exists to financial stakeholders (such as Governments and investors), but also manifests as a liability risk with ageing aircraft and a limited emphasis on safety and security in an increasingly litigious and westernised society.

What links the South Pacific nations by their membership to instruments such as the Warsaw and Montreal Conventions, does not necessarily produce like-mindedness for carriage outside those regimes. Indeed, belonging to organisations such as ICAO,[2] the South Pacific Forum, the United Nations or PIASA[3] does not guarantee uniformity in liability and compensation regimes across the region. And therein lies the complexity and legal diversity of the various South Pacific nations analysed in this *Guide*.

This inaugural edition of the Carter Newell *Asia Pacific Carriers' Liability Guide* details the civil aviation liability regime in a number of Asia Pacific nations. The *Guide* outlines the international conventions to which each nation is a member, and examines the key domestic carrier liability legislation and case law for death and injury, baggage and cargo, third party property damage and delay claims. The *Guide* then looks at the civil system of laws adopted and the judicial hierarchy in which they are enforced around the region, the key regulatory bodies empowered to oversee aviation and the impact of local customary laws in each country.

The *Asia Pacific Carriers' Liability Guide* we hope is a valuable tool to all with an interest in this area, with particular value to five key industries:

[1] Civil Aviation Safety Authority, Annual report, 2009–2010 (2010). The Pacific Aviation Safety Office is an organisation made up of member nations comprising the Cook Islands, Fiji, Kiribati, Niue, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu, Australia and New Zealand.

[2] International Civil Aviation Organization.

[3] Pacific Islands Air Services Agreement.

- Private charter or common commercial carriers operating out of or into the Asia Pacific region, or operating an aircraft for private or general business purposes within this region;
- Various business partners of Asia Pacific carriers and aircraft operators, such as brokers, auditors, accountants and loss adjusters;
- Aerospace and aviation underwriters, reinsurers and claims consultants, particularly those with major risks operating in this region;
- Businesses whose operations rely on the Asia Pacific region – from tourism and adventure operators, resorts, fishing, marine and the mining industry, to aircraft service companies, cargo and transhipment operations; and
- Corporate and private passengers who frequent some of Australia's closest international neighbours, this *Guide* outlines how differently the Asia Pacific region deals with carriers' liability.

While some of the nations outlined in this *Guide* may have only one national carrier which may be a signatory to an IATA Intercarrier Agreement and/or promulgate its own more expansive conditions of carriage for liability, this *Guide* remains focused on the legislative regime for liability compensation for that respective nation. Care must always therefore be taken to ensure any express terms of carriage are considered in conjunction with the liability regimes in place as outlined in this *Guide*.

It is therefore with great pleasure that the Carter Newell aviation team provides the latest addition to the suite of Carter Newell legal guides; the *Asia Pacific Carriers' Liability Guide*. As always, we encourage the use of the *Guide* where possible, as well as any feedback on its content and useability. We look forward to a strong ongoing partnership with Asia Pacific carriers, their corporate customers, insurers and brokers.

CARTER NEWELL

APPLICATION OF CUSTOMARY LAW

> *'The fact that customary law is not part of the formal system of law does not mean that its importance will diminish in a practical sense. The enduring strength of customary law supports the view that formal recognition is not required to give it force. Customary law still operates, as it has always done, on a separate plane, at a village level. This is recognised and enforced independently and without the need for statutory endorsement.'*[4]

Many of our readers will be well aware of the impact Asia Pacific customary laws have on the resolution of a property damage or personal injury carriers' claim. But what is Customary Law, why is it relevant and how do we address this issue in this *Guide*?

To begin with, there is no universal definition of customary law. Confusion arises between a 'custom', compared to 'customary law'; the former might refer to a person's behaviour within a group, whereas the latter relates more to the rules governing that behaviour. Drawing a line between the two is difficult. Both are relevant to a carrier's potential liability.

