

Parliament of Australia

Joint Committee of Public Accounts and Audit

REVIEW OF AVIATION SECURITY IN AUSTRALIA

Submission by Leonard Joseph Attard.

Summary

1. I forward this submission for your consideration prompted by my concern over baggage **insecurity** at one of the domestic carriers.

1.1 The purpose of this submission is to illustrate to the Committee the extent and nature of an ingrained culture of obstruction, delay, denial and deceit within **Virgin Blue Airlines Pty Ltd.**

1.1 The illustration will isolate one small example of an otherwise insignificant event and seek, by analogy, to focus on the potential consequence/s in the same and other areas of responsibility of Virgin Blue Airlines Pty Ltd (hereafter 'Virgin Blue').

1.2 In essence, I propose to demonstrate an ingrained culture of flagrant and sustained denial by Virgin even in the face of compelling reality.

1.3 My concern arises from demonstrable baggage insecurity disclosed through my recent dealings with Virgin Blue. The Committee will be aware of the enormous and sustained media coverage reflecting the, at times, daily public revelations of pilfering and interference with airline passengers' baggage since about mid-October, 2004, viz., what has become known as "the Schapelle Corby case."

1.3.1 My involvement with Virgin Blue stemmed from an attempt, on behalf of my daughter, to obtain compensation from Virgin for a smashed item of baggage. The relative value of that item is , in itself, miniscule viz., \$169.00. Yet, like the tiny seed which grows into an oak tree, the resulting demonstrable discoveries unearthed from this case expose an airline content and prepared to obstruct, delay, deny and deceive .

1.3.2 The dispute between my daughter and Virgin Blue is to be heard by the New South Wales Consumer, Trader and Tenancy Tribunal (hereafter "Consumer Tribunal"). Aimee Attard is the Applicant, Virgin Blue Airlines Pty Ltd is the Respondent in GEN 05/10380. Each party has submitted an outline of legal submissions; my daughter tendered affidavits, and Virgin Blue a statutory declaration. Throughout the submission I shall refer to those documents.

The "Insignificant" Event

2. On 27th October, 2004 my daughter, Aimee Attard, and friend, Mr Richard Clarkson, purchased two return tickets with Virgin Blue to travel from Sydney on 12th November next to Coolangatta and return to visit Mr Clarkson's parents.

2.1 On the day before their return to Sydney my daughter and Mr Clarkson purchased a water feature at a renowned pottery shop, Cronulla Gallery, on the Gold Coast hinterland. The item was extremely well-packaged by the manager, Narelle Krespanis, in anticipation of being transported to Sydney as hand , or on-board, baggage. Ms Krespanis is expert in packaging items for international, interstate and

intrastate carriage due to the high volume of the Gold Coast tourist trade, principally Japanese. In packaging the water feature, Ms Krespanis took into account the reasonable possibility of later rough handling of the packaged item. She carefully packaged the water feature in bubble wrap, stiff cardboard and butcher's paper and then re-enforced it with stiff cardboard. It was **finally securely fastened it with cord.**

(See copy of **Affidavit of Narelle Krespanis** sworn 13th March, 2005 marked Annexure 1).

2.2 Mr Clarkson, a licensed plumber, observed each stage of Ms Krespanis' packaging process, and he was compelled to observe to her, words to the effect, "Wow, we are only going to Sydney." (See **Affidavit of Richard Clarkson** sworn 22nd March, 2005 marked Annexure 3 hereto.)

3. According to Virgin Blue, its "Guest Service Staff" at Coolangatta airport are "not Virgin Blue employees", rather they are employees of "independent contractors" (See copy of **Statutory Declaration of Louise Zimmerman** declared 10th May, 2005 marked Annexure 2).

3.1 Prior to boarding Flight DJ22 Coolangatta to Sydney on the evening of 15th November, 2004 an "employee of [Virgin's] contractor" prevented my daughter from taking the packaged water feature on board promising its safe arrival at Sydney via "excess baggage" and to be treated differently from ordinary baggage, and to be collected at the excess baggage section. The identity of that "employee" of Virgin's contractor, is unknown to me and, I suggest, unknown to Virgin Blue.

