

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 15/05/2020 8:53:51 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD464/2020  
File Title: APPLICATION IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Dated: 15/05/2020 8:54:12 AM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59  
Rule 29.02(1)

**Affidavit**

No. NSD 464 of 2020

Federal Court of Australia  
District Registry: New South Wales  
Division: Commercial and Corporations List

**IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS**

**VAUGHAN STRAWBRIDGE, SALVATORE ALGERI, JOHN GREIG AND RICHARD HUGHES,  
IN THEIR CAPACITY AS JOINT AND SEVERAL VOLUNTARY ADMINISTRATORS  
OF EACH OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) AND THE  
THIRD TO THIRTY-NINTH PLAINTIFFS NAMED IN SCHEDULE 1**

First Plaintiffs

**AND OTHERS NAMED IN SCHEDULE 1**

Affidavit of:       Kassandra Suzann Adams  
Address:            Level 15, 1 Bligh Street, Sydney NSW 2000  
Occupation:        Solicitor  
Date:                15 May 2020

**Contents**

Document number	Details	Annexure	Pages
1.	Affidavit of Kassandra Suzann Adams sworn on 12 May 2020		1 - 15
2.	Letter from Norton Rose Fulbright Australia to Clayton Utz dated 14 May 2020	A.	16 - 17
3.	Email chain between Norton Rose Fulbright Australia and Clayton Utz commencing 14 May 2020	B.	18 - 22

Filed on behalf of (name & role of party)	The Plaintiffs		
Prepared by (name of person/lawyer)	Timothy James Sackar		
Law firm (if applicable)	Clayton Utz		
Tel	+61 2 9353 4000	Fax	+61 2 8220 6700
Email	kaadams@claytonutz.com		
<b>Address for service</b> (include state and postcode)	Level 15, 1 Bligh Street, Sydney NSW 2000		

[Version 3 form approved 02/05/2019]

<b>Document number</b>	<b>Details</b>	<b>Annexure</b>	<b>Pages</b>
4.	Letter from Clayton Utz to Norton Rose Fulbright Australia dated 14 May 2020	C.	23
5.	Letter from Thomson Geer to Clayton Utz dated 14 May 2020	D.	24 - 26
6.	Letter from Clayton Utz to Thomson Geer dated 14 May 2020	E.	27
7.	Letter from King & Wood Malleons to Clayton Utz dated 14 May 2020	F.	28 - 30
8.	Email chain between King & Wood Malleons and Clayton Utz commencing 14 May 2020	G.	31 - 33
9.	Letter from HWL Ebsworth to Clayton Utz dated 14 May 2020	H.	34 - 35
10.	Email chain between HWL Ebsworth and Clayton Utz commencing 13 May 2020	I.	36 - 37
11.	Email chain between HWL Ebsworth, King & Wood Malleons and Clayton Utz commencing 14 May 2020	J.	38 - 48
12.	Email chain between HWL Ebsworth, King & Wood Malleons and Clayton Utz commencing 14 May 2020	K.	49 - 51
13.	Minutes of proposed orders attached provided by email to HWL Ebsworth, King & Wood Malleons and Clayton Utz on 14 May 2020	L.	52 - 61
14.	Email chain between King & Wood Malleons and Clayton Utz commencing 11 May 2020	M.	62 - 66
15.	Letter from King & Wood Malleons to Clayton Utz dated 12 May 2020	N.	67 - 94
16.	Email chain between Clayton Utz and Norton Rose Fulbright Australia commencing 11 May 2020	O.	95 - 102
17.	Letter from Norton Rose Fulbright to Clayton Utz dated 11 May 2020	P.	103 - 105
18.	Letter from Norton Rose Fulbright to Clayton Utz dated 12 May 2020	Q.	106 - 108

I Cassandra Suzann Adams, solicitor of Clayton Utz, Level 15, 1 Bligh Street, Sydney NSW 2000, say on oath:

1. I am a solicitor employed by Clayton Utz, solicitors for the Plaintiffs. I have the day to day carriage of this matter under the supervision of Timothy Sackar, a partner of Clayton Utz.
2. I make this affidavit from my own knowledge and belief, except where otherwise stated in which case I have stated the source of my knowledge.
3. I make this affidavit in relation to the Interlocutory Application filed on behalf of the Plaintiffs on 11 May 2020 (**Interlocutory Application**).

## **CORRESPONDENCE WITH INTERESTED PARTIES**

### **Perth Airport**

4. On 14 May 2020 I am informed by Mr Sackar that a letter was sent from Mr Jeffrey Black, Partner, Norton Rose Fulbright Australia (**NRF**), acting on behalf of Perth Airport to Mr Sackar in relation to the orders sought in the Interlocutory Process, requesting among other things, that the First Plaintiffs:
  - (a) *"agree that the orders sought relate only to any future contracts entered into, and do not limit or affect their personal liability arising in respect of debts (or future liabilities) incurred under existing contracts or arrangements with our client, including but not limited to, the ASA (as defined in previous correspondence);*
  - (b) *without limitation to other contracts that have or may be adopted, and for the avoidance of doubt, adopts the terms of the ASA; and*
  - (c) *undertake to meet liabilities accruing to our client personally notwithstanding the making of the orders sought (either pursuant to the ASA or otherwise)."*
5. Copies of the letter from Mr Black dated 14 May 2020 and the email chain in which this letter was provided are located at **Annexures A** and **B**, respectively.
6. On 14 May 2020 at approximately 5.17pm, I caused a letter to be sent to Mr Black:
  - (a) confirming that paragraph 14 of the Interlocutory Process is not intended to apply to the ASA in respect of the Perth Airport: and
  - (b) stating:
    - i. *"However, should Perth Airport enter into a new agreement with the Administrators during their appointment, such new agreement would be subject to the proposed order in accordance with paragraph 14 of the Interlocutory Process"; and*
    - ii. *"Any previous arrangement with the Administrators and Perth Airport in respect of liabilities under the ASA is not sought to be withdrawn and will be paid in accordance with such arrangements agreed upon between the Administrators and Perth Airport."*
7. A copy of the letter I caused to be sent to Mr Black via email is located at **Annexure C**.

8. On 14 May 2020 at approximately 7.30pm, I received an email from Kellie Link, Senior Associate, NRF and Mr Black requesting confirmation:
- (a) in relation to the First Plaintiffs' adoption of the ASA;
  - (b) that Counsel appearing on behalf of the First Plaintiffs at tomorrow morning's hearing will bring to the Court's attention that, although responses have been received from certain creditors in relation to the proposed orders, that have been no objections to proposed order 14 on the basis that order does not extend to any existing agreements, including any future liabilities that may arise under existing agreements; and
  - (c) the First Plaintiffs provide Perth Airport with reasonable prior notice of any future applications brought by them, which may affect Perth Airports interests.
9. A copy of this email is contained in the email chain at **Annexure B**.
10. At approximately 9.52pm, I am aware that Mr Alistair Fleming, Partner, Clayton Utz sent an email to Ms Link, copying others, confirming:
- (a) in relation to paragraph 8(a) above, that the First Plaintiffs have not adopted (without limitation) the ASA but that they do accept the position under section 443A of the Corporations Act that they are personally liable for debts they incur on an from the date of their appointment subject to modification by Court Order. I also requested that if Perth Airport have any particular questions about any such orders, or their interplay with the ASA and section 443A that they please tell us;
  - (b) in relation to paragraph 8(b) above, the First Plaintiffs' agreement; and
  - (c) in relation to paragraph 8(c) above, the First Plaintiffs' agreement.
- I am aware that Mr Fleming sent this email, as I was copied in to the email. A copy of this email is contained in the email chain at **Annexure B**.
11. I am informed by and believe to be true that on 14 May 2020, that Mr Sackar attended a telephone call with Mr Black to discuss the matters raised above regarding paragraph 14 of the Interlocutory Process. I am informed by Mr Sackar that those queries were resolved and Mr Black confirmed on behalf of Perth Airport that it is not appearing at the hearing on 15 May 2020 (**Hearing**).

#### **Adelaide Airport**

12. On 14 May 2020, I am aware that Mr Sackar received a letter from Michael Barrett, Partner, Thompson Geer, acting on behalf of Adelaide Airport Limited (**AAL**). That letter, among other things:
- (a) stated that AAL is a creditor of the Virgin Australia Airways Pty Ltd (Administrators Appointed) (**VAA**);
  - (b) set out various agreements entered into between AAL and VAA; and

(c) requested that the First Plaintiffs confirm whether the Interlocutory Application is intended to affect existing contracts, in particular those with AAL.

A copy of the letter from Mr Barrett to Mr Sackar is located at **Annexure D**.

13. On 14 May 2020, I caused a letter to be sent to Mr Barret confirming, among other things:
- (a) that the Interlocutory Process is not intended to apply to apply to prior contracts entered into by the Virgin group, rather it is to apply to new contracts entered into during the administration of the Virgin companies; and
  - (b) should AAL enter into a new agreement with First Plaintiffs, such new agreement would be subject to the proposed order in accordance with paragraph 14 of the Interlocutory Process.

A copy of the letter I caused to be sent to Mr Black is located at **Annexure E**.

### **Melbourne Airport**

14. I am informed by Mr Sackar and believe to be true that on 14 May 2020, Mr Sackar received a call from Mr Tony Troiani, Partner, King & Wood Mallesons, acting on behalf of Melbourne Airport, with a certain questions regarding paragraph 14 of the Interlocutory Process. I am informed by Mr Sackar that those queries were resolved and Mr Troiani confirmed on behalf of Melbourne Airport that it is not appearing at the Hearing.

### **Government - Attorney General's Department and the Australian Taxation Office**

15. On 14 May 2020 at approximately 12.16pm, I was copied to an email attaching a letter from Natalie Tatasciore, Partner, King & Wood Mallesons acting on behalf of the Commonwealth Government Attorney-General's Department (**KWM Commonwealth Letter**). A copy of the KWM Commonwealth Letter is located at **Annexure F**.
16. In the KWM Commonwealth Letter, Ms Tatasciore referred to the proposed short minutes of order sought by the First Plaintiffs in in the Interlocutory Process. The letter provides:
- (a) in relation to proposed order 15, which proposes to limit the liability of the First Plaintiffs liability, that the Commonwealth requests the First Plaintiffs make certain disclosures to the Committee of Inspect, including:
    - i. *"by 21 May 2020, for each Applicable Agreement (as that term is defined in paragraph 76 of the Strawbridge Affidavit) that the voluntary administrators intend to cause an entity within the Virgin group to perform in whole or in part between now and 18 August 2020, the debts that the voluntary administrators expect to incur under each of those Applicable Agreements if those debts exceed, or are expected to exceed, AUD 10 million (**Table**);*
    - ii. *on a monthly basis thereafter, any material changes to the Table including any Applicable Agreements that have been varied during that period with the effect of the variation being that the debts that the voluntary administrators expect to incur under that Applicable Agreement prior to 18 August 2020 exceeds AUD 10 million; and*

- iii. *3 business days prior to the entry of any new agreements, any new agreement that the voluntary administrators propose to enter into prior to 18 August 2020 under which the voluntary administrators intend to cause an entity within the Virgin group to incur a debt in excess of AUD 10 million."*

(b) in relation to proposed order 20, in respect of bank accounts in the administration, stating that:

- i. the Tenth Plaintiff is the largest employing entity within the group and the Twentieth plaintiff is also an employing entity;
- ii. *"The Commonwealth is concerned that if the cash held in the bank accounts of these entities is used to meet the debts of other entities within the group, and all or part of the Virgin group ends up in liquidation, the cash that would have ordinarily been available to priority employee creditors will have been significantly diminished. This is particularly so in circumstances where those the other entities within the group are unlikely to be in a position to repay to the tenth and twentieth plaintiffs the funds that were advanced on their behalf to satisfy their debts";* and
- iii. the Commonwealth seeks agreement from the First Plaintiffs that it will continue to record journal entries in relation to payments made for other subsidiaries from accounts held by the Tenth and Twentieth Plaintiffs;

(c) in relation to proposed orders 21 and 23:

- i. the Commonwealth relies upon directors to provide it with detailed information about the asset position of each individual entity within a corporate group in administration upon their appointment and that information is essential to the integrity of the Commonwealth's FEG recovery program;
- ii. KWM is instructed that Commonwealth has previously requested Estimated Outcome Statements for each of the employing entities within the Virgin group as at the date of the voluntary administrators' appointment, which it understands will be provided when it becomes available; and
- iii. on the basis that the Ninth, Tenth, Thirteenth and Twentieth plaintiffs are the only employing entities in the group and the First Plaintiffs agree to provide Estimated Outcome Statements for each of those entities specifically identify the quantum of circulating assets on hand at the time of the voluntary administrators' appointment, the Commonwealth will not press any further objection to these proposed orders; and
- iv. if the First Plaintiffs' consider it to be too onerous to allocate costs in a full Estimated Outcome Statement by 21 May 2020, the Commonwealth is prepared to consider accepting a schedule of circulating assets in the interim.

17. Following receipt of Ms Tatasciore's email attaching the KWM Commonwealth Letter, Ms Tatasciore and I (copying others) engaged in further email correspondence in relation to the

matters raised in the letter. A copy of that email correspondence is contained in the email chain located at **Annexure G**.

18. In the same email chain at approximately 8.00pm, Ms Tatasciore sent me a further email, copied to others, confirming that the Commonwealth does not oppose the proposed orders circulated by me at 6.13pm on 14 May 2020 (discussed at paragraph 21 below) on that basis that the First Plaintiffs:
- (a) have agreed to continue the journal entries contemplated in paragraph 119 of the affidavit of Vaughan Strawbridge dated 11 May 2020, filed in these proceedings;
  - (b) have indicated that the next Committee of Inspection meeting will occur on 21 May 2020, and are expected to occur monthly thereafter until August 2020; and
  - (c) have agreed to provide the Commonwealth with financial information for each of the employing entities as set out in in an email from Mr Strawbridge to Henry Carr at approximately 7.17pm on 14 May 2020.

#### **Deputy Commissioner of Taxation**

19. On 13 May 2020 I received a letter via email from Wayne Jenvey, Partner, HWL Ebsworth acting for the Deputy Commissioner of Taxation (**ATO**) in relation to paragraphs 14, 18, 19 and 22 of the Interlocutory Process. In that letter, Mr Jenvey states that:
- (a) the ATO is concerned with the abovementioned paragraphs in the Interlocutory Process;
  - (b) paragraph 18 raises complicated issues concerning the interaction of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* with the *Taxation Administration Act 1953* and other taxation legislation and the Corporations Act which will need to be considered by the Australian Government and others;
  - (c) the ATO requires more time to consider and obtain advice about the effect of paragraph 18 of the Interlocutory Process; and
  - (d) requests that a without prejudice conference be held between the ATO and the First Plaintiff.
- A copy of the letter sent by Mr Jenvey is located at **Annexure H**.
20. On 14 May 2020:
- (a) at approximately 10:51am I sent an email reply to, among others, Rachel McCarthy, HWL Ebsworth and Mr Jenvey in response to their letter dated 13 May 2020, stating that:
    - i. I had obtained instructions from the First Plaintiffs that the ATO's concern in relation to paragraph 18 is focused primarily on the Jobkeeper programme; and
    - ii. confirming Clayton Utz has been instructed by the First Plaintiffs to stand paragraph 18 of the Interlocutory Process over until 20 May 2020 on the basis that:
      - 1. consent to the other orders sought in the Interlocutory Process be provided by the ATO;



2. the parties work constructively to formulate proposed paragraph 18 order to satisfy the ATO; and
3. no further extension be sought by the ATO in relation to paragraph 18 beyond Wednesday 20 May 2020; and

(b) at approximately 11.58am, Mr Jenvey replied, stating that:

- i. while the ATO's concern is in relation to paragraph 18 of the Interlocutory Process, the ATO has residual concerns in relation to paragraphs 14, 19, 20 and 22;
- ii. notwithstanding the above, the ATO does not intend to prepare submissions in relation to those paragraphs as they understand FEG (being the Attorney General's Department) would do so on behalf of the Commonwealth; and
- iii. the ATO requests draft short minutes and proposed communication to Justice Middleton's Associate be provided as soon as possible.