There is the related problem of deciding whether such rules qualify as law and whether they can be enforced within a formal system of law. Some countries do not deal with this. In the Cook Islands for example, where the definition of customary law dates back to the *Cook Islands Act 1915* (CK), custom is *'the ancient customs and usages of the Natives of Cook Islands'*.[5] Often relevant definitions introduced at independence are more palatable. The Constitution of Papua New Guinea for instance defines a custom to include *'the customs and usages of the indigenous inhabitants of the country existing in relation to which the matter arises, regardless of whether or not the custom or usage has existed from time immemorial'*. This elevates the status of custom and makes it clear that it will continue to develop and form part of the legal system. In countries where new customary rules may be recognised as law, a related question is how widespread they must be to warrant recognition as customary law? This question is particularly pertinent to this region where customs differ from island to island, and village to village.

Some guidance was given by Chief Magistrate Lunabeck in *Waiwo v Waiwo and Banga*.[6] In that case, the petitioner sued for divorce on the grounds of adultery, under the *Marriage Act 1986* (VU). In accepting that adultery was a serious matter in custom (with customary law dictating the measure of punitive damages), the Magistrate referred to the words in the Preamble to the Constitution, which underlined that it was *'founded on traditional Melanesian values . . .'*. Chief Magistrate Lunabeck held that, when considering customary law, *'a Court should not be bound to observe strict legal procedures or apply technical rules of evidence, but shall admit and consider such relevant evidence as is available (including hearsay evidence and expressions of opinion) and the Court shall otherwise inform itself as it sees fit'.* This is a difficult and quite liberal approach that common law would struggle with. Indeed, this approach has since been rejected on appeal on the following basis:

[4] G. Powles, *'The Status of Customary Law in Western Samoa'* Masters Thesis, VUW, (1973), Part VI; Jennifer Corrin, *'The Status Of Customary Law In Fiji Islands After The Constitutional Amendment Act 1997* (2000) 4 Journal of South Pacific Law.

[5] Section 2, whilst not defined in the Constitution, *Interpretation Act* (VU), Cap 132, provides that 'Custom' means the customs and traditional practices of the indigenous peoples of Vanuatu. The word 'traditional' could be interpreted as carrying with it a requirement that the custom is longstanding.

[6] Unreported, Magistrates Court, Vanuatu, cc324/95. The decision was reversed on appeal in *Banga v Waiwo*, unreported, Supreme Court, Vanuatu, AC1/96.

> *'It is essential to remember that Judges and magistrates are not custom chiefs and are not experts in custom of any area let alone of the whole of Vanuatu. Nor is there any such thing as THE custom of Vanuatu. Although it is conceivable that there might not be a need for strict rules regarding the obtaining of evidence of a particular custom if and when the need arises to establish a particular custom, evidence must, nevertheless be obtained and a clear custom must be established.'*

The corollary of the very nature of customary law is that it gives rise to fundamental questions of law and fact. Those nations (like Australia) whose constitutional systems approximate a Westminster concept of government and judicial law, would invariably seek to understand customary law by taking formal law and legal systems as a benchmark. But such concepts of proving facts by evidence and the rule of law may do little to underpin a customary law cause of action.

Ultimately, what makes customary law most perplexing and challenging, is that much of it is unwritten. For the purposes of this *Guide* therefore, it is impossible to provide, as a general explanation of laws, every nuance of a nation's injury, land and property customary laws. What we therefore seek to highlight in this *Guide* is whether the potential exists for customary laws to affect a carrier's liability by examining whether a plural legal system exists and how Judges in turn have resolved relevant liability cases. Certain Asia Pacific nations have sought to expressly exclude the import of custom and customary law by Constitutional amendment. While this does not necessarily mean the 'customs' of those nations will be extraneous to a carrier's liability, it does at least inform generally the minimal impact customary law will have in any given matter. By contrast, many of the Asia Pacific nations still formally seek to recognise and enforce customary law, even sometimes if only by recognising broad concepts rather than prescriptive rules. It is in these nations where our and our local agent's knowledge and experience of customary law throughout the region, is paramount to understanding carriers' liability.