3.2 My daughter booked two items through to Sydney as excess baggage: the specially-packaged water feature, and a painting on an old fence paling.

3.2 Contrary to that promise by the "employee" the specially-packaged water feature was not delivered to the excess baggage section but to the conveyor belt at the baggage carousel just like other baggage. This was discovered after some investigation at the excess baggage section. On the other hand, though both were booked through **at the same time** and **in the same name**, and **at the same place**, the plain 'fence paling' was successfully delivered to the excess baggage section. It may be that the 'fence paling' presented as a profoundly boringly-uninteresting item whereas the specially-packaged water feature (not unlike a 'boogie board') presented very differently.

3.3 When my daughter and Mr Clarkson finally found the package on the conveyor belt, they observed that the fastening cord which had been so well applied by Ms Krespanis **had now been removed but was lying close by.**

3.4 I met my daughter and Mr Clarkson at Sydney airport and drove them to their home. During the homeward car journey, Mr Clarkson discovered that the water feature had been smashed.

3.5 Ms Krespanis' testimony is that, "Given that it was I who packaged the water feature, and I declare that I package these items very carefully ... The abiding

mystery of this case is how the cord became detached from the packaging.” (See **Paras. 12 & 13 of affidavit of Narelle Krespanis sworn 13th March, 2005**)

Virgin Blue’s Obstruction, Delay and Denial

4. Upon arrival at their home, my daughter telephoned Virgin to report the damage. Virgin refused to accept a verbal telephonic report insisting that the **only** report Virgin Blue will accept must be online notification.

4.1 To date, Virgin Blue has not denied this practice and policy, viz., accepting only online notification. I suggest that, very likely, all but the most determined consumers would accept at face value Virgin Blue’s illegal practice. “Illegal” because Virgin’s liability is governed by the **Civil Aviation (Carriers’ Liability) Act**, an Act of the Commonwealth Parliament. That Act prescribes that a carrier **can** be served “by post” or in such other manner as is prescribed:” Sec. 30(2).

4.2 Furthermore, I suggest that there are many who do not have access to a computer, let alone, the internet.

4.3 My daughter believed, and accepted at face value, Virgin’s representations of acceptance only by online notification. The following day, 16th November, 2004, she notified Virgin Blue online of the damage to the water feature and asked for details of their **‘baggage handling procedures’** (see copy of **Affidavit of Aimee Attard sworn 22nd March, 2005** para. 12 marked Annexure 4).

4.3 To this date Virgin Blue has refused to reveal any detail of its baggage handling procedures. That persistence of silence and non-disclosure survived even a Formal Complaint to the New South Wales Department of Fair Trading in which my daughter repeated her request for that disclosure.

4.4 It is indisputable, and a matter of historical record, that Virgin Blue received my daughter’s online notification.

4.5 As the weeks passed, Virgin Blue did not reply. I therefore made representations to the Sydney Airport Corporation Limited to intervene. I verily believe, based on discussions with the Corporation management that it applied pressure upon Virgin Blue to reply to my daughter’s request for compensation.

4.5 Eventually on 17th December, 2005 Virgin Blue replied to my daughter’s online notification denying the claim.

5. I attempted to effect justice for my daughter and after numerous telephone calls to Virgin Blue, which I estimate in excess of twelve, on Christmas Eve, 2004 I finally spoke with the Manager of Guest Relations, Mr Matt Dixon in Brisbane.

5.1 Mr Dixon’s stance was very simple: Deny, deny, deny. Every entreaty was met with a “no”. Mr Dixon was implacably unmoved either by reference to possible legal action (reference to the Department of Fair Trading and the Consumer Tribunal) or regard to Virgin’s reputation; every plea resulted in a simple response:” No.”

5.2 After a very lengthy telephone discussion I suggested that his attitude was contrary to Virgin Blue's marketed image of a 'fun' airline, and that Sir Richard Branson would be horrified were he to be made aware of this case. He warned that I would be wasting my time appealing to Sir Richard or the CEO, Mr Godfrey, as they would merely endorse his decision.

5.3 Incredulous that Mr Dixon stance truly represented Virgin Blue's policy, I attempted later that morning to reach a more senior officer in Sydney. The Sydney number took me to a recorded message. I tried it on six occasions later that afternoon, each time leaving a clear message with my contact details. To this date, I have never received a reply to those six entreaties.