(c) A copy of the email chain containing the above correspondence with HWL Ebsworth is located at **Annexure I**.

#### **Joint correspondence with the Attorney General's Department and the ATO**

21. On 14 May 2020 at 6.13pm, I sent an email to, among others, Ms Tatasciore and Mr Jenvey attaching proposed orders for their consideration. A copy of that email and the attached orders is located at **Annexure J**.
22. On 14 May 2020 at approximately 8:57pm, I sent an email to, among others, Ms Tatasciore and Mr Jenvey setting out proposed consent orders and a draft communication to be provided to the Associate to Justice Middleton.
23. Following a request for a minor amendment to that communication:
  - (a) Ms Tatasciore confirmed the Attorney General's Department's is not opposed to the proposed orders and draft communication by reply email at approximately 9.09pm; and
  - (b) Mr Jenvey confirmed the Deputy Commissioner is not opposed to the proposed orders and draft communication at approximately 10.05pm.
24. Copies of that email chain and the agreed proposed orders are located at **Annexures K and L**, respectively.

#### **Aircraft Lessors**

##### **King & Wood Mallesons**

25. On 11 May 2020 at approximately 11:57pm, I sent an email to, among others, Gavin Rakoczy, Special Counsel, King and Wood Mallesons (**KWM**) acting on behalf of various aircraft lessors and financiers (**Aircraft Lessors (KWM)**) serving copies of the Interlocutory Process and supporting affidavits filed in this proceeding on 11 May 2020. A copy of the email chain, which commences with my email sent at 11.57pm is located at **Annexure M**.
26. On 13 May 2020, in the same email located at **Annexure M**:

- (a) at approximately 10:52am, I received a response from Mr Rakoczy, copied to others, requesting a copy of the orders made by the Court on 13 May 2020 and requesting confirmation of whether a letter sent by Mr Rakoczy to Clayton Utz on 12 May 2020 had been provided to the Court (**12 May Letter**);
  - (b) at approximately 5:10pm, I responded to Mr Rakoczy's email, copying others, providing a copy of the orders made by the Court on 13 May 2020;
  - (c) at approximately 5.26pm, Mr Rakoczy sent a further email to me, copying others, requesting a response to his query in relation to the 12 May Letter.
27. On 14 May 2020, in the same email chain located at **Annexure M**:
- (a) at approximately 10.04am, Mr Rakoczy sent a further email to me, copying others, following up on his query in relation to the 12 May Letter;
  - (b) at approximately 12.17pm, I sent an email to Mr Rakoczy, copying others, confirming that I had received a copy of the 12 May Letter and stating that as I had only become aware of the 12 May Letter after the hearing on 13 May 2020, it would be brought to the Court's attention on 15 May 2020.
28. I was informed of the 12 May Letter by Graeme Tucker, Partner, Clayton Utz to whom the letter was addressed. That letter:
- (a) attached a mark-up of the Aircraft Protocol;
  - (b) stated that on the basis that the Aircraft Protocol will deal with any prejudice to the Aircraft Lessors (KWM), that KWM did not propose to attend or object to the application made pursuant to the Interlocutory Process; and
  - (c) requested that a copy of the letter be provided to the Court.
29. A copy of the 12 May Letter together with the attached Aircraft Protocol is located at **Annexure N**;
30. On 14 May 2020, in the same email chain located at **Annexure M**:
- (a) at approximately 7.36pm, Mr Rakoczy sent me a further email, copying others, requesting copies of the draft proposed orders and any additional affidavit materials filed by our clients;
  - (b) at approximately 8.04pm, I replied to Mr Rakoczy's email, copying others, confirming that the orders were still in the process of being drafted along with additional affidavit material and that copies would be provided once finalised; and
  - (c) at approximately 8.18pm, Mr Rakoczy replied to my email, copying others, confirming receipt of my response.

#### **Norton Rose Fulbright**

31. On 12 May 2020 at approximately 12.07pm, I sent an email to, among others, Noel McCoy, Partner, NRF, acting on behalf of acting on behalf of Perth Aircraft Leasing and Aviation Capital Group (**Aircraft Lessors (NRF)**) serving copies of the Interlocutory Process and supporting

affidavits filed in this proceeding on 11 May 2020. A copy of the email chain, which commences with my email sent at 11.57pm is located at **Annexure N**.

32. On 12 May the following further correspondence took place between Mr McCoy and Clayton Utz, which is contained in the same email chain located at **Annexure N**. That correspondence is set out as follows:

(a) at approximately 2.17pm, I received an email reply from Mr McCoy, copying others, which, among other things:

i. referred to:

1. discussions between Mr McCoy and Mr Tucker of Clayton Utz, which took place on 5 May 2020;
2. a letter sent by Mr McCoy to Clayton Utz dated 11 May 2020; and

ii. stated that the Aircraft Lessors (NRF) would not be in a position to deal with the application on 13 May 2020.

(b) at approximately 2.35pm, I replied to Mr McCoy, copying others, stating, among other things, that in relation to the adjournment, there is an order providing an interested party to have liberty to apply or to vary or discharge the orders on 1 business days' notice;

(c) at approximately 3.43pm, I received a response from Safiyya Khan, Senior Associate, NRF, copying others, stating, among other things, that the Aircraft Protocol contained in Tab 12 of the Affidavit of Vaughan Strawbridge dated 11 May 2020 contained a previous version of the limitation of liability clause than had been subsequently discussed with NRF;

(d) at approximately 6.21pm, I replied to Ms Khan, stating, among other things, that as described in the Interlocutory Process and supporting affidavit, the First Plaintiffs' are seeking an order that is be an agreement on the terms of, or substantially in accordance with the Aircraft Protocol circulated on 1 May 2020;

(e) at approximately 11.18pm, I received a reply from Mr McCoy, copying others, stating among other things that NRF understands the First Plaintiffs' position to be:

- i. *"the administrators' application seeks protection from personal liability in respect of an agreement on the terms of, or substantially in accordance with the Aircraft Protocol circulated on 1 May 2020 (being the version that will be put before the Court) but it is expected that the actual terms of the Aircraft Protocol to be entered into with lessors, at least the form of words limiting liability (being the subject matter of the orders) will be different to the version of the Aircraft Protocol before the Court;*
- ii. *at the same time, the administrators have provided a revised form of limitation of liability wording that is substantially different to the wording contained in the Aircraft Protocol circulated on 1 May 2020 and is intended to be included in the actual terms of the Aircraft Protocol to be entered into with lessors but this form of revised wording is not being put before the Court on the application."*

33. On 13 May 2020, at approximately 9.22am, I sent a further email to Mr McCoy, copying others, confirming:

- i. *"The form of words for the limitation of liability clause is to reflect the form of the orders proposed in the interlocutory application;*
- ii. *As I understand it, the Aircraft Protocol with your clients are being discussed and we have not received any comments from your clients on the current Aircraft Protocol other than letters to reflect your high level concerns. The form of the limitation of liability clause will reflect the orders proposed."*

A copy of the email chain is located at **Annexure N**.

34. On 14 May 2020:

(a) at approximately 10.24pm, I received a further email from Mr McCoy, which, among other things:

- i. attached letters from NRF to Clayton Utz dated 11 May 2020 and 12 May 2020, copies of which are located at **Annexures O** and **P**, respectively (**NRF Letters**);
- ii. attached the Aircraft Lessors (NRF)'s proposed amendments to the draft Aircraft Protocol, a copy of which is located at **Annexure Q**;
- iii. noted that the proposed amendments to the Aircraft Protocol should be read in conjunction with the NRF Letters;
- iv. stated that

1. *"Most relevant to the administrators' application under section 447A(1) of the Corporations Act and section 90-15 of the IPSC to limit the administrators' personal liability consistent with the Protocol, the drafting amendments proposed by our clients accommodate the areas of common ground – limited recourse personal liability of the administrators and deferral of rental payments (other than the payments identified in Schedule 2) during the administration – but otherwise seek to preserve the post-appointment priority of lessors as discussed in our letter.";* and

- v. requested that the First Plaintiffs defer the application until the Aircraft Lessors (NRF) have a proper opportunity to consider and discuss the Aircraft Protocol in light of the amendments.

(b) at approximately 11.49pm, I sent a further email to Mr McCoy, copying others, which is contained in the same email chain located at **Annexure O**. That email stated, among other things, that:

- i. the orders had been discussed with various parties over the course of that day and that Clayton Utz had not received any opposition to the orders sought by the First Plaintiffs;

- ii. the limitation of liability clause is not intended to affect pre-appointment agreements or agreements entered into post-appointment but before the orders are made with which specific relief is not sought; and
- iii. should NRF's client consider the need to address the Court on such matters, it is proposed that interested parties have the ability to bring the matter back before the Court on one business days' notice to seek to vary or discharge the orders.

**Additional correspondence**

- 35. In addition to the correspondence identified above, I am aware that a large volume of correspondence has been received by Clayton Utz and the First Plaintiffs concerning the administration of the First to Fortieth Plaintiff's more generally, which does not relate specifically to this application and which I have not exhibited.
- 36. Various creditors have also asked for a copy of the orders made by the Honourable Justice Middleton on 13 May 2020. A copy of these orders have been provided in response to those requests. Unless specified otherwise in this affidavit, I have not had a response to sending those orders.

Sworn by the deponent )  
 at Sydney )  
 in New South Wales )  
 on 15 May 2020 ) \_\_\_\_\_ Signature of deponent  
 Before me: )

\_\_\_\_\_  
 Signature of witness  
 Madeline McCloy, Solicitor

**SCHEDULE 1**

No. NSD

464 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: Commercial and Corporations List

**IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS****Plaintiffs**

First Plaintiffs:	Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes, in their capacity as joint and several voluntary administrators of the Second to Thirty-ninth Plaintiffs
Second Plaintiff:	Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226
Third Plaintiff	Virgin Australia International Operations Pty Ltd (Administrators Appointed) ACN 155 859 608
Fourth Plaintiff:	Virgin Australia International Holdings Pty Ltd (Administrators Appointed) ACN 155 860 021
Fifth Plaintiff:	Virgin Australia International Airlines Pty Ltd (Administrators Appointed) ACN 125 580 823
Sixth Plaintiff:	Virgin Australia Airlines (SE Asia) Pty Ltd (Administrators Appointed) ACN 097 892 389
Seventh Plaintiff:	Virgin Australia Airlines Holdings Pty Ltd (Administrators Appointed) ACN 093 924 675
Eighth Plaintiff:	VAH Newco No.1 Pty Ltd (Administrators Appointed) ACN 160 881 345
Ninth Plaintiff:	Tiger Airways Australia Pty Limited (Administrators Appointed) ACN 124 369 008
Tenth Plaintiff:	Virgin Australia Airlines Pty Ltd (Administrators Appointed) ACN 090 670 965
Eleventh Plaintiff:	VA Borrower 2019 No. 1 Pty Ltd (Administrators Appointed) ACN 633 241 059

Twelfth Plaintiff:	VA Borrower 2019 No. 2 Pty Ltd (Administrators Appointed) ACN 637 371 343
Thirteenth Plaintiff:	Virgin Tech Pty Ltd (Administrators Appointed) ACN 101 808 879
Fourteenth Plaintiff:	Short Haul 2018 No. 1 Pty Ltd (Administrators Appointed) ACN 622 014 831
Fifteenth Plaintiff:	Short Haul 2017 No. 1 Pty Ltd (Administrators Appointed) ACN 617 644 390
Sixteenth Plaintiff:	Short Haul 2017 No. 2 Pty Ltd (Administrators Appointed) ACN 617 644 443
Seventeenth Plaintiff:	Short Haul 2017 No. 3 Pty Ltd (Administrators Appointed) ACN 622 014 813
Eighteenth Plaintiff:	VBNC5 Pty Ltd (Administrators Appointed) ACN 119 691 502
Nineteenth Plaintiff:	A.C.N. 098 904 262 Pty Ltd (Administrators Appointed) ACN 098 904 262
Twentieth Plaintiff:	Virgin Australia Regional Airlines Pty Ltd (Administrators Appointed) ACN 008 997 662
Twenty-first Plaintiff:	Virgin Australia Holidays Pty Ltd (Administrators Appointed) ACN 118 552 159
Twenty-second Plaintiff:	VB Ventures Pty Ltd (Administrators Appointed) ACN 125 139 004
Twenty-third Plaintiff:	Virgin Australia Cargo Pty Ltd (Administrators Appointed) ACN 600 667 838
Twenty-fourth Plaintiff:	VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741
Twenty-fifth Plaintiff:	VA Hold Co Pty Ltd (Administrators Appointed) ACN 165 507 157
Twenty-sixth Plaintiff:	VA Lease Co Pty Ltd (Administrators Appointed) ACN 165 507 291
Twenty-seventh Plaintiff:	Virgin Australia 2013-1 Issuer Co Pty Ltd (Administrators Appointed) ACN 165 507 326
Twenty-eighth Plaintiff:	737 2012 No.1 Pty. Ltd (Administrators Appointed) ACN 154 201 859

Twenty-ninth Plaintiff:	737 2012 No. 2 Pty Ltd (Administrators Appointed) ACN 154 225 064
Thirtieth Plaintiff:	Short Haul 2016 No. 1 Pty Ltd (Administrators Appointed) ACN 612 766 328
Thirty-first Plaintiff:	Short Haul 2016 No. 2 Pty Ltd (Administrators Appointed) ACN 612 796 077
Thirty-second Plaintiff:	Short Haul 2014 No. 1 Pty Ltd (Administrators Appointed) ACN 600 809 612
Thirty-third Plaintiff:	Short Haul 2014 No. 2 Pty Ltd (Administrators Appointed) ACN 600 878 199
Thirty-fourth Plaintiff:	VA Regional Leaseco Pty Ltd (Administrators Appointed) ACN 127 491 605
Thirty-fifth Plaintiff:	VB 800 2009 Pty Ltd (Administrators Appointed) ACN 135 488 934
Thirty-sixth Plaintiff:	VB Leaseco No 2 Pty Ltd (Administrators Appointed) ACN 142 533 319
Thirty-seventh Plaintiff:	VB LH 2008 No. 1 Pty Ltd (Administrators Appointed) ACN 134 280 354
Thirty-eighth Plaintiff:	VB LH 2008 No. 2 Pty Ltd (Administrators Appointed) ACN 134 288 805
Thirty-ninth Plaintiff:	VB PDP 2010-11 Pty Ltd (Administrators Appointed) ACN 140 818 266



This and the following page is **Annexure A** referred to in the affidavit of Kassandra Suzann Adams

Sworn on \_\_\_\_\_

Before me \_\_\_\_\_

14 May 2020

**First letter**

By email only: [afleming@claytonutz.com](mailto:afleming@claytonutz.com);  
[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)

**Attention:** Timothy Sackar and Alistair Fleming

Clayton Utz  
QV.1, 250 St Georges Terrace  
PERTH WA 6000

 **NORTON ROSE FULBRIGHT**

Norton Rose Fulbright Australia  
ABN 32 720 868 049  
Level 30, 108 St Georges Terrace  
PERTH WA 6000  
AUSTRALIA

Tel +61 8 6212 3222  
Fax +61 8 6212 3444  
GPO Box P1225, Perth WA 6844  
DX 139 Perth  
nortonrosefulbright.com

**Direct line**  
+61 8 6212 3135

**Email**  
kellie.link@nortonrosefulbright.com

<b>Your reference:</b>	<b>Our reference:</b>
14887/21595/81005835	4029293

Dear Sirs

**Administrators' application for relief from liability**

We refer to your clients' application dated 12 May 2020, which was filed on an *ex parte* and urgent basis (**Application**), and to the telephone discussion between Alistair Fleming and Jeff Black on the evening of 12 May 2020.