TABLE OF CASES PAGE

Abdul Rahman Imam v PT Garuda Indonesia 2600 K/Pdt/2003 79
Agnew v Polynesian Airlines Holdings Ltd [1997] WSSC 29 (8 December 1997) 45
Air Fiji Ltd v Flora Seu Houng-Lee [2005] FJCA 84 101
Alii and Fapule of Siumu District v Attorney General [2010] WSSC 9 44
Asan v Truk, 4 FSM Intrm. 51 14
Aundak Kupil v State of Papua New Guinea [1983] PNGLR 350 32
Banga v Waiwo (unreported) Supreme Court, Vanuatu, AC1/96 xvii
Boe & Taga v Thomas (1980–1994) Van LR 293 125
Cauchi v Air Fiji & Air Pacific Ltd [2005] TOSC 7 ..... 50, 53
Cheung v Tanda [1984] SILR 108 134
Costello v Talair Pty Ltd [1985] PNGLR 61 N503 35
David Kapi v Pacific Helicopters [2002] PGNC 53 35
Davis v Kutta, 7 FSM Intrm. 536, 546 (Chk.1996) 12
Eastern & Global (NZ) Limited v Air New Zealand Limited, District Court Auckland (unreported), Judge Gittos, 23 December 2004 (Civ 2002-004-2759) 65, 67
Edwards v Pohnpei, 3 FSM Intrm. 350, 359 (Pon.1986). 11, 14
Elwise v Bonnevile Construction Co., 6 FSM Intrm. 570, 572 (Pon.1994) 12
Emery Air Freight Corporation v Nerine Nurseries Ltd [1997] 3 NZLR 723 68
Eric Fiebig v Solomon Islands Airlines Limited (unreported) High Court of the Solomon Islands 282 of 1993 High Court of the Solomon Islands 131
Estate of Lydia Keith and Windy Keith v Vanuatu Internak Air Services Ltd (Vanair) [2006] VUSC 61 126
Fabian v Ting Hong Ocaeanic Enterprises, 8 FSM Intrm. 63. 65 (Chk. 1997) 11
Fothergill v Monarch Airlines Ltd [1980] 1 All ER 696 108
Goldman v Thai Airways International Ltd (1983) 3 All ER 693 105
Inabari v Sapat and the State of Papua New Guinea [1991] PNGLR 427 34
Indemnity Insurance Co. v Koontz-Wagner Electric Co., 233 F.2d 380 19
Jacklick v Jejo Civ Act. No. 1983-42 (1983) 117
Joli v Joli [2003] VUCA 27 (unreported) 122
Kaka Kopun v State of Papua New Guinea [1980] PNGLR 557 ..... 30, 31
Koike v Ponape Rock Products Inc 1 FSM Intrm. 496 ..... 12, 16
Koko v Motor Vehicles Insurance (PNG) Trust [1988] PNGLR 167 32
Kong v Kong [2000] VUCA 8 122
Leeruw v FSM 4 FSM Intrm. 350 ..... 14, 15, 17
Leeruw v Yap State Gov't (Yap, 97) 15
Likinbod v Kejlat, 2 MILR 65, 66 (RMI Sup. Ct. 1995) 116
Luda v Maeda Road Construction Co., 2 FSM Intrm. 107 13
Mathebei v Ting Hong Oceanic Enterprises 9 FSM Intrm. 23, 26 (Yap 1999). 12
Mauricio v. Phoenix of Micronesia, Inc. 8 FSM Intrm. 248, 253 (Pon. 1998). 11
McGrory v Ansett New Zealand Ltd [1999] 2 NZLR 328 63
Meitou v Uwera, 5 FSM Intrm. 139, 145 (Chk. S. Ct. Tr. 1991) 12
Mina Uokare v The Independent State of Papua New Guinea [1988–89] PNGLR 655 34
Nair v Public Trustee of Fiji and the Attorney-General of Fiji 110
Nolnga v Motor Vehicles Insurance (PNG) Trust [1991] PNGLR 436 32
Official Administrator for Deceased Estates v Allardyce Lumber Company Ltd [1980/91] SILR 66 133
Opeloge Ole v Police, (unreported) Supreme Court, Samoa, m5092/80 44
Pangis Toea v Motor Vehicles Insurance (PNG) Trust and the Independent State of Papua New Guinea [1986] PNGLR 294 32
Pike Dambe v Peri and the State of Papua New Guinea [1993] PNGLR 4 33
Pohnpei v M/V Miyo Maru No. 11, 8 FSM Intrm. 281 11