6. Early in the New Year 2005 I continued to attempt to reach senior personnel at Virgin Blue. I tried on four separate occasions to speak with Brett Godfrey, CEO of Virgin Blue. He did not return my calls.

6.2 On four separate occasions I telephoned Virgin Blue in an attempt to obtain Sir Richard Branson's mailing address to make a direct representation. On each occasion the Virgin 'employee' replied, i.e., on each of those four occasions, that they did not know "a Sir Richard Branson" or to whom I might be referring. After a few questions they said, words to the effect, "Oh yes, him. Well, yes I know him but I can't help you because I do not know how to contact him."

6.3 I later attempted the same enquiry of Virgin Pacific. I received a similar response from them.

6.4 On each of the occasions I made telephone contact with Virgin Blue or Virgin Pacific I was subjected to a series of questions principally to establish my identity and the precise nature and purpose of reaching Sir Richard Branson and Mr Godfrey. I answered all their questions.

New South Wales Department of Fair Trading

7. On 20th January, 2005 I presented a formal written Complaint signed by my daughter with the Department of Fair Trading. This became **Reference No: 2459503**.

7.1 On 4th February, 2005 an Investigating Officer from the Department of Fair Trading reported to my daughter in words to the effect, "I don't know, this Virgin Blue. I spoke with Mr Dixon yesterday and he will not budge one inch."

My daughter said, words to the effect, "Yes, my father said Mr Dixon will not negotiate or conciliate."

The Investigating Officer said, words to the effect, "**Mr Dixon believes that they exercised all reasonable care in handling your item** and that you released them from all liability when you signed that document." (See copy of **Affidavit of Aimee Attard** Annexure 4).

7.2 I suggest that in his responses to the Investigating Officer from the Department of Fair Trading Mr Dixon was content and prepared to exculpate Virgin Blue by saying that he believed all reasonable care was exercised. I suggest that in his position in the airline industry he is **and was at the time** cognizant of the notorious practices of pilfering and tampering from passengers' baggage by baggage handlers.

I remind the Committee of one of the leading cases in Employment Law on unfair dismissal which reached the **High Court** in the cases of **Byrne v Australian Airlines Limited** and **Frew v Australian Airlines Limited** (1995) 185 CLR 410.

Briefly, Messrs Byrne and Frew had been very long term employees (20 and 25 years) of Australian Airlines. Their duties were to handle, load, stow and unload cargo and baggage at Sydney airport. The airline possessed unequivocal video and other evidence of them pilfering passengers' baggage. Indeed, the practice was so entrenched that part of the appellants case before the High Court was that there were other members of the work team who ought to have been investigated; and, furthermore, they complained in the High Court that the airline ought to have warned them or brought to their notice that there existed this evidence of their pilfering!

7.3 I suggest that the Manager, Customer Relations of Virgin Blue was content to mislead the Investigations Officer of the Department of Fair Trading in asserting that Virgin Took **all reasonable care in handling the item** at a time when he possessed no idea what occurred to the item from its deposition at Coolangatta airport until its collection at Sydney airport.

8. I filed an application with the Consumer, Trader and Tenancy Tribunal for a hearing of the dispute.

Deceit upon The Consumer Tribunal

9. The Tribunal set down 7th April, 2005 for a Conciliation Hearing.

9.1 In compliance with procedural orders from the Consumer Tribunal I mailed to the Manager, Customer Relations, Virgin Blue Airlines Pty Ltd at its registered offices in Brisbane (P.O. Box 1034, Springhill Qld. 4004), on 24th March, 2005, from the Castlereagh Street, Sydney Post Office copy affidavits upon which I intended to rely at the future hearing.

9.2 On the appointed date, 7th April the Manager, Customer Relations, Virgin declared to the Consumer Tribunal Member, Ms Steer, that he had not received any material from the Applicant.

9.3 The Tribunal member pursued this allegation with the Manager, Mr Dixon, who continued with his denial of receipt of any material from me.

9.3 I produced to the Tribunal Member a carbon copy of Posting Copy and Sender's Receipt No: 1919657 and stamped "24 /03/05".