We are instructed as follows:

- 1.1 It is unclear to our client, the basis for the apparent urgency with which the Application was filed (at least insofar as it relates to the limitation of your clients' personal liability), and why it was not possible to provide our client with prior notice of orders sought that may prejudice their rights. For completeness, we note that our client learned of the Application by monitoring the Federal Court records.
- 1.2 For the avoidance of any doubt, our client expressly reserves its right to object to the orders sought in the Application, and to object to any further or other orders sought by your client that seek to limit or alter the provisions of the Corporations Act designed to protect creditors such as our client.
- 1.3 Please confirm by no later than **4:00 p.m. AWST this afternoon** that your clients:
  - (1) agree that the orders sought relate only to any future contracts entered into, and do not limit or affect their personal liability arising in respect of debts (or future liabilities) incurred under existing contracts or arrangements with our client, including but not limited to, the ASA (as defined in previous correspondence);
  - (2) without limitation to other contracts that have or may be adopted, and for the avoidance of doubt, adopts the terms of the ASA; and
  - (3) undertake to meet liabilities accruing to our client personally notwithstanding the making of the orders sought (either pursuant to the ASA or otherwise).
- 1.4 If the confirmations and undertaking sought above are not forthcoming, please note that our client intends to oppose the Application, insofar as it relates to limitation of liability.

APAC-#106896410-v2

14 May 2020

We look forward to hearing from you by the above deadline.

Yours faithfully



Jeffery Black  
Partner  
Norton Rose Fulbright Australia  
Contact: Kellie Link

Sworn on \_\_\_\_\_  
Before me \_\_\_\_\_

**McCloy, Madeleine**

---

**From:** Fleming, Alistair  
**Sent:** Thursday, 14 May 2020 9:52 PM  
**To:** Link, Kellie  
**Cc:** jeffery.black@nortonrosefulbright.com; Sackar, Timothy; Adams, Kassandra; Hanrahan, Rebecca; Wong, Patrick; Poncini, Adriano  
**Subject:** FW: Perth Airport / Virgin Australia (4029293)[NRF-APAC.FID2760194] [CU-Legal.FID3017446]

Dear Kellie,

Thank you for your email.

Our responses to your questions are set out and highlighted in your email below.

Regards,

**Alistair Fleming, Partner  
Clayton Utz**

Level 27, QV.1 Building, 250 St Georges Terrace, Perth WA 6000 Australia | D +618 9426 8288 | F +618 9481 3095 | M +61 401138328 |

[afleming@claytonutz.com](mailto:afleming@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)

Please consider the environment before printing this e-mail

---

**From:** Link, Kellie <[kellie.link@nortonrosefulbright.com](mailto:kellie.link@nortonrosefulbright.com)>  
**Sent:** Thursday, 14 May 2020 7:30 PM  
**To:** Adams, Kassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>  
**Cc:** Black, Jeffery <[jeffery.black@nortonrosefulbright.com](mailto:jeffery.black@nortonrosefulbright.com)>; Fleming, Alistair <[afleming@claytonutz.com](mailto:afleming@claytonutz.com)>; Sackar, Timothy <[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)>  
**Subject:** FW: Perth Airport / Virgin Australia (4029293)[NRF-APAC.FID2760194]

Dear Kassandra

Thank you for your letter of a little earlier this afternoon.

Can you please also confirm as follows:

1. that, for the avoidance of doubt, your clients have adopted (without limitation) the ASA, and absent any future agreement are personally liable for amounts accruing under that agreement on and from the date of appointment; The Administrators have not adopted (without limitation) the ASA. The Administrators do however accept the position under section 443A of the Corporations Act, that they are personally liable for debts they incur on and from the date of their appointment subject to modification by Court order. If your clients have any particular questions about any such orders, or their interplay with the ASA and section 443A, please tell us.

We otherwise note that the Administrators remain in negotiations with your client in relation to the terms of the ongoing operations, and await your client's response to their proposal. To that end, if there is any particular reason your clients have asked this question at this stage of the negotiations, please tell us.

2. that Counsel appearing on behalf of your clients at tomorrow morning's hearing will bring to the Court's attention that, although responses have been received from certain creditors in relation to the proposed orders, there have been no objections to proposed order 14 on the basis that that order does not extend to any existing agreements, including any future liabilities that may arise under existing agreements; and Yes, agreed.
3. your clients shall provide our client with reasonable prior notice of any future applications brought by them, which may affect our client's interests; absent extenuating circumstances, we would expect not less than five (5) business days' notice of any proposed application. Yes, understood.

We look forward to hearing from you later today.

Kind regards

**Jeffery Black** | Partner (Admitted in Australia and New York)  
Norton Rose Fulbright Australia  
Level 30, 108 St Georges Terrace, Perth, Australia  
Tel +61 8 6212 3203 | Mob +61 408 463 770 | Fax +61 8 6212 3444  
jeffery.black@nortonrosefulbright.com

**Kellie Link** | Senior Associate  
Norton Rose Fulbright Australia  
Level 30, 108 St Georges Terrace, Perth, Australia  
Tel +61 8 6212 3135 | Mob +61 417 862 797 | Fax +61 8 6212 3444  
kellie.link@nortonrosefulbright.com

## **NORTON ROSE FULBRIGHT**

*Law around the world*  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

Please be aware that all Australian staff other than those required to provide essential services and facilities are working remotely, so we are not currently hosting meetings in our offices. To find out more, [click here](#).

---

**From:** Adams, Cassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>  
**Sent:** Thursday, 14 May 2020 4:28 PM  
**To:** Black, Jeffery <[jeffery.black@nortonrosefulbright.com](mailto:jeffery.black@nortonrosefulbright.com)>  
**Cc:** Link, Kellie <[kellie.link@nortonrosefulbright.com](mailto:kellie.link@nortonrosefulbright.com)>; Fleming, Alistair <[afleming@claytonutz.com](mailto:afleming@claytonutz.com)>; Sackar, Timothy <[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)>; Herewini, Amy <[amy.herewini@nortonrosefulbright.com](mailto:amy.herewini@nortonrosefulbright.com)>  
**Subject:** RE: Perth Airport / Virgin Australia (4029293)[NRF-APAC.FID2760194]

Dear Jeff,

Please find attached letter.

Kind regards,

**Kassandra Adams, Senior Associate**  
**Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |  
[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)  
*Please consider the environment before printing this e-mail*

---

**From:** Sackar, Timothy <[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)>  
**Sent:** Thursday, 14 May 2020 5:17 PM  
**To:** 'Black, Jeffery' <[jeffery.black@nortonrosefulbright.com](mailto:jeffery.black@nortonrosefulbright.com)>; Herewini, Amy <[amy.herewini@nortonrosefulbright.com](mailto:amy.herewini@nortonrosefulbright.com)>  
**Cc:** Link, Kellie <[kellie.link@nortonrosefulbright.com](mailto:kellie.link@nortonrosefulbright.com)>; Fleming, Alistair <[afleming@claytonutz.com](mailto:afleming@claytonutz.com)>; Adams, Cassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>  
**Subject:** RE: Perth Airport / Virgin Australia (4029293)[NRF-APAC.FID2760194]

Thanks Jeff, no problem. I am free during that time. We also have a letter coming.

Kind regards

Tim

**Timothy Sackar**  
**National Practice Leader, R&I**  
**Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4114 | F +612 8220 6700 | M +614 29 450 051 |  
[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)  
*Please consider the environment before printing this e-mail*

---

**From:** Black, Jeffery <[jeffery.black@nortonrosefulbright.com](mailto:jeffery.black@nortonrosefulbright.com)>  
**Sent:** Thursday, 14 May 2020 5:04 PM

**To:** Sackar, Timothy <[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)>; Herewini, Amy <[amy.herewini@nortonrosefulbright.com](mailto:amy.herewini@nortonrosefulbright.com)>  
**Cc:** Link, Kellie <[kellie.link@nortonrosefulbright.com](mailto:kellie.link@nortonrosefulbright.com)>; Fleming, Alistair <[afleming@claytonutz.com](mailto:afleming@claytonutz.com)>; Adams, Cassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>  
**Subject:** RE: Perth Airport / Virgin Australia (4029293)[NRF-APAC.FID2760194]

Hi Tim

Thanks for your email below and subsequent voicemail message.

I just tried you back.

I am clear through 3:45 p.m. / 5:45 p.m. this afternoon, if that works for you?

Kind regards  
Jeff

**Jeffery Black** | Partner (Admitted in Australia and New York)  
Norton Rose Fulbright Australia  
Level 30, 108 St Georges Terrace, Perth, Australia  
Tel +61 8 6212 3203 | Mob +61 408 463 770 | Fax +61 8 6212 3444  
[jeffery.black@nortonrosefulbright.com](mailto:jeffery.black@nortonrosefulbright.com)

## **NORTON ROSE FULBRIGHT**

*Law around the world*  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

Please be aware that all Australian staff other than those required to provide essential services and facilities are working remotely, so we are not currently hosting meetings in our offices. To find out more, [click here](#).

---

**From:** Sackar, Timothy <[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)>

**Sent:** Thursday, 14 May 2020 2:36 PM

**To:** Herewini, Amy <[amy.herewini@nortonrosefulbright.com](mailto:amy.herewini@nortonrosefulbright.com)>

**Cc:** Black, Jeffery <[jeffery.black@nortonrosefulbright.com](mailto:jeffery.black@nortonrosefulbright.com)>; Link, Kellie <[kellie.link@nortonrosefulbright.com](mailto:kellie.link@nortonrosefulbright.com)>; Fleming, Alistair <[afleming@claytonutz.com](mailto:afleming@claytonutz.com)>; Adams, Cassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>

**Subject:** RE: Perth Airport / Virgin Australia (4029293)[NRF-APAC.FID2760194]

Thank you for the letter. We will respond shortly.

It might be worth a short call - could you please let me know who is the best contact at NRF?

Kind regards

Tim

**Timothy Sackar**  
**National Practice Leader, R&I**  
**Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4114 | F +612 8220 6700 | M +614 29 450 051 |

[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)

Please consider the environment before printing this e-mail

---

**From:** Herewini, Amy <[amy.herewini@nortonrosefulbright.com](mailto:amy.herewini@nortonrosefulbright.com)>

**Sent:** Thursday, 14 May 2020 4:24 PM

**To:** Fleming, Alistair <[afleming@claytonutz.com](mailto:afleming@claytonutz.com)>; Sackar, Timothy <[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)>

**Cc:** Black, Jeffery <[jeffery.black@nortonrosefulbright.com](mailto:jeffery.black@nortonrosefulbright.com)>; Link, Kellie <[kellie.link@nortonrosefulbright.com](mailto:kellie.link@nortonrosefulbright.com)>

**Subject:** Perth Airport / Virgin Australia (4029293)[NRF-APAC.FID2760194]

Dear Sirs

Please see **attached** correspondence.

Regards

**Amy Herewini** | Legal Assistant  
Norton Rose Fulbright Australia  
Level 30, 108 St Georges Terrace, Perth, Australia  
Tel +61 8 6212 3118 | Fax +61 8 6212 3444  
amy.herewini@nortonrosefulbright.com

## **NORTON ROSE FULBRIGHT**

*Law around the world*  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

Please be aware that all Australian staff other than those required to provide essential services and facilities are working remotely, so we are not currently hosting meetings in our offices. To find out more, [click here](#).

**CONFIDENTIALITY NOTICE:** This email, including any attachments, is confidential and may be privileged. If you are not the intended recipient please notify the sender immediately, and please delete it; you should not copy it or use it for any purpose or disclose its contents to any other person. Norton Rose Fulbright Australia and its affiliates reserve the right to monitor all email communications through their networks.

Norton Rose Fulbright Australia is a law firm as defined in the legal profession legislation of the Australian states and territory in which it practises.

Norton Rose Fulbright Australia, Norton Rose Fulbright LLP, Norton Rose Fulbright Canada LLP, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are available at [nortonrosefulbright.com](http://nortonrosefulbright.com).

We collect personal information in the course of providing our legal services. For further information please see our Australian privacy collection notice available on our website.

**CONFIDENTIALITY NOTICE:** This email, including any attachments, is confidential and may be privileged. If you are not the intended recipient please notify the sender immediately, and please delete it; you should not copy it or use it for any purpose or disclose its contents to any other person. Norton Rose Fulbright Australia and its affiliates reserve the right to monitor all email communications through their networks.

Norton Rose Fulbright Australia is a law firm as defined in the legal profession legislation of the Australian states and territory in which it practises.

Norton Rose Fulbright Australia, Norton Rose Fulbright LLP, Norton Rose Fulbright Canada LLP, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are available at [nortonrosefulbright.com](http://nortonrosefulbright.com).

We collect personal information in the course of providing our legal services. For further information please see our Australian privacy collection notice available on our website.

**CONFIDENTIALITY NOTICE:** This email, including any attachments, is confidential and may be privileged. If you are not the intended recipient please notify the sender immediately, and please delete it; you should not copy it or use it for any purpose or disclose its contents to any other person. Norton Rose Fulbright Australia and its affiliates reserve the right to monitor all email communications through their networks.

Norton Rose Fulbright Australia is a law firm as defined in the legal profession legislation of the Australian states and territory in which it practises.

Norton Rose Fulbright Australia, Norton Rose Fulbright LLP, Norton Rose Fulbright Canada LLP, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are available at [nortonrosefulbright.com](http://nortonrosefulbright.com).

We collect personal information in the course of providing our legal services. For further information please see our Australian privacy collection notice available on our website.

This page is **Annexure C** referred  
to in the affidavit of Cassandra Suzann Adams  
Sworn on \_\_\_\_\_  
Before me \_\_\_\_\_

CLAYTON UTZ

**Confidential**

Mr Jeffery Black  
Partner  
Norton Rose Fulbright  
Level 30,  
108 St Georges Terrace  
PERTH WA 6000

14 May 2020

Dear Jeffrey

**In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) & Ors  
Federal Court of Australia Proceeding Number NSD 464/2020**

Thank you for your letter of today, regarding Perth Airport.

The Application, is not intended to apply to prior contracts entered into by Virgin and the Virgin Group. Rather, it is to apply to new contracts entered into during the Administration.

The Application and the paragraph 14 of the Interlocutory Process is not intended to apply to the ASA in respect of the Perth Airport.

However, should Perth Airport enter into a new agreement with the Administrators during their appointment, such new agreement would be subject to the proposed order in accordance with paragraph 14 of the Interlocutory Process.

Any previous arrangement with the Administrators and Perth Airport in respect of liabilities under the ASA is not sought to be withdrawn and will be paid in accordance with such arrangements agreed upon between the Administrators and Perth Airport.

We hope this clarifies your query. If you would like to discuss, please contact Cassandra Adams on 0435 014 318.