TABLE OF CASES PAGE

Primo v Refalopei, 7 FSM Intrm. 423, 430 n.13 (Pon. 1996) 11
Raibosa v Air Pacific Ltd [2004] FJCA 13 107
*Raquel v Smerdon (*unreported) Supreme Court Judgement, No 706, 1972 31
Robsonson Urai v Air Niugini & Guard Dog Security Services Ltd [2008] PGDC 131 28
Saumi v Air Fiji Ltd [2002] FJHC 41; Hbc0506d.2000s 106
Seke Ope v State of Papua New Guinea [1987] PNGLR 469 31
Semens v Continental Airlines Inc. [1985] FMSC 3; 2 FSM Intrm. 131 (Pon. 1985) 11, 16, 17, 18, 19
Seni Ela v State of Papua New Guinea [1988–89] PNGLR 653 33
Sidhu v British Airways PLC [1997] 2 WLR 26 69
Simin Dingi v Motor Vehicles Insurance (PNG) Trust [1994] PNGLR 385 34
Southern Pacific Co. v Morrison-Knudsen Co. 338 P.2d 665 19
S.S. Pharmaceutical Co. Ltd. v Qantas Airways Ltd (1991) 1 Lloyd's Rep 288 105
Suka v Truk, 4 FSM Intrm. 123, 131 (Truk S. Ct. Tr. 1989) 12, 15, 17
Susanna Undapmaina by the next friend Eriwiye Daena v Talair Pty Limited [1981] PNGLR 559 25
Tasman Pulp & Paper Co Ltd v Brambles JB O'Loghlen Ltd [1981] 2 NZLR 225 ..... 68, 69
Thomas v Turtle Airways Ltd [1998] FJHC 141 104
Waiwo v Waiwo and Banga, (unreported) Magistrates Court, Vanuatu, cc324/95 xvii

TABLE OF STATUTES

COOK ISLANDS

Carriage of Goods Act 1998
s 9(1) 5
s 9(2) 5
s 12(1) 5
s 12(4) 5
s 15 5
s 31(1) 5
sch 1 1

Civil Aviation Act 2002
s 2(a) 3
s 2(b) 3
s 5(1)(a) 3
s 5(1)(b) 3
s 5(1)(c) 3
s 5(1)(d) 3
s 39 4
s 105 5
s 105(3) 5
s 105(4) 5
s 105(5)(a) 6
s 105(5)(b) 6
s 105(6) 6
s 105(8)(b) 5

Constitution of the Cook Islands
s 46 3
s 66A 6
s 66A(3) 6

Convention for the Unification of Certain Rules for International Carriage by Air Done at Montreal on 28 May 1999 7

Department of Civil Aviation Act 1987 3

Law Reform Act 1968
s 5 4
s 7 4

FEDERATED STATES OF MICRONESIA

Code of the Federated States of Micronesia 1999
Title 6, §501 12
Title 6, §502 13
Title 6, §503(1) 13
Title 6, §503(2) 13
Title 20, §201 11
Title 20, §301 10
Title 20, §302 10
Title 20, §304 11
Title 20, §306 11
Title 20, §401(6) 11

Code of the State of Pohnpei
div VIII, Title 58 14

Constitution of the Federated States of Micronesia
art V, s 2 16
art XI, s 1 17
art XI, s 11 16

Kosrae State Code
Title 6, s 6.2903 14

Trust Territory Code 1980 13

INDEPENDENT STATE OF PAPUA NEW GUINEA

Civil Aviation Act 2000
s 2(a) 24
s 2(b) 24
s 2(c) 24
s 18 24
s 320(3) 29, 30
s 320(4) 29
s 320(5) 30
s 320(9) 30

