



Australian Government

Department of Transport and Regional Services

Secretary

File Reference: P2005/0008
Contact: Darren Crombie

Mr Mick J Keelty
Commissioner
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Dear Mr Keelty

Ms Shapelle Corby: Checked Baggage Screening Process

I refer to your letter of 11 July 2005 in which you sought information on the process involved in screening Ms Corby's checked baggage on Australian Airlines flight AO 7829.

Ms Corby travelled on 8 October 2004. Hence, the information provided in this letter refers to the legal regime in force on that date. The current legal regime is quite different, and as far as is relevant is outlined in the attachment to this letter.

I have undertaken detailed enquiries in relation to your queries, and provide the following information.

How the 4th baggage item of Ms Corby was handled?

The Department of Transport and Regional Services (DOTARS) understands that Ms Corby's lawyers have already been in contact with SACL about the management of Ms Corby's baggage. We also understand that SACL does not have a listing of the 4th baggage item having been recorded by the checked baggage system.

SACL and/or Qantas (who we understand acted as ground handlers for Australian Airlines) may be able to provide you with more information on how the 4th baggage item was handled.

The normal process that should have been applied to Ms Corby's baggage

Legal framework relating to screening in force on 8 October 2004

On 8 October 2004, when Ms Corby flew to Denpasar, the legislative regime relating to screening was different to that which is in place now (the current regime is outlined in the attachment to this letter). The applicable legislation at that time was the *Air Navigation Act 1920* (the AN Act) and various regulations made under that Act, in particular the *Air Navigation (Checked Baggage) Regulations 2000* (the Checked Baggage Regulations). Under that regime:

- the aircraft operator of a regular public transport aircraft (such as that on which Ms Corby flew) was obliged to ensure that a tag indicating the flight number and destination of the aircraft was securely attached to each item of baggage accepted by the operator for carriage on the aircraft (see s.22C(4) of the AN Act).

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- The aircraft operator (in this case Australian Airlines) was permitted to carry baggage on an international aircraft only if it had been screened in accordance with the Checked Baggage Regulations (see reg.13).
 - The terminal operator (in this case SACL) was responsible for screening and clearing of checked baggage processed through the terminal facility which was to be carried on an international flight (reg.6 Checked Baggage Regulations). In practice, this meant that it was the airline's responsibility to present checked bags to the terminal operator, which then performed the checked baggage screening process.

Legal framework relating to methods and techniques for screening in force on 8 October 2004

The legislation in force on 8 October 2004 (the day on which Ms Corby flew to Bali) did not specify that any particular method, technique or equipment, such as in-line CBS, was to be employed for screening international checked baggage. The relevant legislation in force at that time was the Air Navigation (Checked Baggage) Regulations 2000. As noted above, those Regulations did require a terminal operator to ensure that all items of checked baggage that were processed through the terminal facility were 'screened and cleared' before being loaded onto an international aircraft. They did not specify the detail of how the required screening and clearing was to be undertaken. However, screening had to be undertaken in accordance with testing procedures established by the terminal operator (reg.6). The testing procedures established by SACL as at October 2004 provided in essence that 20% of all checked baggage processed through the international terminal in a month was to be subject to checked baggage screening. The procedures to be used were a combination of manual and automated systems (that is, involving X-ray equipment). In relation to baggage transferred from domestic to international scheduled flights, the procedures provided that selected baggage was to be inserted into the automated checked baggage handling system.

In addition, a direction was given under reg. 8 to SACL requiring SACL to comply with these procedures.

Any deviation from the normal process that may be relevant to consider

Responsibility for screening and loading checked baggage rests, and has always rested with, the relevant screening authority (in the case of Sydney International Terminal, SACL), and the relevant airline, and hence, DOTARS has no direct knowledge of how baggage which was loaded onto the flight on which Ms Corby travelled to Denpasar was dealt with by either the screening authority (SACL), the aircraft operator (Australian Airlines) or the ground handler (Qantas). The parties with direct knowledge of this matter would be Qantas, Australian Airlines and SACL.