Yours sincerely



**Timothy Sackar, NPGL Restructuring/Insolvency**  
+61 2 9353 4114  
tsackar@claytonutz.com

**Kassandra Adams, Senior Associate**  
+61 2 9353 4200  
kaadams@claytonutz.com

Our ref 20556/21895/81005835



This and the following 2 pages is **Annexure D** referred to in the affidavit of Cassandra Suzann Adams

Sworn on \_\_\_\_\_

Before me \_\_\_\_\_

Level 7, 19 Gouger Street  
Adelaide SA 5000 Australia

GPO Box 1663 Adelaide SA 5001  
DX 571 Adelaide

T +61 8 8236 1300  
F +61 8 8232 1961

Our ref MB:4605415  
Your ref 14887/21595/81005835

14 May 2020

**tsackar@claytonutz.com**

Mr Timothy Sackar  
Clayton Utz  
Level 15, 1 Bligh Street  
SYDNEY NSW 2000

**Electronic**

Dear Sir

**Urgent**

**In the matter of Virgin Australia Holdings Ltd (Administrators Appointed)  
Federal Court of Australia Case no NSD464/2020**

As know we act for Adelaide Airport Limited (**AAL**). AAL operates Adelaide Airport (**Airport**) pursuant to a headlease granted by the Commonwealth. We have been in communication with both your office and your Perth office in relation to the administration of Virgin Australia Airways Pty Ltd (Administrators Appointed) (**Virgin**) more generally.

AAL is a substantial creditor of Virgin and other entities in the Virgin Group and has lodged proofs of debt with the Administrators of the relevant Virgin Group entities. The debt owing to our client exceeds \$10million.

**Our respective clients' dealings**

As your clients are aware, AAL and Virgin contract in relation to aeronautical activities and services provided at the Airport pursuant to:

- 1 the Terms of Use which are published on AAL's website (**Terms of Use**).
- 2 a Landing Fee Agreement dated 17 August 2016, varied by way of letter dated 22 February 2018 (**Landing Fee Agreement**); and
- 3 a Passenger Facilitation Charge (**PFC**) Deed dated 23 October 2003 (**PFC Deed**).

Virgin pays three categories of fees for its aeronautical activities at the Airport being landing or aeronautical fees pursuant to the Landing Fee Agreement, PFCs pursuant to the PFC Deed and Government Mandated Charges pursuant to the Terms of Use. The Terms of Use regulates operational matters as between AAL and Virgin.

AAL is a secured creditor pursuant to a lien conferred on it pursuant to the Terms of Use but the value of its security is presently unknown. AAL has recently written to your clients directly with a request for information and documents under the *Insolvency Practice Schedule* to attempt to ascertain the value of its security.

By an email sent by Mr Anthony Lowe (of Deloitte Financial Advisory) on 22 April 2020, the administrators of Virgin (**Administrators**) acknowledged and confirmed that they had a personal liability in respect of fees due to AAL arising out of Virgin's flight operations during "the administration period". In so doing, the

Administrators adopted each of the Landing Fee Agreement, the PFC Deed and the Terms of Use (though in the latter case that was necessarily adopted by them in using the Airport).

Our client in its dealings with Virgin and the Virgin Group of entities has relied on the email of 22 April 2020.

### Your clients' application

We refer to your clients' application dated 12 May 2020 (**Application**) which was brought by your client on an *ex parte* basis.

Our client only learnt of the making of the Application as a result of our office conducting a search of the Federal Court's website dedicated to the proceedings brought by your client. Notwithstanding the extensive liaison between the representatives of our client and the Administrators since their appointment, the Administrators did not foreshadow to our client that they intended to make such an application. Further your clients have not served AAL or our office with a copy of the Order made by the Court at the hearing on 13 May 2020.

We note that consideration of (amongst others) proposed order 14 (**Order**) has been adjourned to a hearing at 10:15am AEST this Friday 15 May 2020. For convenience, the Order relevantly states:

14. *An order pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, that Part 5.3A of the Corporations Act is to operate in relation to the Plaintiffs as if section 443A(1) of the Corporations Act provides that:*
  - a. *the liabilities of the First Plaintiffs (in their capacity as administrators of each of the Virgin Companies) incurred with respect to any obligations arising out of, or in connection with, any future:*  
  
...
    - v. *airport agreements, being agreements entered into with major airports across Australia, for the use of terminal gates, public spaces and facilities and for sub-leases in relation to each of the Virgin Companies' airport lounges;*

On its terms, the Order refers to future agreements (i.e. those which the Administrators and counterparties might enter into future) rather than existing agreements, and your clients' submissions (at [87](b)) suggest that is what is intended, rather than future liabilities which arise under existing arrangements. That interpretation is further supported by the submissions filed in support of the Application and in particular the submission that your clients apprehend that if they "*seek to operate the business of the Virgin Companies to a greater capacity*", they may wish to "*enter into negotiations with other counter-parties in respect of the Applicable Agreements*" and seek to be excused from personal liability in relation to those future agreements.

Our client has sought from the Administrators, confirmation as to whether the Application is intended to affect existing contracts in particular those with it. The limited response they have received did not address that issue specifically but suggested that it affected all contracts.

There appears to us to be an inconsistency between the Order and what is intended by the Administrators.

The Application is supported by, amongst others, the affidavit of Mr Strawbridge dated 11 May 2020 (**Strawbridge Affidavit**). Paragraph 7 of the Strawbridge Affidavit states that it is in support of orders, amongst others, intended "*to limit the personal liability of the Administrators with respect to debts incurred in connection with certain contracts including... (v) the ongoing use of airports and airport spaces*". There is no limitation in the Strawbridge affidavit that it is intended that the Order apply to only "future" agreements which are not presently in place.

It is unclear to AAL whether the Order is intended to apply to future liabilities which might arise under existing agreements such as those as between AAL and Virgin, or only as to some hypothetical agreements which might be reached between them in future.

AAL seeks urgent clarification from you as to whether it is intended by the Order that it have effect in relation to each of the Landing Fee Agreement, PFC Deed and Terms of Use and whether the undertaking provided by the Administrators on 22 April 2020 is proposed to be withdrawn. Please let us know by 2:00pm today whether that is the intent of the Order.

If it is the case that the Order is intended to apply to future liabilities arising under existing agreements, such an order is likely to be prejudicial to AAL and we have instructions to appear and oppose the making of the Order insofar as it relates to each of those agreements and have briefed Mr Philip Crutchfield QC and Mr Banjo McLachlan to appear. Alternatively, AAL would be prepared not to oppose the making of the Order if the Administrators were prepared to undertake to meet liabilities accruing to AAL (only) personally notwithstanding the making of the Order pursuant to the Terms of Use, Landing Fee Agreement and PFC Deed.

We look forward to hearing from you.

Yours faithfully  
**THOMSON GEER**



**Michael Barrett**  
Partner  
T +61 8 8236 1130  
M 0412 807 861  
E mbarrett@tjlaw.com.au

This is page is **Annexure E** referred  
to in the affidavit of **Kassandra Suzann Adams**  
Sworn on \_\_\_\_\_  
Before me \_\_\_\_\_

**Confidential**

Mr Michael Barrett  
Partner  
Thomson Geer  
Level 7  
19 Gouger Street  
ADELAIDE SA 5001

14 May 2020

Dear Michael

**In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) & Ors Federal Court of Australia Proceeding Number NSD 464/2020**

Thank you for your letter of today, regarding Adelaide Airport Limited (**AAL**).

Defined terms used in your letter are used below in our letter.

The Application, is not intended to apply to prior contracts entered into by Virgin and the Virgin Group. Rather, it is to apply to new contracts entered into during the Administration.

The Application and the paragraph 14 of the Interlocutory Process and paragraph 7 of the Strawbridge Affidavit are correct and unambiguous. Accordingly, it is not intended to apply to the Landing Fee Agreement, the PFC Deed and the Terms of Use in respect of the Airport.

However, should the Airport enter into a new agreement with the Administrators during their appointment, such new agreement would be subject to the proposed order in accordance with paragraph 14 of the Interlocutory Process.

Any previous arrangement with the Administrators and the Airport in respect of fees is not sought to be withdrawn and will be paid in accordance with the arrangements agreed upon between the Administrators and the Airport.

We hope this clarifies your query. If you would like to discuss, please contact Kassandra Adams on 0435 014 318.

Yours sincerely



**Timothy Sackar, NPGL Restructuring/Insolvency**  
+61 2 9353 4114  
tsackar@claytonutz.com

**Kassandra Adams, Senior Associate**  
+61 2 9353 4200  
kaadams@claytonutz.com

Our ref 20556/21895/81005835

14 May 2020

To Tim Sackar  
Partner  
Clayton Utz

Copy Kassandra Adams  
Senior Associate  
Clayton Utz

[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)

[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)

Dear Tim and Kassandra

**In the matter of Virgin Australia Holdings Ltd (Administrators Appointed)  
NSD 464 of 2020 (Proceeding)**

We refer to the Proceeding and to the Proposed Short Minute of Order that was tendered in Court on 13 May 2020 (**Minute**).

The Commonwealth of Australia has now had the opportunity of considering the Minute, the Affidavit of Vaughan Neil Strawbridge dated 11 May 2020 (**Strawbridge Affidavit**) and has instructed us to raise the following matters for your consideration.

**Proposed Order 15**

Proposed order 15 provides that the voluntary administrators will not be personally liable for a very wide range of liabilities incurred in relation to various types of 'future' agreements to the extent that the assets of the particular Virgin company that is counterparty to the relevant agreement are insufficient to satisfy the debts owed by the company. The agreements are defined in partially inclusive terms as the 'Applicable Agreements'. This order would effectively remove the personal liability imposed on the administrators by s 443A of the *Corporations Act 2001* (Cth) in relation to practically any agreement the voluntary administrators enter into during the trade on of the Virgin group.

Section 443A is a central feature of the legislative scheme governing external administration and an important protection for creditors and other stakeholders in any administration. Any abrogation of it by a Court must be carefully considered, taking into account all of the circumstances of the particular administration and the particular personal liabilities that the voluntary administrators seek to avoid.

That said, the Commonwealth appreciates that the Virgin administration is unique in both its own right and because of the economic environment in which it is taking place. The Commonwealth also notes the information that has been provided to it by the voluntary administrators to date. Given this, the Commonwealth requests that the voluntary administrators disclose to the Committee of Inspection:

- (a) by 21 May 2020, for each Applicable Agreement (as that term is defined in paragraph 76 of the Strawbridge Affidavit) that the voluntary administrators intend to cause an entity within the Virgin group to perform in whole or in part between now and 18 August 2020, the debts that the voluntary administrators expect to incur under each of those Applicable Agreements if those debts exceed, or are expected to exceed, AUD 10 million (**Table**);
- (b) on a monthly basis thereafter, any material changes to the Table including any Applicable Agreements that have been varied during that period with the effect of the variation being that the debts that the voluntary administrators expect to incur under that Applicable Agreement prior to 18 August 2020 exceeds AUD 10 million; and
- (c) 3 business days prior to the entry of any new agreements, any new agreement that the voluntary administrators propose to enter into prior to 18 August 2020 under which the voluntary administrators intend to cause an entity within the Virgin group to incur a debt in excess of AUD 10 million.

This mechanism will enable, at least, the Committee of Inspection to have proper visibility of the debts being incurred by the voluntary administrators on an ongoing basis, and provide an opportunity for any of those creditors who are aggrieved by the potential incurring of a particular debt to make an informed decision about whether they wish to exercise the liberty provided to them in the orders made on 13 May 2020 to apply to the Court for an appropriate variation of proposed order 15 (through the Committee of Inspection or otherwise).

#### **Proposed Order 19**

We have been instructed that the Commissioner of Taxation, through the Australian Taxation Office and its solicitors, is liaising directly with the voluntary administrators regarding the scope of this order. As such, the Attorney-General's Department will not make any submissions on this order.

#### **Proposed Order 20**

As we understand it, Order 20 is being sought because all payments are being made from bank accounts held by the tenth plaintiff and the twentieth plaintiff. The tenth plaintiff is the largest employing entity within the group (by far) and the twentieth plaintiff is also an employing entity. The Commonwealth is concerned that if the cash held in the bank accounts of these entities is used to meet the debts of other entities within the group, and all or part of the Virgin group ends up in liquidation, the cash that would have ordinarily been available to priority employee creditors will have been significantly diminished. This is particularly so in circumstances where those the other entities within the group are unlikely to be in a position to repay to the tenth and twentieth plaintiffs the funds that were advanced on their behalf to satisfy their debts.

The Commonwealth notes that in paragraph 119 of the Strawbridge Affidavit, Mr Strawbridge states that when a Virgin subsidiary incurs a debt and it is paid from an account held by the tenth or twentieth plaintiffs, the voluntary administrators record a journal entry detailing the transaction, such that a later accounting is possible.

The Commonwealth seeks the voluntary administrators' agreement that the voluntary administrators will continue to record these journal entries for the remainder of the voluntary administration period.

**Proposed Orders 21 and 23**

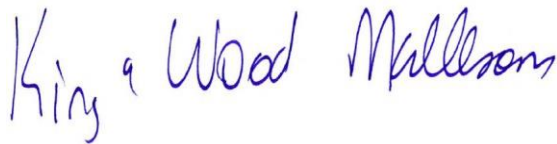
The Commonwealth's concern in relation to these orders is that it relies upon directors to provide it with detailed information about the asset position of each individual entity within a corporate group in administration upon their appointment. As you would appreciate, this information is essential to the integrity of the Commonwealth's FEG recovery program.

We have been instructed that Commonwealth has previously requested Estimated Outcome Statements for each of the employing entities within the Virgin group as at the date of the voluntary administrators' appointment. We further understand that this information will be provided when it becomes available.

The voluntary administrators have advised the Commonwealth that the employing entities within the Virgin group are the Ninth, Tenth, Thirteenth and Twentieth plaintiffs (**Employing Entities**). Please inform us if there are any others. On the basis that our understanding is correct, we have been instructed that if the voluntary administrators agree to provide Estimated Outcome Statements for each of the Employing Entities that specifically identify the quantum of circulating assets on hand at the time of the voluntary administrators' appointment, the Commonwealth will not press any further objection to these proposed orders. If the voluntary administrators consider it to be too onerous to allocate costs in a full Estimated Outcome Statement by 21 May 2020, the Commonwealth is prepared to consider accepting a schedule of circulating assets in the interim.

We look forward to hearing from you.

Yours sincerely



**Natalie Tatasciore | Partner**  
**King & Wood Mallesons**  
T +61 2 9296 2288 | M +61 429 908 476  
[natalie.tatasciore@au.kwm.com](mailto:natalie.tatasciore@au.kwm.com)

**This communication and any attachments are confidential and may be privileged.**

Sworn on \_\_\_\_\_

Before me

**McCloy, Madeleine**

---

**From:** Tatasciore, Natalie (AU) <Natalie.Tatasciore@au.kwm.com>  
**Sent:** Thursday, 14 May 2020 8:00 PM  
**To:** Sackar, Timothy; Adams, Cassandra  
**Cc:** Project Volar; Cowling, David (AU); Gorovtsov, Alex (AU)  
**Subject:** RE: Virgin - Interlocutory Process

Dear Tim and Cassandra

We refer to our letter dated 14 May 2020, the email chain below, and Vaughan Strawbridge's email to Henry Carr at 7:17pm this evening (**Strawbridge Email**).