Civil Aviation (Aircraft Operators' Liability) Act 1975
s 23 24
s 24 ..... 24, 36
s 25(1)(a) 27
s 25(1)(b) 27
s 25(2)(a) 27
s 25(2)(b) 27
s 26(2)(a) 27
s 26(2)(b) 27
s 26(2)(c) 27
s 27 ..... 24, 36
s 27(2) 27
s 27(3) 27
s 30(a) 25
s 30(b) 25
s 31(2) 26
s 31(3) 26
s 31(4) 26
s 31(5) 26
s 31(6) 26
s 31(8) 26
s 32 25
s 33 25
s 33(a) 24
s 33(b) 24
s 35(1) 26
s 35(2) 26
s 35(3) 26
s 35(4) 26
s 37(1) 28
s 37(2) 29
s 46(1)(a) 29
s 46(1)(b) 29
s 46(2) 29
s 46(3) 29
pt III 24, 25, 28
pt IV (div 3) 29

Constitution of Papua New Guinea
sch 2.1(1) 30

Convention for the Unification of Certain Rules relating to International Carriage by Air Signed at Warsaw on 12 October 1929
Article 22(1) 29

Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface Signed at Rome on 7 October 1952 .. 29, 37

Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier Signed at Guadalajara on 18 September 1961 ..... 24, 28, 37

Judicial Proceedings (Interest on Debts and Damages) Act 1962 35

Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 Signed at The Hague on 28 September 1955 ..... 24, 28, 37

Wrongs (Miscellaneous Provisions) Act 1975
s 40 30
s 40(1) 30

INDEPENDENT STATE OF SAMOA

Accident Compensation Act 1989 41

TABLE OF STATUTES

Accident Compensation Amendment Act 2003
s 2(3) 41

Carriage by Air Act 1964
s 12 41
art 20 42

Carriers Act 1975
s 2 42
s 3 42
s 4 43
s 6 ..... 42, 43

Civil Aviation Act 1998
s 1 40
s 5 41
s 122(3) 43
s 122(4) 43
s 122(5) 43
s 122(7) 43

Civil Aviation Regulations 2000 41

Constitution of Samoa 1960
s 111 ..... 41, 44
s 114 41

Limitation Act 1975
s 30 45

Reprint of Statutes Act 1972
s 8(2) 41

Revision and Publication of Laws Act 2008 41

KINGDOM OF TONGA

Carriage by Air Act 1991
s 3(5) 55

Carriage by Air Currency Equivalent Order 2003 ..... 50, 51

Civil Aviation Act 1990
s 2 49
s 3 52
s 3(1)(b) 49
s 3(1)(c) 49
s 3(2) 49
s 28(2) 52

Civil Law Act 1966
s 3 ..... 49, 52

Convention for the Unification of Certain Rules for International Carriage by Air Done at Montreal on 28 May 1999 53

Convention for the Unification of Certain Rules relating to International Carriage by Air Signed at Warsaw on 12 October 1929 ..... 49, 53

Evidence Act
s 89 55

Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 Signed at The Hague on 28 September 1955 53

NEW ZEALAND

Accident Compensation Act 2001
s 3 62
s 16(3) 62
s 20 62
s 20(2)(a) 62
s 25(b) 62
s 25(ba) 62
s 25(c) 62
s 25(d) 62
s 25(e) 62
s 25(1)(a)(i) 62
s 25(1)(a)(ii) 62
s 25(1)(a)(iii) 62
s 26(1)(a) 62
s 26(1)(b) 62
s 26(1)(c) 62
s 26(1)(e) 62
s 48 63
s 53(3)(a) 63
s 53(3)(b) 63
s 69(1)(a) 62
s 69(1)(b) 62
s 69(1)(c) 62
s 69(1)(d) 62
s 317(2) 61
s 317(5) 63

Accident Rehabilitation and Compensation Insurance Act 1992 64

Carriage by Air Act 1967
s 3(1) 3
s 22 4
s 25(1) 5
s 25(2) 5
s 26 4
s 28 63
s 28(1) 4
s 28(4) 5
s 31 ..... 4, 63
s 36 4