9.4 Mr Dixon then asserted that he had received "only yesterday", i.e., **6th April, 2005**

Notification of receipt of postal article to be collected from Virgin's post office box (their registered address).

9.5 But for Mr Dixon's assertion of non-receipt of copies of the affidavits upon which I intended to present evidence, the matter could have proceeded to a hearing on that very day, 7th April last. Mr Dixon successfully ensured further delay.

9.6 Enquiries with Australia Post regarding the details of the relevant envelope addressed to Virgin, No: 1919657, had been "carded" i.e., an advice card left in the addressee's post office box, P.O. Box 1034, on 1st April, 2005. (**See letter from David McAuliffe, for Manager, Customer Service Contact Centre, Australia Post, and dated 12th April, 2005** annexed hereto).

9.7 In procedural orders the Tribunal ordered Virgin to provide material to both the Applicant and the Tribunal by 26th April, 2005. Virgin did not comply with that order, and so, to minimise the extent of non-compliance, dated its correspondence "22nd April, 2005". When Virgin did comply with the order, their envelope was submitted to Australia Post Investigations for examination.

9.8 Australia Post declared that the relevant envelope was imprinted with the Virgin Blue franking machine indicating a processing on 26th April, 2005. (**See letter from David McAuliffe, Customer Service Investigations, Australia Post and dated 2nd May, 2005** annexed hereto). The subject material in the envelope had been sent by Virgin's legal counsel, Ms Parks.

9.9 Without taking the Committee to one of the legal points made by Virgin in its written submissions to the Tribunal, I allege that Virgin sought to deceive the Tribunal as to the law covering its (Virgin's) liability to compensate a passenger. The written submissions were obviously drafted by a lawyer with a mind of exculpating Virgin from liability to compensate its passenger.

Aviation Industry Ombudsman.

10. I strongly submit to the Committee that the extent, intensity, width and passion to and with which the general public and the radio, print and television media has voiced their grave concerns over baggage insecurity at airports since about October/November, 2004 illustrates a cri de coeur for the establishment of an **Aviation Industry Ombudsman.**

10.1 It must be remembered that this is now the fourth review of Aviation Security. And I respectfully recommend to the Committee to give favourable and serious

consideration to recommending to the Federal Parliament to initiate the establishment of an **Aviation Industry Ombudsman**.

10.2 I further submit that in its consideration of this submission the Committee should exclude the model of the Banking Industry Ombudsman funded, as it is, by the Australian Bankers' Association. That system cannot engender or foster credibility amongst consumers.

10.3 The Australian community is urgently in need of the establishment of this new Ombudsman. I do not suggest that it would be without the usual initial 'teething' difficulties. The time is ripe for this Committee to act in recommending this new Ombudsman. The combination of "nine/eleven", the Australian public's sensitivity and affront of and to the Schapelle Corby case and the massive public revelations which flowed therefrom should be sufficient to catapult the Committee into recommending the establishment of this new Ombudsman.

10.4 Paragraphs 10 to 10.3 above must, with respect, be patently self-evident to the Committee. I suggest almost everyone in Australia is acutely aware of the gravity of concern over this issue.

10.5 The brief, and otherwise insignificant, experience with Virgin illustrated in this submission demonstrates that this airline cannot be trusted to act conscientiously. There needs, I submit, to exist a 'people's' champion to whom an entity such as Virgin, entrusted by the Department of Transport to be let loose upon the public, can be made accountable.

CONCLUSION

11. I cannot articulate my incredulity at the initial, persistent and continuing determination of Virgin to obstruct, delay, defeat and deceive particularly in the context of one of its own passengers. If it has and still is so intent on this course of conduct, then one is frightened by the potential analogous consequence or consequences of its similar conduct in matters far more important than obstructing a claim for compensation for \$169.00 .

11.2 The Committee will, I suggest, be offended at Virgin's initial deceit in its attempt to deter even the reporting of damage. By declaring that it will only accept online notification of damage, it potentially deters untold complaints.

11.2.1 By delaying four weeks before even responding, it systematically deters its consumers. Indeed, without the good services of the **Sydney Airport Corporation Limited**, Virgin may have taken even longer than four weeks to respond; or not respond at all.