On the basis of the voluntary administrators:

- have agreed to continuing the journal entries contemplated in paragraph 119 of the Strawbridge Affidavit;
- have indicated that the next Committee of Inspection meeting will occur on 21 May 2020, and are expected to occur monthly thereafter until August 2020; and
- have agreed to provide the Commonwealth with financial information for each of the employing entities as set out in the Strawbridge Email,

the Commonwealth does not oppose the Minute of Proposed Orders circulated at 6:13pm this evening. We note that the date of the proposed orders needs to be updated on page 1.

Please note that the Commonwealth will file a short submission, which we will circulate to the Court shortly and file in the morning. Mr Moore QC will also make a brief oral submission.

Kind regards

**Natalie Tatasciore | Partner  
King & Wood Mallesons**

Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000  
T +61 2 9296 2288 | M +61 429 908 476 | F +61 2 9296 3999  
[natalie.tatasciore@au.kwm.com](mailto:natalie.tatasciore@au.kwm.com) | [Partner profile](#) | [www.kwm.com](http://www.kwm.com)

**This communication and any attachments are confidential and may be privileged.**

King & Wood Mallesons in Australia is a member firm of the King & Wood Mallesons network.  
See [www.kwm.com](http://www.kwm.com) for more information.

---

**From:** Sackar, Timothy <tsackar@claytonutz.com>  
**Sent:** Thursday, 14 May 2020 2:54 PM  
**To:** Tatasciore, Natalie (AU) <Natalie.Tatasciore@au.kwm.com>; Adams, Cassandra <kaadams@claytonutz.com>  
**Cc:** Project Volar <Volar@claytonutz.com>; Cowling, David (AU) <David.Cowling@au.kwm.com>; Gorovtsov, Alex (AU) <Alex.Gorovtsov@au.kwm.com>  
**Subject:** RE: Virgin - Interlocutory Process

Natalie, see our comments below.

Kind regards

Tim

**Timothy Sackar  
National Practice Leader, R&I  
Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4114 | F +612 8220 6700 | M +614 29 450 051 |  
[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)  
Please consider the environment before printing this e-mail



---

**From:** Tatasciore, Natalie (AU) <[Natalie.Tatasciore@au.kwm.com](mailto:Natalie.Tatasciore@au.kwm.com)>  
**Sent:** Thursday, 14 May 2020 4:32 PM  
**To:** Adams, Cassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>  
**Cc:** Sackar, Timothy <[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)>; Project Volar <[Volar@claytonutz.com](mailto:Volar@claytonutz.com)>; Cowling, David (AU) <[David.Cowling@au.kwm.com](mailto:David.Cowling@au.kwm.com)>; Gorovtsov, Alex (AU) <[Alex.Gorovtsov@au.kwm.com](mailto:Alex.Gorovtsov@au.kwm.com)>  
**Subject:** RE: Virgin - Interlocutory Process

Dear Cassandra

A couple of things:

- We will take instructions on what you say about the information about circulating assets. In the meantime, can you please confirm the VAs agreement to continuing the journal entries contemplated in paragraph 119 of the Strawbridge Affidavit, which will resolve the issues with Proposed Order 20. **Yes, confirmed.**
- Given that much of the consultation will be dependant upon a COI meeting being held, can you please let us know how regular these are likely to be between now and 18 August 2020. Ie – I assume they will not be weekly, but will they be fortnightly, monthly etc? **We are told the first meeting is next Thursday 21 May and they are planned for monthly after that. Of course, as the sale progresses the VAs may step up the frequency depending on the updates needed.**

Kind regards

**Natalie Tatasciore | Partner**  
**King & Wood Mallesons**  
Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000  
T +61 2 9296 2288 | M +61 429 908 476 | F +61 2 9296 3999  
[natalie.tatasciore@au.kwm.com](mailto:natalie.tatasciore@au.kwm.com) | [Partner profile](#) | [www.kwm.com](http://www.kwm.com)

**This communication and any attachments are confidential and may be privileged.**

King & Wood Mallesons in Australia is a member firm of the King & Wood Mallesons network.  
See [www.kwm.com](http://www.kwm.com) for more information.

---

**From:** Adams, Cassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>  
**Sent:** Thursday, 14 May 2020 2:08 PM  
**To:** Tatasciore, Natalie (AU) <[Natalie.Tatasciore@au.kwm.com](mailto:Natalie.Tatasciore@au.kwm.com)>  
**Cc:** Sackar, Timothy <[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)>; Project Volar <[Volar@claytonutz.com](mailto:Volar@claytonutz.com)>; Cowling, David (AU) <[David.Cowling@au.kwm.com](mailto:David.Cowling@au.kwm.com)>  
**Subject:** Virgin - Interlocutory Process

Hi Natalie,

Please find attached proposed orders, that we hope are acceptable to your client.

In relation to EOS, we are instructed that this was discussed with FEG last night and the current request is extremely onerous. The Administrators are otherwise content to provide a trial balance - this was discussed with your client last night.

We look forward to hearing from you.

Kind regards,  
Kass

**Kassandra Adams, Senior Associate**  
**Clayton Utz**  
Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |  
[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)  
Please consider the environment before printing this e-mail

---

**From:** Tatasciore, Natalie (AU) <[Natalie.Tatasciore@au.kwm.com](mailto:Natalie.Tatasciore@au.kwm.com)>  
**Sent:** Thursday, 14 May 2020 12:16 PM  
**To:** Sackar, Timothy <[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)>; Adams, Cassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>

**Cc:** Cowling, David (AU) <[David.Cowling@au.kwm.com](mailto:David.Cowling@au.kwm.com)>

**Subject:** Virgin - Interlocutory Process

Dear Tim and Cassandra

Please find attached a copy of our letter to you.

Kind regards

**Natalie Tatasciore | Partner**

**King & Wood Malleons**

Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000

T +61 2 9296 2288 | M +61 429 908 476 | F +61 2 9296 3999

[natalie.tatasciore@au.kwm.com](mailto:natalie.tatasciore@au.kwm.com) | [Partner profile](#) | [www.kwm.com](http://www.kwm.com)

**This communication and any attachments are confidential and may be privileged.**

King & Wood Malleons in Australia is a member firm of the King & Wood Malleons network.  
See [www.kwm.com](http://www.kwm.com) for more information.

This and the following page is **Annexure H** referred to in the affidavit of **Kassandra Suzann Adams**  
Sworn on \_\_\_\_\_  
Before me \_\_\_\_\_

Our Ref:

Timothy Sackar and Kassandra Adams  
Clayton Utz  
Level 15, 1 Bligh Street  
Sydney NSW 2000

**Email: [tsackar@claytonutz.com](mailto:tsackar@claytonutz.com); [kaadams@claytonutz.com](mailto:kaadams@claytonutz.com);**

This document, including any attachments, may contain privileged and confidential information intended only for the addressee named above. If you are not the intended recipient please notify us. Any unauthorised use, distribution or reproduction of the content of this document is expressly forbidden.

Dear Colleagues

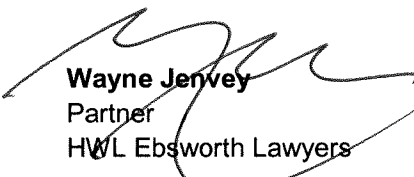
**In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) & Ors  
Federal Court of Australia proceeding NSD464/2020**

1. As you are aware, we act for the Deputy Commissioner of Taxation in relation to the above proceeding.
2. At this morning's hearing, Middleton J ordered that the hearing be stood over until 10.15am on Friday, 15 May 2020 in respect of paragraphs 14, 15, 18, 20, 21 and 22 of the Interlocutory Process. His Honour also requested that any interested parties who wish to be heard in respect of those orders file any material to be relied upon before noon tomorrow, Thursday 14 May 2020.
3. As previously indicated, the Deputy Commissioner has some serious concerns regarding the effect of the orders sought by the Administrators in paragraphs 14, 18, 19, 20 and 22 of the Interlocutory Process.
4. The Deputy Commissioner is particularly concerned about the effect of paragraph 18 of the Interlocutory Process which seeks to limit the Administrators' personal liability for any JobKeeper debts or liabilities incurred in respect of the Ninth, Tenth and Thirteenth Plaintiffs (the **Companies**) to the assets of the particular company that received the benefit of any JobKeeper payments received.
5. The *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* was enacted very recently and quickly by Parliament to respond to the unprecedented Coronavirus pandemic. The Australian Tax Offices (the **ATO**) has deployed staff and has been working on developing the resources and material required to administer that Act since it was enacted. However, those resources have been focused on the mainstream aspects of the provisions which will affect the broadest segment of the Australian community.

Adelaide  
Brisbane  
Canberra  
Darwin  
Hobart  
Melbourne  
Norwest  
Perth  
Sydney

6. Paragraph 18 of the Interlocutory Process raises complicated issues concerning the interaction of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*, in particular sections 9 and 11 of that Act, with the *Taxation Administration Act 1953*, and other taxation legislation, and the *Corporations Act 2001* (Cth). Those matters have not had to be considered before and consideration of these complexities will need to be run to ground, including by our client liaising with and obtaining advice from legal advisors, the Australian Government, the Attorney General's Department and other affected agencies with responsibility for impacted legislation.
7. As you will appreciate it is not possible for the Deputy Commissioner to be able to resolve these matters within 48 hours, let alone by noon on 14 May 2020. Our client requires further time to consider and obtain advice about the effect of paragraph 18 of the Interlocutory Process within the wider legislative context.
8. We are instructed that during a without prejudice conference between our client and your client this evening, your client indicated that he would defer seeking the relief sought in paragraph 18 until Wednesday, 20 May 2020. The Deputy Commissioner appreciates the pragmatic approach of your client and is committed to having an open dialogue and discussions with the administrators to try and resolve the issues in the coming days.
9. If you could provide us with consent orders to that effect by 10.00 am tomorrow, that would be appreciated.

Yours faithfully



**Wayne Jenvey**  
Partner  
HWL Ebsworth Lawyers

+61 7 3169 4801  
wjenvey@hwle.com.au



**Rachel McCarthy**  
Solicitor  
HWL Ebsworth Lawyers

+61 7 3169 4999  
rmccarthy@hwle.com.au

This and the following page is **Annexure I** referred to in the affidavit of **Kassandra Suzann Adams**

Sworn on \_\_\_\_\_

Before me

**McCloy, Madeleine**

---

**From:** Wayne Jenvey <wjenvy@hwle.com.au>  
**Sent:** Thursday, 14 May 2020 11:58 AM  
**To:** Adams, Kassandra; Rachel McCarthy  
**Cc:** Sackar, Timothy; Project Volar  
**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) & Ors - Federal Court of Australia proceeding NSD464/2020 [HWLE-Matter.C071955.980853]  
**Attachments:** 2020-05-13 Letter to Clayton Utz.pdf

Dear Kassandra

I confirm that our client's primary concern is in relation to paragraph 18 of the Interlocutory Process however as set out in paragraph 3 of our correspondence last evening (attached) our client also has residual concerns in relation to paragraphs 14, 19, 20 and 22.

Notwithstanding, our client does not intend to prepare submissions in relation to those other paragraphs as we understand that FEG on behalf of the Commonwealth will do so. Our client may wish to adopt some or all of those submissions.

I look forward to receiving the draft short minutes and proposed communication to Middleton J's Associate as soon as possible.

Kind regards,

**Wayne Jenvey**  
Partner



Level 19, 480 Queen Street | Brisbane QLD 4000  
Phone +61 7 3169 4801 | Mobile 0411 646 482  
[wjenvy@hwle.com.au](mailto:wjenvy@hwle.com.au) | [www.hwlebsworth.com.au](http://www.hwlebsworth.com.au)

Full service | Commercially oriented | Unrivalled value

Adelaide | Brisbane | Canberra | Darwin | Hobart | Melbourne | Norwest | Perth | Sydney

If you receive this communication by mistake we prohibit you from using it in any way and do not waive client legal privilege. Please notify us, delete the communication (and any attachments) and destroy all copies. We do not represent or warrant that this communication is free from computer viruses or other defects. You are responsible for all loss or damage caused directly or indirectly by the use of this communication. If you do not receive all of the email or attachments please notify us immediately by reply email. This notice should not be deleted or altered.

---

**From:** Adams, Kassandra <kaadams@claytonutz.com>  
**Sent:** Thursday, 14 May 2020 10:51 AM  
**To:** Rachel McCarthy <rmccarthy@hwle.com.au>  
**Cc:** Sackar, Timothy <tsackar@claytonutz.com>; Wayne Jenvey <wjenvy@hwle.com.au>; Project Volar <Volar@claytonutz.com>  
**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) & Ors - Federal Court of Australia proceeding NSD464/2020

Dear Rachel,

Thank you again for your letter. We have formally obtained instructions from the Voluntary Administrators and understand from your letter that the concern is really focused on paragraph 18 in the Interlocutory Process in relation to JobKeeper. On this basis, we are instructed to stand paragraph 18 of the Interlocutory Process until next Wednesday 20 May 2020 on the basis that:

- consent to the other orders sought in the Interlocutory Process is provided;
- the parties are to work constructively to formulate an Order 18 that satisfies your client; and

- no further extension is sought by the ATO in relation to paragraph 18 beyond Wednesday 20 May 2020.

We assume this is acceptable and are preparing short minutes. Please let us know if any issues.

Kind regards,

**Kassandra Adams, Senior Associate**

**Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |

[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)

Please consider the environment before printing this e-mail

---

**From:** Rachel McCarthy <[rmccarthy@hwle.com.au](mailto:rmccarthy@hwle.com.au)>

**Sent:** Wednesday, 13 May 2020 11:03 PM

**To:** Sackar, Timothy <[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)>; Adams, Kassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>

**Cc:** Wayne Jenvey <[wjenvey@hwle.com.au](mailto:wjenvey@hwle.com.au)>

**Subject:** In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) & Ors - Federal Court of Australia proceeding NSD464/2020

Dear Colleagues,

Please find **attached** correspondence of today's date.

Kind regards,

Rachel

**Rachel McCarthy**

Solicitor



Level 19, 480 Queen Street | Brisbane QLD 4000

Phone +61 7 3169 4999

[rmccarthy@hwle.com.au](mailto:rmccarthy@hwle.com.au) | [www.hwlebsworth.com.au](http://www.hwlebsworth.com.au)

Full service | Commercially oriented | Unrivalled value

Adelaide | Brisbane | Canberra | Darwin | Hobart | Melbourne | Norwest | Perth | Sydney

If you receive this communication by mistake we prohibit you from using it in any way and do not waive client legal privilege. Please notify us, delete the communication (and any attachments) and destroy all copies. We do not represent or warrant that this communication is free from computer viruses or other defects. You are responsible for all loss or damage caused directly or indirectly by the use of this communication. If you do not receive all of the email or attachments please notify us immediately by reply email. This notice should not be deleted or altered.

This and the following 10 pages is **Annexure J** referred to in the affidavit of Kassandra Suzann Adams

Sworn on \_\_\_\_\_

Before me

**McCloy, Madeleine**

---

**From:** Adams, Kassandra  
**Sent:** Thursday, 14 May 2020 6:13 PM  
**To:** Rachel McCarthy  
**Cc:** Sackar, Timothy; Tatasciore, Natalie (AU); Wayne Jenvey  
**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) & Ors - Federal Court of Australia proceeding NSD464/2020  
**Attachments:** Project Volar - Proposed Short Minutes of Order (Friday).DOCX

Hi Rachel,

Please find attached the current proposed orders.