Carriage of Goods Act 1979
s 9 65
s 12(4) 65
s 14 65
s 15(1) 65
s 15(2) 65

Civil Aviation Act 1990
s 4(a) 61
s 4(b) 61
s 4(c) 61
s 4(d) 61
s 91V(1)(a) 61
s 91V(1)(b) 61
s 91V(2)(a) 61
s 91V(2)(b) 61
s 91Z 64
s 91Z(a)(i) 64
s 91Z(a)(ii) 64
s 91Z(a)(iii) 64
s 91Z(b) 64
s 91Z(c) 64
s 91ZA 64
s 91ZB 64
s 91ZC 64
s 91ZE 64
s 91ZL 64
s 97 66
pt 9A 67

Contributory Negligence Act 1947 65

Convention for the Unification of Certain Rules for International Carriage by Air Done at Montreal on 28 May 1999 67

Convention for the Unification of Certain Rules relating to International Carriage by Air Signed at Warsaw on 12 October 1929
art 1(2) 63

Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage

TABLE OF STATUTES

by Air Performed by a Person Other than the Contracting Carrier Signed at Guadalajara on 18 September 1961
art II 68

Cook Islands Act 1915
s 422 3
s 618 3
s 628 6

Death by Accident Compensation Act 1952
s 4 3
s 5 4
s 6 4
s 7 4

Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 Signed at The Hague on 28 September 1955 67

Treaty of Waitangi, 6 February 1840 66

REPUBLIC OF INDONESIA (INCLUDING BALI AND WEST PAPUA)

Aviation Act 2009
art 1(22) 75
art 1(24) 77
art 1(25) 77
art 8 75
art 140(1) 75
art 140(3) 75
art 141(1) 76
art 141(2) 76
art 141(3) 77
art 143 77
art 144 77
art 145 79
art 146 80
art 158 79
art 166 77
art 167 78
art 168(1) 78, 79
art 169 ..... 78, 80
art 170 80
art 172 77
art 172(1) 77, 78, 80
art 172(3) 78, 80
art 174(1) 78
art 174(2) 78, 80
art 174(3) 78
art 174(4) 78
art 175(1) 79
art 175(2) 79, 80
art 175(3) 79
art 176 ..... 77, 78, 80
art 177 ..... 78, 80
art 184(1) 81
art 184(3) 81
art 449 75
art 450 75
art 451 75

Constitution of Indonesia
art 1 75
art 24 83

Convention for the Unification of Certain Rules relating to International Carriage by Air Signed at Warsaw on 12 October 1929 84

Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier Signed at Guadalajara on 18 September 1961 84

Regulation of the Minister of Transportation No. PM 77 of 2011
ch 2 art 3(a) 76
ch 2 art 3(b) 76
ch 2 art 3(c) 76
ch 2 art 3(d) 76
ch 2 art 3(e) 77
ch 2 art 4(1) 77
ch 2 art 5(1)(a) 78
ch 2 art 5(2) 78
ch 2 art 5(3) 78
ch 2 art 6 77
ch 2 art 7(1)(a) 80
ch 2 art 7(1)(b) 80
ch 2 art 7(1)(c) 80
ch 2 art 7(2) 80
ch 2 art 9 80
ch 2 art 10(a) 81
ch 2 art 10(b) 81
ch 2 art 10(c) 81
ch 2 art 11 81
ch 2 art 12(1) 81
ch 2 art 12(2) 81
ch 2 art 12(3) 81
ch 2 art 14(a) 82
ch 2 art 14(b) 82
ch 2 art 14(c) 82

The Civil Code
art 1366 70
art 1367 70

REPUBLIC OF KIRIBATI

Civil Aviation Act 2004
s 8(1) 87
s 8(2)(a) 87
s 8(2)(b) 87
s 8(2)(c) 87
s 60 91
pt II 87

Kiribati Independence Order 1979 No. 719
s 5 88

Laws of Kiribati Act 1989
s 6(1) 92
s 6(2) 92
s 6(3)(b) 92
s 5(3) 92
s 7 92
s 8(1)(b)(iii) 88

