



Submissions to Senate Enquiry in to
Aviation Security

My submissions are under three main headings

PHILOSOPHICAL PROFILE OF CRIMINAL TARGETS

LEGAL BASIS FOR AVIATION SECURITY

PRACTICAL IMPACT

Philosophical Profiles

The philosophical profile of possible criminals who may seek to subvert Australia's aviation security umbrella can be considered to fall into two general classes of criminal

- (a) The domestic selfish, greed motivated individual who hopes to benefit either financially or notoriously from his activities; the hi jacker.
- (b) The spiritually unselfish individual who hopes to benefit from his activities in the life hereafter; the suicide bomber

It is for the aviation security bureaucracy to focus on methods to thwart these two types as well as reduce their ability to conduct their activities.

Currently, I do not believe that the focus of aviation security is addressing these two extremist criminals. The system seems to be focused on the nonsensical perpetrators of exhibitionism.

Legal impediments

Aviation security is presently engaged in confiscating citizens personal property in it's effort to uphold a so called safe sky policy. I ask the question

“Does the Commonwealth have the constitutional power to confiscate a law-abiding citizens property?” I believe the answer is no. The reason is that the Federal constitution was proclaimed on 1 January 1901 and Wilbur and Orville Wright first flew an aircraft on 7 December 1903, about 3 weeks short of 3 years later. The High Court has considered this dilemma twice. In *R v Burgess ex parte Henry* 1936 55 CLR 608, the court decided that whilst the Commonwealth did not have general control over civil aviation in Australia it had an external affairs power (S51 (xxix)) to enact domestic legislation based upon any treaty, convention or protocol. The Chicago Convention on aviation safety of international operations provides the basis of the powers of CASA. But the Court has been diligent to ensure that the Commonwealth does not exceed the terms of the Convention lest it intrude into State Rights. In *Airlines of New South Wales v New South Wales Nos 1 & 2* 1964-65 113 CLR 1 and 57, the High Court decisively rejected the notion that because the Commonwealth had the trade and commerce power, S51 (i), to control interstate regular public transport, that power extended to the concept of commingling of intrastate, interstate and international air traffic into one whole blank range of federal power. It was clear that the High Court was determined to ensure that the States retained control over the sovereign states’ intrastate trade and commerce.

Lest your Committee thinks that S52 (1) of the Constitution (the Commonwealth places provision) will overcome these deficiencies of constitutional power, would your committee please consider *AG (NSW) v Stocks*

& Holding Constructions Pty Ltd 1970 124 CLR 262 @ 266 “Any law of the Commonwealth made pursuant to S52 (1) with respect to that place will cease to operate when the Commonwealth’s ownership or possession ends”. Most airport terminals are leased by private companies from the Commonwealth and the Commonwealth does not have possession thereof vide Airport Act S22.

When one considers the vast concourses that make up the public areas of airport terminals, the High Court decisions taken at their face value seem to imply that the concourses are constitutionally the province of the individual states. After all what part of facilities offered to the public at Brisbane Domestic Terminal has anything to do with any of the articles of the Chicago Convention? None! In what way is a passenger involved in interstate trade and commerce when he checks in to fly from Brisbane to Townsville? None! Yet in both cases he is subjected to a comprehensive search of his person on “aviation security” grounds by Federal officials and his nail file and nail clippers confiscated never to be returned.

In my submission, this lacuna in the law may prevent the Federal bureaucracy from effectively countering the most offensive and damaging criminals seeking perhaps to cause terror to air passengers.

Practical suggestions

It is more productive to consider the various internal physical qualities within an aircraft such as the air and water facilities, together with the generation of electricity and hydraulics to name the most obvious.

It is more productive to concentrate on the outward appearances of the various passengers as they traverse the current security "race".

Taking the second suggestion first. Most persons when placed in the path of danger exhibit fear and nervous mannerisms. Nothing new in that comment. For reference "Bomber Command " by Max Hastings; "No Moon Tonight" by Don Charlwood or either of Martin Middlebrook's historical works "The Berlin Raids", "The Nuremburg Raid" are instructive to show that most bomber crews were afraid of conducting operations to the point of superstition and sickness PRIOR to the flight. I suggest that either of the two categories of criminal are equally in a severe state of nervousness when they attempt to destroy themselves and the aircraft or take over an airliner. It would be more useful to concentrate of trying to pick the very nervous potential passenger prior to them being allowed onto the aircraft. Currently, this is not seen to be done.

Recently, I travelled through many and various aviation security procedures namely Brisbane, Sydney, Singapore, Bahrain, London Stansted, Biarritz France, Paris Orly and Paris De Gaulle. The two that impressed me most were Stansted and De Gaulle. At Stansted, each passenger had to go through a form of race like a sheep dip where they were individually observed by a security person. At De Gaulle, a dedicated French security person made close eye contact with each passenger. In Australia, whilst there were a lot of contract security personnel engaged, not one of them was actually looking at persons.

All seemed to be engrossed in checking objects of various sorts. Perhaps there were security cameras at Sydney or Brisbane but I could see no evidence of them.

Reverting to the first practical suggestion, the air within the airliner is a rich source for mayhem. Large airliners resemble the original gas chamber at Auschwitz used as a model to murder millions during World War II. The added advantage for a suicide bomber is that the airborne gas chamber is augmented by powerful recirculation fans to ensure that all persons on board share possibly fatal air. The admission by a suicide criminal of cyanide gas to the air of a sealed airliner would ensure that the inmates of the aircraft are killed and the aircraft will suffer the fate of Payne Stewart's aircraft and the Beechcraft King Air from WA a few years back. The splashing of formaldehyde on bare aluminium surfaces generates debilitating and eye watering fumes that will disable passengers and air crew very quickly. I know as I experienced such an event in an airliner. Neither of these possibilities have been considered by "Aviation Security" that I am aware of.

The use of a quantity of water splashed into the electrical and electronic compartment of an airliner will quickly disable that aircraft by fusing and interrupting electric current to run the aircraft. You can be certain the cockpit door will open quickly and remain open whilst the technical crew seek to isolate the loss of current to regain some control of the aircraft.

Naturally, the airconditioning system would shut down and passengers will be living on the contained air in the aircraft until the pressurization on doors can be reduced, for them to be opened. In all a great upheaval will occur in the aircraft whilst the tech crew try to regain electrical control. How easy is it to admit water to the E & E compartment? All airliners have cold trays cooling drinks, ice is used to cool drinks, ice melts and fills the trays. It would be a simple matter to move the ice/water tray to the E & E compartment and tip it in. Leaks from ice water trays have occurred in QANTAS airliners but they are not taken seriously by that airline.

A diamond ring can cut through each of the load bearing panels of a passenger window in about 4 or 5 hours. Unlikely? I was in command of a B 727 when a passenger did exactly that, try to cut through the internal load bearing panel of a passenger window. When I explained what would happen to her if she succeeded she stopped doing it. Surprisingly, the airline shut their corporate eyes to the risk.

There are probably many ways in which a determined criminal can disable, destroy or hazard an airliner other than with a gun or a knife or sharp object. I would be pleased to expand on these themes personally if your committee deems it appropriate.

I mention that I am a solicitor in private practice in aviation law as a speciality and I hold a first class airline transport pilot's licence endorsed to B 727 command. I have spent many years flying aircraft of all types and now practice primarily in aviation matters. I have some practical experience of aviation security and its shortfalls.

P. Clough