Kind regards,  
Kass

**Kassandra Adams, Senior Associate  
Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |  
[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)  
*Please consider the environment before printing this e-mail*

---

**From:** Rachel McCarthy <[rmccarthy@hwle.com.au](mailto:rmccarthy@hwle.com.au)>  
**Sent:** Thursday, 14 May 2020 6:11 PM  
**To:** Adams, Kassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>  
**Cc:** Sackar, Timothy <[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)>; Tatasciore, Natalie (AU) <[Natalie.Tatasciore@au.kwm.com](mailto:Natalie.Tatasciore@au.kwm.com)>; Wayne Jenvey <[wjenvey@hwle.com.au](mailto:wjenvey@hwle.com.au)>  
**Subject:** In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) & Ors - Federal Court of Australia proceeding NSD464/2020

Dear Kassandra,

We are scheduled to speak with our client at 6.15pm.

Would you please provide, as a matter of urgency, the current version of the draft orders which are in circulation.

Kind regards,  
Rachel

**Rachel McCarthy**  
Solicitor



Level 19, 480 Queen Street | Brisbane QLD 4000  
Phone +61 7 3169 4999  
[rmccarthy@hwle.com.au](mailto:rmccarthy@hwle.com.au) | [www.hwlebsworth.com.au](http://www.hwlebsworth.com.au)

Full service | Commercially oriented | Unrivalled value

Adelaide | Brisbane | Canberra | Darwin | Hobart | Melbourne | Norwest | Perth | Sydney

If you receive this communication by mistake we prohibit you from using it in any way and do not waive client legal privilege. Please notify us, delete the communication (and any attachments) and destroy all copies. We do not represent or warrant that this communication is free from computer viruses or other defects. You are responsible for all loss or damage caused directly or indirectly by the use of this communication. If you do not receive all of the email or attachments please notify us immediately by reply email. This notice should not be deleted or altered.

## Minutes of proposed orders

No. NSD 464 of 2020

Federal Court of Australia  
District Registry: New South Wales  
Division: Commercial and Corporations List

### IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS

VAUGHAN STRAWBRIDGE, SALVATORE ALGERI, JOHN GREIG AND RICHARD HUGHES,  
IN THEIR CAPACITY AS JOINT AND SEVERAL VOLUNTARY ADMINISTRATORS  
OF EACH OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) AND THE  
THIRD TO THIRTY-NINTH PLAINTIFFS NAMED IN SCHEDULE 1  
First Plaintiffs

AND OTHERS NAMED IN SCHEDULE 1

Judge: Justice Middleton

Date of order: 13 May 2020

Where made: Melbourne

#### THE COURT ORDERS THAT:

##### JobKeeper

1. By consent of the First Plaintiffs and the Deputy Commissioner of Taxation, the hearing of paragraph 18 of the Interlocutory Process be stood over until 10.15am on 20 May 2020, with liberty to the parties to provide the Associate to Middleton J any orders by consent with respect to the relief sought in that paragraph.

##### Limitation of Administrators' Liability

##### *Specified Categories of Future Agreements*

2. Pursuant to section 447A(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the *Insolvency Practice Schedule 2016* (Cth), being Schedule 2 to the *Corporations Act (IPSC)*,

---

Filed on behalf of (name & role of party)	The Plaintiffs		
Prepared by (name of person/lawyer)	Timothy James Sackar		
Law firm (if applicable)	Clayton Utz		
Tel	+61 2 9353 4000	Fax	+61 2 8220 6700
Email	kaadams@claytonutz.com		
<b>Address for service</b> (include state and postcode)	Level 15, 1 Bligh Street, Sydney NSW 2000		

---



Part 5.3A of the Corporations Act is to operate in relation to the Plaintiffs as if section 443A(1) of the Corporations Act provides that:

- (a) the liabilities of the First Plaintiffs (in their capacity as administrators of each of the Virgin Companies) incurred with respect to any obligations arising out of, or in connection with, any future:
  - (i) agreement on the terms of, or substantially in accordance with, the Aircraft Protocols document in the form exhibited at Tab 12 of Exhibit VNS-2 to the Strawbridge Affidavit;
  - (ii) alliance agreements, being international arrangements established with various global airlines that provide the Virgin Companies with a long distance international network;
  - (iii) procurement contracts, including:
    - A. in-flight services agreements, being agreements entered into for the provision of food and beverages and other retail on-board services, catering, entertainment and internet wifi on flights operated by the Virgin Companies;
    - B. ground handling agreements, being agreements entered into for the provision of ground handling services for the Virgin Companies' flight arrivals and departures at national and international airports;
    - C. operational systems agreements, being agreements entered into for the provision of support and maintenance services in relation to licenced software, systems, platforms and network infrastructure;
    - D. fuel agreements, being agreements entered into for the supply and delivery of fuel to the Virgin Companies at various locations throughout Australia, New Zealand and the United States;
    - E. maintenance and parts agreements, being agreements entered into for the provision of maintenance, repair and modification services for aircraft operated by the Virgin Companies, including the provision of the relevant component parts;
    - F. IT agreements, being agreements entered into for the provision of core computer infrastructure and end user computing support services and business services to the Virgin Companies;
  - (iv) trade mark licence agreements;
  - (v) airport agreements, being agreements entered into with major airports across Australia, for the use of terminal gates, public spaces and facilities and for sub-leases in relation to each of the Virgin Companies' airport lounges;

- (vi) charter agreements, being agreements entered into with various major companies for the supply of scheduled air transport services for personnel and freight to nominated destinations agreed between the parties to the agreement;
- (vii) cargo agreements, being agreements entered into for the handling of cargo and the provision of management, administration and support services;
- (viii) corporate sales agreements, being agreements entered into with major travel agents and other platforms, including with both government and private counterparties, which set out incentives offered by the Virgin Companies for the sale of Virgin flights by the relevant agents;
- (ix) industry/agency agreements, being agreements entered into which provide for the preferred supply by the Virgin Companies of flight services to each of its clients, including with both government and private counterparties;
- (x) insurance arrangements, including contracts to support the ongoing operation of the Virgin Companies' self-insurance scheme; and
- (xi) training agreements, being agreements entered into to provide ongoing training to crew members.

(together, the **Applicable Agreements** and each, an **Applicable Agreement**) are in the nature of debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Virgin Companies; and

- (b) notwithstanding that the liabilities in suborder (a) are debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Virgin Companies, the First Plaintiffs will not be personally liable to repay such debts or satisfy such liabilities to the extent that the assets of the particular Virgin Company or Virgin Companies that is or are a party to the particular Applicable Agreement are insufficient to satisfy the debt and liabilities incurred by the First Plaintiffs arising out of, or in connection with, the Applicable Agreements.
3. Pursuant to section 447A of the Corporations Act and section 90-15 of the IPSC, the First Plaintiffs are to provide notice, in the Applicable Agreement or otherwise, to any counterparty to an Applicable Agreement of order 2 above, prior to that counterparty entering into an Applicable Agreement.
  4. Pursuant to section 447A of the Corporations Act and section 90-15 of the IPSC, the First Plaintiffs are to:
    - (a) keep a schedule noting each Applicable Agreement entered into by the First Plaintiffs on behalf of any of the Virgin Companies; and

- (b) provide an update to the Committee of Inspection formed for the Second to Fortieth Plaintiffs (**Committee**), at each meeting of the Committee, as to each Applicable Agreement that the First Plaintiffs have entered into or proposed to be entered into together with estimated debts that may be incurred in respect of each Applicable Agreement, on behalf of any of the Virgin Companies.

### ***Virgin Company Loan Monies***

5. Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, Part 5.3A of the Corporations Act is to operate in relation to the Plaintiffs as if section 443A(1) of the Corporations Act provides that:
  - (a) any liability incurred by the First Plaintiffs arising out, of or in connection with, any loan or monies borrowed by a Virgin Company from another Virgin Company or Virgin Companies are in the nature of debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Virgin Companies; and
  - (b) notwithstanding that the liabilities in suborder (a) are debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Virgin Companies, the First Plaintiffs will not be personally liable to repay such debts or satisfy such liabilities to the extent that the assets of the particular Virgin Company that has borrowed monies from any other Virgin Company or Virgin Companies are insufficient to satisfy the debt and liabilities incurred by the First Plaintiffs.

### **Report on company activities and property**

6. Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, Part 5.3A of the Corporations Act is to operate in relation to the Plaintiffs as if:
  - (a) a single report in the prescribed form about the business, property, affairs and financial circumstances of the Second, Third, Seventh to Tenth, Thirteenth, and Ninetieth to Twenty-Fourth Plaintiffs be prepared by each of the directors of the Second Plaintiff;
  - (b) the requirement in section 438B(2) that the directors of each of the Second, Third, Seventh to Tenth, Thirteenth, and Ninetieth to Twenty-Fourth Plaintiffs prepare a separate report about the business, property, affairs and financial circumstances of each of those companies, be dispensed with; and
  - (c) the requirement in section 438B(2) that the directors of each of the Fourth to Sixth, Eleventh to Twelfth, Fourteenth to Eighteenth, and Twenty-Fifth to Fortieth Plaintiffs prepare a separate report about the business, property, affairs and financial circumstances of each of those companies, be maintained.

### **Leave to members of the committee of inspection to derive profit**

7. Subject to Orders 8 and 9 below, pursuant to sections 80-55(5)(b) and 90-15 of the IPSC, leave be granted to the members of the Committee to derive a profit or advantage from the external administration of each of the Virgin Companies.
8. No leave be granted for the members of the Committee to receive any gift or remuneration from the external administration of any of the Virgin Companies by reason of their position as a member of the Committee.
9. Pursuant to section 447A of the Corporations Act and section 90-15 of the IPSC, the First Plaintiffs are to:
  - (a) keep a schedule noting each agreement entered into by the First Plaintiffs on behalf of any of the Virgin Companies with a member of the Committee or any related entity of a member of the Committee (**Agreements with Committee Members**); and
  - (b) provide an update to the Committee, at each meeting of the Committee, as to each of the Agreements with Committee Members that the First Plaintiffs have entered into on behalf of any of the Virgin Companies;
  - (c) include, as a section in a report to creditors of the Virgin Companies pursuant to section 75-225 of the *Insolvency Practice Rules (Corporations) 2016* (Cth), a list of the Agreements with Committee Members and a summary of the key terms of each such agreement.

### **Bank account**

10. Pursuant to sections 65-45 and 90-15 of the IPSC, the First Plaintiffs (in their capacity as administrators of each of the Virgin Companies) are not required to maintain a separate administration account in relation to each of the Virgin Companies (as otherwise required by the operation of Division 65 of the IPS).

### **Other ancillary orders**

11. The First Plaintiffs must take all reasonable steps to cause notice of these orders to be given, within one (1) business day after the making of these orders, to:
  - (a) the creditors (including persons or entities claiming to be creditors) of each of the Virgin Companies, in the following manner:
    - (i) where the First Plaintiffs have an email address for a creditor, notifying each such creditor, via email, of the making of the orders and providing a link to a website where the creditor may download the orders and the Interlocutory Process;

- (ii) where the First Plaintiffs do not have an email address for a creditor but have a postal address for that creditor (or have received notification of non-delivery of a notice sent by email in accordance with (a)(i) above), notifying each such creditor, via post, of the making of the orders and providing a link to a website where the creditor may download the orders and the Interlocutory Process; and
  - (iii) placing scanned, sealed copies of the orders and the Interlocutory Process on the website maintained by the First Plaintiffs at <https://www2.deloitte.com/au/en/pages/finance/articles/virgin-australia-holdings-limited-subsidiaries.html>.; and
- (b) the Australian Securities and Investments Commission;
  - (c) the Deputy Commissioner of Taxation; and
  - (d) the Attorney-General's Department (administering the Fair Entitlements Guarantee Scheme).
12. Any person who can demonstrate a sufficient interest has liberty to apply to vary or discharge any orders made pursuant to orders 2 to 10 above, on 1 business day's written notice being given to the Plaintiffs and to the Associate to Justice Middleton.
  13. The Plaintiffs' costs of this application be costs in the administration of the Virgin Companies, jointly and severally.
  14. These orders be entered forthwith.

Date that entry is stamped: 15 May 2020

**SCHEDULE 1**

Federal Court of Australia  
 District Registry: New South Wales  
 Division: General

No. NSD 464 of 2020

**IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS**

**Plaintiffs**

- First Plaintiffs: Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes, in their capacity as joint and several voluntary administrators of the Second to Thirty-ninth Plaintiffs
- Second Plaintiff: Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226
- Third Plaintiff: Virgin Australia International Operations Pty Ltd (Administrators Appointed) ACN 155 859 608
- Fourth Plaintiff: Virgin Australia International Holdings Pty Ltd (Administrators Appointed) ACN 155 860 021
- Fifth Plaintiff: Virgin Australia International Airlines Pty Ltd (Administrators Appointed) ACN 125 580 823
- Sixth Plaintiff: Virgin Australia Airlines (SE Asia) Pty Ltd (Administrators Appointed) ACN 097 892 389
- Seventh Plaintiff: Virgin Australia Airlines Holdings Pty Ltd (Administrators Appointed) ACN 093 924 675
- Eighth Plaintiff: VAH Newco No.1 Pty Ltd (Administrators Appointed) ACN 160 881 345
- Ninth Plaintiff: Tiger Airways Australia Pty Limited (Administrators Appointed) ACN 124 369 008
- Tenth Plaintiff: Virgin Australia Airlines Pty Ltd (Administrators Appointed) ACN 090 670 965
- Eleventh Plaintiff: VA Borrower 2019 No. 1 Pty Ltd (Administrators Appointed) ACN 633 241 059

Twelfth Plaintiff:	VA Borrower 2019 No. 2 Pty Ltd (Administrators Appointed) ACN 637 371 343
Thirteenth Plaintiff:	Virgin Tech Pty Ltd (Administrators Appointed) ACN 101 808 879
Fourteenth Plaintiff:	Short Haul 2018 No. 1 Pty Ltd (Administrators Appointed) ACN 622 014 831
Fifteenth Plaintiff:	Short Haul 2017 No. 1 Pty Ltd (Administrators Appointed) ACN 617 644 390
Sixteenth Plaintiff:	Short Haul 2017 No. 2 Pty Ltd (Administrators Appointed) ACN 617 644 443
Seventeenth Plaintiff:	Short Haul 2017 No. 3 Pty Ltd (Administrators Appointed) ACN 622 014 813
Eighteenth Plaintiff:	VBNC5 Pty Ltd (Administrators Appointed) ACN 119 691 502
Nineteenth Plaintiff:	A.C.N. 098 904 262 Pty Ltd (Administrators Appointed) ACN 098 904 262
Twentieth Plaintiff:	Virgin Australia Regional Airlines Pty Ltd (Administrators Appointed) ACN 008 997 662
Twenty-first Plaintiff:	Virgin Australia Holidays Pty Ltd (Administrators Appointed) ACN 118 552 159
Twenty-second Plaintiff:	VB Ventures Pty Ltd (Administrators Appointed) ACN 125 139 004
Twenty-third Plaintiff:	Virgin Australia Cargo Pty Ltd (Administrators Appointed) ACN 600 667 838
Twenty-fourth Plaintiff:	VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741
Twenty-fifth Plaintiff:	VA Hold Co Pty Ltd (Administrators Appointed) ACN 165 507 157
Twenty-sixth Plaintiff:	VA Lease Co Pty Ltd (Administrators Appointed) ACN 165 507 291
Twenty-seventh Plaintiff:	Virgin Australia 2013-1 Issuer Co Pty Ltd (Administrators Appointed) ACN 165 507 326
Twenty-eighth Plaintiff:	737 2012 No.1 Pty. Ltd (Administrators Appointed) ACN 154 201 859

Twenty-ninth Plaintiff:	737 2012 No. 2 Pty Ltd (Administrators Appointed) ACN 154 225 064
Thirtieth Plaintiff:	Short Haul 2016 No. 1 Pty Ltd (Administrators Appointed) ACN 612 766 328
Thirty-first Plaintiff:	Short Haul 2016 No. 2 Pty Ltd (Administrators Appointed) ACN 612 796 077
Thirty-second Plaintiff:	Short Haul 2014 No. 1 Pty Ltd (Administrators Appointed) ACN 600 809 612
Thirty-third Plaintiff:	Short Haul 2014 No. 2 Pty Ltd (Administrators Appointed) ACN 600 878 199
Thirty-fourth Plaintiff:	VA Regional Leaseco Pty Ltd (Administrators Appointed) ACN 127 491 605
Thirty-fifth Plaintiff:	VB 800 2009 Pty Ltd (Administrators Appointed) ACN 135 488 934
Thirty-sixth Plaintiff:	VB Leaseco No 2 Pty Ltd (Administrators Appointed) ACN 142 533 319
Thirty-seventh Plaintiff:	VB LH 2008 No. 1 Pty Ltd (Administrators Appointed) ACN 134 280 354
Thirty-eighth Plaintiff:	VB LH 2008 No. 2 Pty Ltd (Administrators Appointed) ACN 134 288 805
Thirty-ninth Plaintiff:	VB PDP 2010-11 Pty Ltd (Administrators Appointed) ACN 140 818 266
Fortieth Plaintiff:	Tiger International No. 1 Pty Ltd (Administrators Appointed) ACN 606 131 944





This and the following 2 pages is **Annexure K** referred to in the affidavit of **Kassandra Suzann Adams**

Sworn on \_\_\_\_\_

Before me \_\_\_\_\_

**McCloy, Madeleine**

---

**From:** Wayne Jenvey <wjjenvey@hwle.com.au>  
**Sent:** Thursday, 14 May 2020 10:05 PM  
**To:** 'Tatasciore, Natalie (AU)'; Adams, Kassandra  
**Cc:** Rachel McCarthy; Cowling, David (AU); Gorovtsov, Alex (AU); Project Volar  
**Subject:** RE: In the matter of Virgin Australia Holdings Limited (Administrators Appointed) & Ors [CU-Legal.FID3017446]

Apologies for the short delay, we also agree to the communication now being sent.