REPUBLIC OF NAURU

Civil Aviation Act 2010
s 3(a) 94
s 3(b) 94
s 4(a) 94
s 4(b) 94
s 4(c) 94
s 4(d) 94
s 12(1) 94
s 149(1) 97
s 149(2) 97
s 149(3) 97

Convention for the Unification of Certain Rules relating to International Carriage by Air Signed at Warsaw on 12 October 1929 ..... 95, 98

Custom & Adopted Laws Act 1971
s 3 97
s 4 95
s 4(2) 97
s 4(3) 97
s 5 95

Laws Repeal and Adopting Ordinance 1922–1936 97

TABLE OF STATUTES

Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 Signed at The Hague on 28 September 1955 98

REPUBLIC OF THE FIJI ISLANDS

Carriage by Air (Fiji Currency Equivalents) Order 1969 102

Carriage by Air (Fiji Currency Equivalents) Order 2006 ..... 104, 107

Civil Aviation Act (Chapter 174)
s 16 109
s 17 109
sch 2, art 18 107
sch 2, art 21 107

Compensation to Relatives Act (Chapter 29) 106

Constitution (Amendment) Act 1997
s 186 110

Constitution of the Republic of Fiji Islands 1997
s 118 110
s 195(2)(d) 109

Convention for the Unification of Certain Rules relating to International Carriage by Air Signed at Warsaw on 12 October 1929 111

Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier Signed at Guadalajara on 18 September 1961 111

Law Reform (Contributory Negligence and Tortfeasors) Act 1946 (Chapter 30) 110

Law Reform (Miscellaneous Provisions) (Death and Interest) Act 106

Limitation Act 1971 (Chapter 35) 110

Magistrates Court Act 1944 (Chapter 14) 110

Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 Signed at The Hague on 28 September 1955 111

Supreme Court Act 1875 (Chapter 13)
s 24 109
s 35 109

Supreme Court Ordinance 1875 109

REPUBLIC OF THE MARSHALL ISLANDS

Civil Aviation Safety Act 1988 ..... 115, 116

Civil Procedure Rules 2004 (Marshall Islands)
pt X 116

Constitution of the Marshall Islands
art I, s 3 ..... 116, 117
art VI, s 1(1) 117
art VI, s 3 117
art XIV 117

Marshall Islands Revised Code 1988
pt IV 117
pt X 116

REPUBLIC OF VANUATU

Civil Aviation Act 1999
s 1 121
s 128(3) 124

Civil Aviation (Amendment) Act 2005 121

Constitution of the Republic of Vanuatu
s 47(1) 125
s 49 122
s 95 122
s 95(3) 122, 125

Convention for the Unification of Certain Rules for International Carriage by Air Done at Montreal on 28 May 1999 125

Convention for the Unification of Certain Rules relating to International Carriage by Air Signed at Warsaw on 12 October 1929 125

Limitation Act No. 4 (1991)
s 3(1)(a)(i) 123

Marriage Act 1986 xvii

Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 Signed at The Hague on 28 September 1955 125

SOLOMON ISLANDS

Civil Aviation Act 2008
s 1 129
s 62(3) 133
s 62(4) 133
s 62(5) 133
s 62(6) 133
s 62(7) 133
s 62(8) 133
s 62(9) 133
s 168 130

Constitution of Solomon Islands
s 2 134
s 3 134

Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier Signed at Guadalajara on 18 September 1961 134

Convention for the Unification of Certain Rules relating to International Carriage by Air Signed at Warsaw on 12 October 1929 134

Limitation Act 1984
s 3(2) 131

TABLE OF STATUTES

s 39 131
s 39(1) 132

Post Office Act 1996 130

Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 Signed at The Hague on 28 September 1955 134

Solomon Islands Independence Order 1978
s 2(1) 129

TUVALU

Laws of Tuvalu Act 1987
s 5(1) 140
s 5(2) 140
s 6 140
s 6(3)(b) 140
sch 1, para 2 140
sch 1, para 4 140
sch 1, para 6 140