11.2.2 I suggest that airline passengers should not have to seek the intervention of the Sydney Airport Corporation Limited to importune upon a derelict airline to do what is right and, presumably, what the Department of Transport would expect.

11.2.3 I suggest that an airline with even a modicum of probity would willingly promptly deal with complaints from its customers; and without having to be cajoled by an organisation such as the Sydney Airport Corporation Limited.

11.2.3 Virgin, to this day, has still not disclosed any detail of its **baggage handling procedures**. This persistence in refusing to disclose this detail continued even in the face of an investigation by an Investigations Officer from the New South Wales Department Fair Trading.

11.3 I suggest that without my intervention on behalf of my daughter, the attempt to obtain compensation from Virgin would have died back on 16th November, 2004 (i.e., when Virgin received my daughter's online notification of damage to baggage and request for compensation.).

11.3.1 If I may be permitted to resort to the common experience of mankind and the accumulated knowledge and experience of officers from 'departments of fair trading' around Australia, I very seriously suggest that Virgin's policy (of obstruction, delay, denial and deceit) is based on this same experience, viz., most of the people will simply give up as the chore at hand is too difficult, and 'I don't have the time' and 'it's only \$169.00'.

11.4 The Committee needs to recall that senior personnel from Virgin, the Customer Relations Manager, Mr Dixon, **asserted** to the Department of Fair Trading Investigations Officer that Virgin took all reasonable care in handling the subject baggage. He made that assertion either prior to or on 4th February, 2005. I submit that an officer in his position in the airline industry either knew or ought to have known what shortly afterwards was publicly revealed, viz., the enormous extent of flagrant pilfering of passengers' baggage by baggage handlers. All the more so as in the case under investigation by the Department of Fair Trading related to an extremely well-packaged item specifically designed to accommodate a degree of rough handling and, therefore, the removal of the external security binding cord must have been a deliberate act by a human being.

11.4.1 When Mr Dixon made the above **assertion** to the Investigations Officer he well knew that Virgin, contrary to its promise to treat and deliver the water feature differently from ordinary baggage, i.e., as oversize baggage, he must have known that Virgin had acted without due care and skill in its handling of the item. This further illustrates the determination to deceive over an 'insignificant' matter. One fears to consider the extent to which the Manager would deceive an investigator in a substantial failing by Virgin. This further illustrates, if it be necessary, that the airline industry needs to be held accountable to an industry-based Ombudsman.

11.5 In playing a 'ducks and drakes' game with the Tribunal Member over his assertion of not receiving documents from the Applicant, the Customer Relations Manager successfully protracted the proceedings to the detriment of my daughter. When the Committee considers that the 'fun' airline did this to frustrate a passenger's attempt to compensation for \$169.00, the mind boggles over the extent to which the airline might descend over covering-up, whitewashing or concealing important though damaging evidence against itself.

11.5.1 The Committee might similarly consider the step-by-step process of Virgin Blue personnel questioning me (during the four telephone calls) to obtain my identity and then declaring on those four separate occasions that they are ignorant of the identity of Sir Richard Branson. I suggest there is a compelling inference to be drawn from Mr Dixon's warning that I would be wasting my time trying to communicate with Sir Richard or a superior. I suspect that Mr Dixon 'posted' a 'post it' notification on Virgin's computer system to deflect my endeavours to communicate with Sir Richard. And remember, all this was over \$169.00. Imagine if one were searching for evidence of Virgin wrongdoing. Even with the intervention and weight of office of the Sydney Airport Corporation Limited, it still took Virgin four weeks to reply to my daughter's representations.

11.6 Even in Virgin's written legal submissions to the Tribunal, as late as 10th May, 2005, Virgin tenaciously followed the policy of denial of the possibility of any of its "employees or agents" engaging in pilfering or tampering passengers' baggage. Rather, Virgin's lawyers speculatively explored the outer limits of intellectual gymnastics supposing various possibilities how securely bound cord may have accidentally become detached from the very-well packaged water feature. And the considered legal submissions were made in the absence of any evidence whatsoever.

12. I respectfully exhort the Committee to strongly recommend to the Parliament the establishment of an **Aviation Industry Ombudsman**.

Mr. L.J. Attard