Regards,

**Wayne Jenvey**  
Partner



Level 19, 480 Queen Street | Brisbane QLD 4000  
Phone +61 7 3169 4801 | Mobile 0411 646 482  
[wjjenvey@hwle.com.au](mailto:wjenvey@hwle.com.au) | [www.hwlebsworth.com.au](http://www.hwlebsworth.com.au)

Full service | Commercially oriented | Unrivalled value

Adelaide | Brisbane | Canberra | Darwin | Hobart | Melbourne | Norwest | Perth | Sydney

If you receive this communication by mistake we prohibit you from using it in any way and do not waive client legal privilege. Please notify us, delete the communication (and any attachments) and destroy all copies. We do not represent or warrant that this communication is free from computer viruses or other defects. You are responsible for all loss or damage caused directly or indirectly by the use of this communication. If you do not receive all of the email or attachments please notify us immediately by reply email. This notice should not be deleted or altered.

---

**From:** Tatasciore, Natalie (AU) <Natalie.Tatasciore@au.kwm.com>  
**Sent:** Thursday, 14 May 2020 9:09 PM  
**To:** Adams, Kassandra <kaadams@claytonutz.com>  
**Cc:** Wayne Jenvey <wjjenvey@hwle.com.au>; Rachel McCarthy <rmccarthy@hwle.com.au>; Cowling, David (AU) <David.Cowling@au.kwm.com>; Gorovtsov, Alex (AU) <Alex.Gorovtsov@au.kwm.com>; Project Volar <Volar@claytonutz.com>  
**Subject:** Re: In the matter of Virgin Australia Holdings Limited (Administrators Appointed) & Ors [CU-Legal.FID3017446]

Ok by us

Thanks

**Natalie Tatasciore | Partner**  
**King & Wood Mallesons**

Level 61, Governor Phillip Tower, [1 Farrer Place, Sydney NSW 2000](#)

T [+61 2 9296 2288](tel:+61292962288) | M [+61 429 908 476](tel:+61429908476) | F [+61 2 9296 3999](tel:+61292963999)

[natalie.tatasciore@au.kwm.com](mailto:natalie.tatasciore@au.kwm.com) | [Partner profile](#) | [www.kwm.com](http://www.kwm.com)

**This communication and any attachments are confidential and may be privileged.**

King & Wood Mallesons in Australia is a member firm of the King & Wood Mallesons network. See [kwm.com](http://kwm.com) for more information.

On 14 May 2020, at 7:03 pm, Adams, Kassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)> wrote:

Hi Natalie,

Please see below:

*Dear Associate to the Honourable Justice Middleton*

*We have had considerable discussions with the representatives of the Attorney-General's Department and the Deputy Commissioner of Taxation.*

*Please find attached proposed orders that are not opposed by the Attorney-General's Department and the Deputy Commissioner of Taxation in relation to paragraphs 14, 18, 19, 20 and 22 of the Interlocutory Process.*

*In respect of paragraph 18 of the Interlocutory Process it is proposed that the hearing of this paragraph be stood over until Wednesday, 20 May 2020 unless a form order is achieved earlier which is not opposed by the Deputy Commissioner of Taxation. Accordingly, the Deputy Commissioner of Taxation does not intend to file submissions at this time.*

*This correspondence is sent with the consent of the Attorney-General's Department and the Deputy Commissioner of Taxation, and their respective solicitors are copied in.*

*Kind regards*

Thanks,  
Kass

**Kassandra Adams, Senior Associate  
Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |  
kaadams@claytonutz.com | [www.claytonutz.com](http://www.claytonutz.com)

[Please consider the environment before printing this e-mail](#)

---

**From:** Tatasciore, Natalie (AU) <[Natalie.Tatasciore@au.kwm.com](mailto:Natalie.Tatasciore@au.kwm.com)>

**Sent:** Thursday, 14 May 2020 9:00 PM

**To:** Adams, Kassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>

**Cc:** Wayne Jenvey <[wjenvey@hwle.com.au](mailto:wjenvey@hwle.com.au)>; Rachel McCarthy <[rmccarthy@hwle.com.au](mailto:rmccarthy@hwle.com.au)>;

Cowling, David (AU) <[David.Cowling@au.kwm.com](mailto:David.Cowling@au.kwm.com)>; Gorovtsov, Alex (AU)

<[Alex.Gorovtsov@au.kwm.com](mailto:Alex.Gorovtsov@au.kwm.com)>; Project Volar <[Volar@claytonutz.com](mailto:Volar@claytonutz.com)>

**Subject:** Re: In the matter of Virgin Australia Holdings Limited (Administrators Appointed) & Ors [CU-Legal.FID3017446]

Dear Kass

Can you please update to indicate that the AG doesn't oppose (rather than he consents). Ie he has the same position as the Commissioner

Thanks

**Natalie Tatasciore | Partner  
King & Wood Malleons**

Level 61, Governor Phillip Tower, [1 Farrer Place, Sydney NSW 2000](#)

T [+61 2 9296 2288](tel:+61292962288) | M [+61 429 908 476](tel:+61429908476) | F [+61 2 9296 3999](tel:+61292963999)

[natalie.tatasciore@au.kwm.com](mailto:natalie.tatasciore@au.kwm.com) | [Partner profile](#) | [www.kwm.com](http://www.kwm.com)

**This communication and any attachments are confidential and may be privileged.**

King & Wood Malleons in Australia is a member firm of the King & Wood Malleons network. See [kwm.com](http://kwm.com) for more information.

On 14 May 2020, at 6:57 pm, Adams, Kassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)> wrote:

Dear Colleagues,

Please find attached a proposed form of order to be sent to the Associate to the Honourable Justice Middleton this evening.

These orders have incorporated both positions taken by Attorney-General's Department/Fair Entitlements Guarantee (**AG**) (as detailed in a letter received from King & Wood Mallesons this morning) and the Deputy Commissioner of Taxation (**DCT**) (as detailed in a letter received from HWL Ebsworth yesterday).

The orders have been consented to by AG and based on the communications on behalf of the DCT, we believe these orders will not be opposed by the DCT.

Accordingly, we propose the following communication to be sent to the Court:

*Dear Associate to the Honourable Justice Middleton*

*We have had considerable discussions with the representatives of the Attorney-General's Department and the Deputy Commissioner of Taxation.*

*Please find attached proposed orders.*

*The Plaintiffs and the Attorney-General's Department have reached an agreement in relation to paragraphs 14, 19, 20 and 22 of the Interlocutory Process. The Deputy Commissioner of Taxation does not oppose these orders being made.*

*In respect of paragraph 18 of the Interlocutory Process it is proposed that the hearing of this paragraph be stood over until Wednesday, 20 May 2020 unless a form order is achieved earlier which is not opposed by the Deputy Commissioner of Taxation. Accordingly, the Deputy Commissioner of Taxation does not intend to file submissions at this time.*

*This correspondence is sent with the consent of the Attorney-General's Department and the Deputy Commissioner of Taxation, and their respective solicitors are copied in.*

*Kind regards*

Please do let me know urgently if you have any comments or queries in relation to the above.

Kind regards,

**Kassandra Adams, Senior Associate  
Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |

[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)

Please consider the environment before printing this e-mail

This and the following 9 pages is **Annexure L** referred to in the affidavit of Cassandra Suzann Adams

Sworn on \_\_\_\_\_

Before me \_\_\_\_\_

Rule 39.33

## Minutes of proposed orders

No. NSD

464 of 2020

Federal Court of Australia  
District Registry: New South Wales  
Division: Commercial and Corporations List

**IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS**

**VAUGHAN STRAWBRIDGE, SALVATORE ALGERI, JOHN GREIG AND RICHARD HUGHES,  
IN THEIR CAPACITY AS JOINT AND SEVERAL VOLUNTARY ADMINISTRATORS  
OF EACH OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) AND THE  
THIRD TO THIRTY-NINTH PLAINTIFFS NAMED IN SCHEDULE 1**

First Plaintiffs

**AND OTHERS NAMED IN SCHEDULE 1**

Judge: Justice Middleton

Date of order: 15 May 2020

Where made: Melbourne

### THE COURT ORDERS THAT:

#### JobKeeper

1. By consent of the First Plaintiffs and the Deputy Commissioner of Taxation, the hearing of paragraph 18 of the Interlocutory Process be stood over until 10.15am on 20 May 2020, with liberty to the parties to provide the Associate to Middleton J any orders which are not opposed by the Deputy Commissioner of Taxation with respect to the relief sought in that paragraph.

#### Limitation of Administrators' Liability

##### *Specified Categories of Future Agreements*

2. Pursuant to section 447A(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the *Insolvency Practice Schedule 2016* (Cth), being Schedule 2 to the Corporations Act (**IPSC**),

---

Filed on behalf of (name & role of party)	The Plaintiffs		
Prepared by (name of person/lawyer)	Timothy James Sackar		
Law firm (if applicable)	Clayton Utz		
Tel	+61 2 9353 4000	Fax	+61 2 8220 6700
Email	kaadams@claytonutz.com		
<b>Address for service</b> (include state and postcode)	Level 15, 1 Bligh Street, Sydney NSW 2000		

---

Part 5.3A of the Corporations Act is to operate in relation to the Plaintiffs as if section 443A(1) of the Corporations Act provides that:

- (a) the liabilities of the First Plaintiffs (in their capacity as administrators of each of the Virgin Companies) incurred with respect to any obligations arising out of, or in connection with, any future:
  - (i) agreement on the terms of, or substantially in accordance with, the Aircraft Protocols document in the form exhibited at Tab 12 of Exhibit VNS-2 to the Strawbridge Affidavit;
  - (ii) alliance agreements, being international arrangements established with various global airlines that provide the Virgin Companies with a long distance international network;
  - (iii) procurement contracts, including:
    - A. in-flight services agreements, being agreements entered into for the provision of food and beverages and other retail on-board services, catering, entertainment and internet wifi on flights operated by the Virgin Companies;
    - B. ground handling agreements, being agreements entered into for the provision of ground handling services for the Virgin Companies' flight arrivals and departures at national and international airports;
    - C. operational systems agreements, being agreements entered into for the provision of support and maintenance services in relation to licenced software, systems, platforms and network infrastructure;
    - D. fuel agreements, being agreements entered into for the supply and delivery of fuel to the Virgin Companies at various locations throughout Australia, New Zealand and the United States;
    - E. maintenance and parts agreements, being agreements entered into for the provision of maintenance, repair and modification services for aircraft operated by the Virgin Companies, including the provision of the relevant component parts;
    - F. IT agreements, being agreements entered into for the provision of core computer infrastructure and end user computing support services and business services to the Virgin Companies;
  - (iv) trade mark licence agreements;
  - (v) airport agreements, being agreements entered into with major airports across Australia, for the use of terminal gates, public spaces and facilities and for sub-leases in relation to each of the Virgin Companies' airport lounges;

- (vi) charter agreements, being agreements entered into with various major companies for the supply of scheduled air transport services for personnel and freight to nominated destinations agreed between the parties to the agreement;
- (vii) cargo agreements, being agreements entered into for the handling of cargo and the provision of management, administration and support services;
- (viii) corporate sales agreements, being agreements entered into with major travel agents and other platforms, including with both government and private counterparties, which set out incentives offered by the Virgin Companies for the sale of Virgin flights by the relevant agents;
- (ix) industry/agency agreements, being agreements entered into which provide for the preferred supply by the Virgin Companies of flight services to each of its clients, including with both government and private counterparties;
- (x) insurance arrangements, including contracts to support the ongoing operation of the Virgin Companies' self-insurance scheme; and
- (xi) training agreements, being agreements entered into to provide ongoing training to crew members.

(together, the **Applicable Agreements** and each, an **Applicable Agreement**) are in the nature of debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Virgin Companies; and

- (b) notwithstanding that the liabilities in suborder (a) are debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Virgin Companies, the First Plaintiffs will not be personally liable to repay such debts or satisfy such liabilities to the extent that the assets of the particular Virgin Company or Virgin Companies that is or are a party to the particular Applicable Agreement are insufficient to satisfy the debt and liabilities incurred by the First Plaintiffs arising out of, or in connection with, the Applicable Agreements.
3. Pursuant to section 447A of the Corporations Act and section 90-15 of the IPSC, the First Plaintiffs are to provide notice, in the Applicable Agreement or otherwise, to any counterparty to an Applicable Agreement of order 2 above, prior to that counterparty entering into an Applicable Agreement.
  4. Pursuant to section 447A of the Corporations Act and section 90-15 of the IPSC, the First Plaintiffs are to:
    - (a) keep a schedule noting each Applicable Agreement entered into by the First Plaintiffs on behalf of any of the Virgin Companies; and

- (b) provide an update to the Committee of Inspection formed for the Second to Fortieth Plaintiffs (**Committee**), at each meeting of the Committee, as to each Applicable Agreement that the First Plaintiffs have entered into or proposed to be entered into together with estimated debts that may be incurred in respect of each Applicable Agreement, on behalf of any of the Virgin Companies.

### ***Virgin Company Loan Monies***

5. Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, Part 5.3A of the Corporations Act is to operate in relation to the Plaintiffs as if section 443A(1) of the Corporations Act provides that:
  - (a) any liability incurred by the First Plaintiffs arising out, of or in connection with, any loan or monies borrowed by a Virgin Company from another Virgin Company or Virgin Companies are in the nature of debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Virgin Companies; and
  - (b) notwithstanding that the liabilities in suborder (a) are debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Virgin Companies, the First Plaintiffs will not be personally liable to repay such debts or satisfy such liabilities to the extent that the assets of the particular Virgin Company that has borrowed monies from any other Virgin Company or Virgin Companies are insufficient to satisfy the debt and liabilities incurred by the First Plaintiffs.