DOTARS is not aware of any deviation from these requirements in relation to Ms Corby's baggage on that day. SACL may be able to provide further detail in this regard.

If there was in fact no tag attached to the 4th bag when it was loaded onto the Australian Airlines aircraft, but it was nevertheless carried by Australian Airlines, prima facie Australian Airlines would have breached s.22C(4) of the AN Act. However, the fact that SACL does not have a listing of the 4th baggage tag having been recorded by the checked baggage system does not necessarily mean that Australian Airlines did in fact carry an untagged bag in breach of s.22C(4).

Potential gaps in the checked baggage screening process

DOTARS believes that on 8 October 2004 there were potential gaps in the CBS process, particularly because at that time there was no requirement for 100% of checked baggage to be subject to screening, and because of the opportunity for human interaction with CBS systems. For example, it was possible

for baggage to bypass the system through manual procedures not being followed properly. DOTARS's current audit and compliance regime actively seeks to identify and minimise any such procedural or systems failures. Moreover, recent Australian Government decisions continue to tighten procedures across industry, including the introduction of the new legislative regime relating to aviation security, and steps to increase the use of video surveillance at airports. This should assist in addressing potential gaps.

Objective of screening

It is important to be cognisant of the fact that the objective of the process of screening is to detect items which could compromise aviation security. In relation to persons and their carry on baggage, the objective is to detect weapons (which, as currently defined in the Aviation Transport Security Regulations 2005, includes explosives), prohibited items (which, as currently defined in those Regulations, include various sharp items, things which could be used to bludgeon a person and flammable goods). The objective of checked baggage screening is only to detect explosives (see reg.4.04 of the Regulations). It is not, under the current legislative regime, nor was it under the previous regime applicable at the time of Ms Corby's travel, the objective of screening of checked baggage to detect other items, which may be prohibited under other statutory regimes, such as drugs.

Yours sincerely



Michael J. Taylor
SECRETARY

25 July 2005

ATTACHMENT - Current legislative framework

The legislation which now regulates screening of checked baggage is the *Aviation Transport Security Act 2004* and the *Aviation Transport Security Regulations 2005*. These came into effect on 10 march 2005.

Current legal framework for conducting screening

At each major airport there is a screening authority or authorities established which have a legal obligation arising under the Act and Regulations to clear persons and their baggage where those persons and/or that baggage are being carried on a screened air service, such as the international passenger flight on which Ms Corby travelled to Denpasar. In the case of Sydney Airport, the legally established screening authority is Sydney Airport Corporation Limited (SACL).

The Regulations provide that airlines must not allow baggage to be loaded onto an aircraft undertaking an international RPT passenger flight unless the baggage has been screened and cleared. In practice, this means that it is the airline's responsibility to present checked bags to the screening authority, and the screening authority then undertakes the checked baggage screening process. In addition the operator of an aircraft undertaking an international flight must ensure that there is attached to each item of checked baggage carried on the flight a tag that identifies the relevant flight.

Current legal framework relating to methods and techniques for screening

The Australian Government's policy since 2002 has been that all international checked baggage on flights from Australian should be subject to checked baggage screening (CBS) from 31 December 2004. This was later supplemented by a policy decision that there should be 100% in-line CBS for all international baggage by 31 December 2004. Broadly speaking, 'in line CBS' means a system for the screening of checked baggage which entails the baggage being placed on an automated conveyor system behind the check-in counter with the baggage then passing through X-ray equipment.

This policy is given legal force and effect by the current legislative regime. A Notice has been issued under reg.4.17 of the Regulations which specifies the methods, techniques and equipment to be used for screening, and which provides in Part 6 that:

- all airports must perform checked baggage screening of 100% of baggage carried on international flights out of Australia;
- by 31 December 2005, all international checked baggage must be subject to CBS in-line screening;
- where an airport does not have in-line CBS screening operational, checked bag screening is to be performed by means of X-ray observation, supplemented by explosive trace detection equipment and trace detection devices.

If a screening authority which has been given this Notice fails to comply with any of the requirements of the Notice, a strict liability offence is committed. All screening authorities at airports have been given the Notice.