Civil Aviation Act 2008
pt II 136
pt III 136
pt IV 136
pt V 136
s 4 136

UNITED KINGDOM

Carriage by Air Act 1961
s 3 43
sch 1 pt 1 art 17 42
sch 1 pt 1 art 18 43
sch 1 pt 1 art 19 42
sch 1 pt 1 art 21 42
sch 1 pt 1 art 22 ..... 42, 43

Carriage by Air Act (Application of Provisions) Order 1967
sch 2 art 22(5) 88, 95, 137
sch 3 art 21 89
ch III art 1 138
ch III art 17 ..... 122, 137
ch III art 18 138
ch III art 19 138
ch III art 20 ..... 122, 137, 138
ch III art 21 ..... 122, 138
ch III art 22 ..... 138, 139
ch III art 23 ..... 122, 137
ch III art 25 ..... 137, 139
ch III art 26 ..... 138, 139
ch III art 29 137
ch III art 30 139

Carriage by Air Act (Application of Provisions) Order 2004
sch 1 pt 1 art 17 ..... 49, 50
sch 1 pt 1 art 18 50
sch 1 pt 1 art 19 51
sch 1 pt 1 art 20 50
sch 1 pt 1 art 21 50
sch 1 pt 1 art 22 ..... 51, 52
sch 1 pt 1 art 25 50
sch 1 pt 1 art 31 ..... 50, 51, 52
sch 1 pt 1 art 36 51

Carriage by Air Acts (Application of Provisions) (Overseas Territories) Order 1967
art 18 96
art 22(2)(a) 96
art 22(3) 96
art 26(2) 97
art 26(4) 96
sch 1 annex to pt 1 s 2 ..... 96, 130, 131
sch 1 annex to pt 1 s 3 96
sch 1 pt 1 s 3 ..... 96, 130
sch 1 pt 1 s 5 95
sch 2 art 17 ..... 95, 104, 130
sch 2 art 18 132
sch 2 art 21 ..... 96, 132
sch 2 art 22(1) 104, 130
sch 2 art 22(2)(a) 107, 132
sch 2 art 22(3) 107, 132
sch 2 art 26(2) 107, 133
sch 2 art 26(4) 107, 132
sch 2 art 29 ..... 95, 130
sch 3 art 17 88
sch 3 art 18(1) 89
sch 3 art 18(2) 89
sch 3 art 19 90
sch 3 art 20 ..... 88, 89, 90
sch 3 art 22(1) 88
sch 3 art 22(2)(a) 90, 91
sch 3 art 22(2)(b) 90, 91
sch 3 art 22(3) 90
sch 3 art 23(1) 88, 90
sch 3 art 23(2) 90
sch 3 art 25 ..... 89, 90
sch 3 art 26(1) 89
sch 3 art 26(2) 89, 91
sch 3 art 26(3) 89, 91
sch 3 art 26(4) 89
sch 3 art 29 89
sch 3 art 30(1) 90, 91
sch 3 art 30(2) 90
sch 3 art 30(3) 90, 91

Carriage by Air Acts (Application of Provisions) (Second Amendment) Order 1969 88

Carriage by Air Acts (Application of Provisions) (Second Amendment) Order 1979
s 2 ..... 122, 123, 124
s 3 123
s 18 124
s 19 123
s 20 ..... 123, 124
s 23 124
s 25 123
s 26 124
s 30 123

Tuvalu Independence Order 1978
s 5 137

THE UNITED STATES OF AMERICA

United States Code
Title 48, §1902 16
Title 48, §1903 116

CARTER NEWELL

Brisbane
Level 13, 215 Adelaide Street
Brisbane QLD Australia 4000

GPO
Box 2232
Brisbane 4001

Phone +61 7 3000 8300
Email cn@carternewell.com

Sydney
15 Castlereagh Street
Sydney NSW Australia 2000

Phone +61 2 8315 2700

Melbourne
Level 30/459 Collins Street
Melbourne VIC Australia 3000

www.carternewell.com