### **Report on company activities and property**

6. Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, Part 5.3A of the Corporations Act is to operate in relation to the Plaintiffs as if:
  - (a) a single report in the prescribed form about the business, property, affairs and financial circumstances of the Second, Third, Seventh to Tenth, Thirteenth, and Ninetieth to Twenty-Fourth Plaintiffs be prepared by each of the directors of the Second Plaintiff;
  - (b) the requirement in section 438B(2) that the directors of each of the Second, Third, Seventh to Tenth, Thirteenth, and Ninetieth to Twenty-Fourth Plaintiffs prepare a separate report about the business, property, affairs and financial circumstances of each of those companies, be dispensed with; and
  - (c) the requirement in section 438B(2) that the directors of each of the Fourth to Sixth, Eleventh to Twelfth, Fourteenth to Eighteenth, and Twenty-Fifth to Fortieth Plaintiffs prepare a separate report about the business, property, affairs and financial circumstances of each of those companies, be maintained.



### **Leave to members of the committee of inspection to derive profit**

7. Subject to Orders 8 and 9 below, pursuant to sections 80-55(5)(b) and 90-15 of the IPSC, leave be granted to the members of the Committee to derive a profit or advantage from the external administration of each of the Virgin Companies.
8. No leave be granted for the members of the Committee to receive any gift or remuneration from the external administration of any of the Virgin Companies by reason of their position as a member of the Committee.
9. Pursuant to section 447A of the Corporations Act and section 90-15 of the IPSC, the First Plaintiffs are to:
  - (a) keep a schedule noting each agreement entered into by the First Plaintiffs on behalf of any of the Virgin Companies with a member of the Committee or any related entity of a member of the Committee (**Agreements with Committee Members**); and
  - (b) provide an update to the Committee, at each meeting of the Committee, as to each of the Agreements with Committee Members that the First Plaintiffs have entered into on behalf of any of the Virgin Companies;
  - (c) include, as a section in a report to creditors of the Virgin Companies pursuant to section 75-225 of the *Insolvency Practice Rules (Corporations) 2016* (Cth), a list of the Agreements with Committee Members and a summary of the key terms of each such agreement.

### **Bank account**

10. Pursuant to sections 65-45 and 90-15 of the IPSC, the First Plaintiffs (in their capacity as administrators of each of the Virgin Companies) are not required to maintain a separate administration account in relation to each of the Virgin Companies (as otherwise required by the operation of Division 65 of the IPS).

### **Other ancillary orders**

11. The First Plaintiffs must take all reasonable steps to cause notice of these orders to be given, within one (1) business day after the making of these orders, to:
  - (a) the creditors (including persons or entities claiming to be creditors) of each of the Virgin Companies, in the following manner:
    - (i) where the First Plaintiffs have an email address for a creditor, notifying each such creditor, via email, of the making of the orders and providing a link to a website where the creditor may download the orders and the Interlocutory Process;

- (ii) where the First Plaintiffs do not have an email address for a creditor but have a postal address for that creditor (or have received notification of non-delivery of a notice sent by email in accordance with (a)(i) above), notifying each such creditor, via post, of the making of the orders and providing a link to a website where the creditor may download the orders and the Interlocutory Process; and
  - (iii) placing scanned, sealed copies of the orders and the Interlocutory Process on the website maintained by the First Plaintiffs at <https://www2.deloitte.com/au/en/pages/finance/articles/virgin-australia-holdings-limited-subsidiaries.html>.; and
- (b) the Australian Securities and Investments Commission;
  - (c) the Deputy Commissioner of Taxation; and
  - (d) the Attorney-General's Department (administering the Fair Entitlements Guarantee Scheme).
12. Any person who can demonstrate a sufficient interest has liberty to apply to vary or discharge any orders made pursuant to orders 2 to 10 above, on 1 business day's written notice being given to the Plaintiffs and to the Associate to Justice Middleton.
13. The Plaintiffs' costs of this application be costs in the administration of the Virgin Companies, jointly and severally.
14. These orders be entered forthwith.

Date that entry is stamped: 15 May 2020

**SCHEDULE 1**

Federal Court of Australia  
 District Registry: New South Wales  
 Division: General

No. NSD 464 of 2020

**IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS**

**Plaintiffs**

- First Plaintiffs: Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes, in their capacity as joint and several voluntary administrators of the Second to Thirty-ninth Plaintiffs
- Second Plaintiff: Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226
- Third Plaintiff: Virgin Australia International Operations Pty Ltd (Administrators Appointed) ACN 155 859 608
- Fourth Plaintiff: Virgin Australia International Holdings Pty Ltd (Administrators Appointed) ACN 155 860 021
- Fifth Plaintiff: Virgin Australia International Airlines Pty Ltd (Administrators Appointed) ACN 125 580 823
- Sixth Plaintiff: Virgin Australia Airlines (SE Asia) Pty Ltd (Administrators Appointed) ACN 097 892 389
- Seventh Plaintiff: Virgin Australia Airlines Holdings Pty Ltd (Administrators Appointed) ACN 093 924 675
- Eighth Plaintiff: VAH Newco No.1 Pty Ltd (Administrators Appointed) ACN 160 881 345
- Ninth Plaintiff: Tiger Airways Australia Pty Limited (Administrators Appointed) ACN 124 369 008
- Tenth Plaintiff: Virgin Australia Airlines Pty Ltd (Administrators Appointed) ACN 090 670 965
- Eleventh Plaintiff: VA Borrower 2019 No. 1 Pty Ltd (Administrators Appointed) ACN 633 241 059

Twelfth Plaintiff:	VA Borrower 2019 No. 2 Pty Ltd (Administrators Appointed) ACN 637 371 343
Thirteenth Plaintiff:	Virgin Tech Pty Ltd (Administrators Appointed) ACN 101 808 879
Fourteenth Plaintiff:	Short Haul 2018 No. 1 Pty Ltd (Administrators Appointed) ACN 622 014 831
Fifteenth Plaintiff:	Short Haul 2017 No. 1 Pty Ltd (Administrators Appointed) ACN 617 644 390
Sixteenth Plaintiff:	Short Haul 2017 No. 2 Pty Ltd (Administrators Appointed) ACN 617 644 443
Seventeenth Plaintiff:	Short Haul 2017 No. 3 Pty Ltd (Administrators Appointed) ACN 622 014 813
Eighteenth Plaintiff:	VBNC5 Pty Ltd (Administrators Appointed) ACN 119 691 502
Nineteenth Plaintiff:	A.C.N. 098 904 262 Pty Ltd (Administrators Appointed) ACN 098 904 262
Twentieth Plaintiff:	Virgin Australia Regional Airlines Pty Ltd (Administrators Appointed) ACN 008 997 662
Twenty-first Plaintiff:	Virgin Australia Holidays Pty Ltd (Administrators Appointed) ACN 118 552 159
Twenty-second Plaintiff:	VB Ventures Pty Ltd (Administrators Appointed) ACN 125 139 004
Twenty-third Plaintiff:	Virgin Australia Cargo Pty Ltd (Administrators Appointed) ACN 600 667 838
Twenty-fourth Plaintiff:	VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741
Twenty-fifth Plaintiff:	VA Hold Co Pty Ltd (Administrators Appointed) ACN 165 507 157
Twenty-sixth Plaintiff:	VA Lease Co Pty Ltd (Administrators Appointed) ACN 165 507 291
Twenty-seventh Plaintiff:	Virgin Australia 2013-1 Issuer Co Pty Ltd (Administrators Appointed) ACN 165 507 326
Twenty-eighth Plaintiff:	737 2012 No.1 Pty. Ltd (Administrators Appointed) ACN 154 201 859

Twenty-ninth Plaintiff:	737 2012 No. 2 Pty Ltd (Administrators Appointed) ACN 154 225 064
Thirtieth Plaintiff:	Short Haul 2016 No. 1 Pty Ltd (Administrators Appointed) ACN 612 766 328
Thirty-first Plaintiff:	Short Haul 2016 No. 2 Pty Ltd (Administrators Appointed) ACN 612 796 077
Thirty-second Plaintiff:	Short Haul 2014 No. 1 Pty Ltd (Administrators Appointed) ACN 600 809 612
Thirty-third Plaintiff:	Short Haul 2014 No. 2 Pty Ltd (Administrators Appointed) ACN 600 878 199
Thirty-fourth Plaintiff:	VA Regional Leaseco Pty Ltd (Administrators Appointed) ACN 127 491 605
Thirty-fifth Plaintiff:	VB 800 2009 Pty Ltd (Administrators Appointed) ACN 135 488 934
Thirty-sixth Plaintiff:	VB Leaseco No 2 Pty Ltd (Administrators Appointed) ACN 142 533 319
Thirty-seventh Plaintiff:	VB LH 2008 No. 1 Pty Ltd (Administrators Appointed) ACN 134 280 354
Thirty-eighth Plaintiff:	VB LH 2008 No. 2 Pty Ltd (Administrators Appointed) ACN 134 288 805
Thirty-ninth Plaintiff:	VB PDP 2010-11 Pty Ltd (Administrators Appointed) ACN 140 818 266
Fortieth Plaintiff:	Tiger International No. 1 Pty Ltd (Administrators Appointed) ACN 606 131 944



This and the following 4 pages is **Annexure M** referred to in the affidavit of Cassandra Suzann Adams

Sworn on \_\_\_\_\_

Before me

**McCloy, Madeleine**

---

**From:** Rakoczy, Gavin (AU) <Gavin.Rakoczy@au.kwm.com>  
**Sent:** Thursday, 14 May 2020 8:18 PM  
**To:** Adams, Cassandra  
**Cc:** Project Volar; Tucker, Graeme; Rayner, Dale (AU); Canning, John (AU); Pan, Philip (AU); Mishra, Rohan; Casellas, Kate; Sackar, Timothy; mukmohammed@deloitte.com.au  
**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) [CU-Legal.FID3017446]

Thank you

**Gavin Rakoczy | Special Counsel  
King & Wood Mallesons**

Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000  
T +61 2 9296 2136 | M +61 407 955 186 | F +61 2 9296 3999  
[gavin.rakoczy@au.kwm.com](mailto:gavin.rakoczy@au.kwm.com) | [www.kwm.com](http://www.kwm.com)

**This communication and any attachments are confidential and may be privileged.**

King & Wood Mallesons in Australia is a member firm of the King & Wood Mallesons network.  
See [www.kwm.com](http://www.kwm.com) for more information.

---

**From:** Adams, Cassandra <kaadams@claytonutz.com>  
**Sent:** Thursday, 14 May 2020 8:04 PM  
**To:** Rakoczy, Gavin (AU) <Gavin.Rakoczy@au.kwm.com>  
**Cc:** Project Volar <Volar@claytonutz.com>; Tucker, Graeme <gtucker@claytonutz.com>; Rayner, Dale (AU) <Dale.Rayner@au.kwm.com>; Canning, John (AU) <John.Canning@au.kwm.com>; Pan, Philip (AU) <Philip.Pan@au.kwm.com>; Mishra, Rohan <rmishra@claytonutz.com>; Casellas, Kate <KCasellas@claytonutz.com>; Sackar, Timothy <tsackar@claytonutz.com>; mukmohammed@deloitte.com.au  
**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) [CU-Legal.FID3017446]

Dear Gavin,

The orders are still in the process of being drafted along with additional affidavit material.

Your email will be included seeking this information and the information will be provided once it has been finalised.

Kind regards,

**Kassandra Adams, Senior Associate  
Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |  
[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)  
*Please consider the environment before printing this e-mail*

---

**From:** Rakoczy, Gavin (AU) <[Gavin.Rakoczy@au.kwm.com](mailto:Gavin.Rakoczy@au.kwm.com)>  
**Sent:** Thursday, 14 May 2020 7:36 PM  
**To:** Adams, Cassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>  
**Cc:** Project Volar <[Volar@claytonutz.com](mailto:Volar@claytonutz.com)>; Tucker, Graeme <[gtucker@claytonutz.com](mailto:gtucker@claytonutz.com)>; Rayner, Dale (AU) <[Dale.Rayner@au.kwm.com](mailto:Dale.Rayner@au.kwm.com)>; Canning, John (AU) <[John.Canning@au.kwm.com](mailto:John.Canning@au.kwm.com)>; Pan, Philip (AU) <[Philip.Pan@au.kwm.com](mailto:Philip.Pan@au.kwm.com)>; Mishra, Rohan <[rmishra@claytonutz.com](mailto:rmishra@claytonutz.com)>; Casellas, Kate <[KCasellas@claytonutz.com](mailto:KCasellas@claytonutz.com)>; Sackar, Timothy <[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)>; Mohammed, Mukhtader <[mukmohammed@deloitte.com.au](mailto:mukmohammed@deloitte.com.au)>

**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) [CU-Legal.FID3017446]

Hi Cassandra,

Ahead of tomorrow's hearing, can we please urgently be provided with:

1. current draft of the minute of proposed orders;
2. any additional affidavit material filed by your clients.

Kind regards

Gavin

**Gavin Rakoczy | Special Counsel  
King & Wood Mallesons**

Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000  
T +61 2 9296 2136 | M +61 407 955 186 | F +61 2 9296 3999  
[gavin.rakoczy@au.kwm.com](mailto:gavin.rakoczy@au.kwm.com) | [www.kwm.com](http://www.kwm.com)

**This communication and any attachments are confidential and may be privileged.**

King & Wood Mallesons in Australia is a member firm of the King & Wood Mallesons network.  
See [www.kwm.com](http://www.kwm.com) for more information.

---

**From:** Adams, Cassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>

**Sent:** Thursday, 14 May 2020 12:17 PM

**To:** Rakoczy, Gavin (AU) <[Gavin.Rakoczy@au.kwm.com](mailto:Gavin.Rakoczy@au.kwm.com)>

**Cc:** Project Volar <[Volar@claytonutz.com](mailto:Volar@claytonutz.com)>

**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) [CU-Legal.FID3017446]

Gavin,

I have now received a copy of your letter (attached). Thank you.

As I have only become aware of the letter you are referring to after Court. It will be brought to the Court's attention tomorrow.

Kind regards,

**Kassandra Adams, Senior Associate  
Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |  
[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)  
Please consider the environment before printing this e-mail

---

**From:** Rakoczy, Gavin (AU) <[Gavin.Rakoczy@au.kwm.com](mailto:Gavin.Rakoczy@au.kwm.com)>

**Sent:** Thursday, 14 May 2020 10:04 AM

**To:** Adams, Cassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>

**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) [CU-Legal.FID3017446]

Kassanda,

Can I please have a response to my email below? I do not understand the delay to a simple query.

Gavin

**Gavin Rakoczy | Special Counsel  
King & Wood Mallesons**

Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000



T +61 2 9296 2136 | M +61 407 955 186 | F +61 2 9296 3999  
[gavin.rakoczy@au.kwm.com](mailto:gavin.rakoczy@au.kwm.com) | [www.kwm.com](http://www.kwm.com)

**This communication and any attachments are confidential and may be privileged.**

King & Wood Mallesons in Australia is a member firm of the King & Wood Mallesons network.  
See [www.kwm.com](http://www.kwm.com) for more information.

---

**From:** Rakoczy, Gavin (AU)  
**Sent:** Wednesday, 13 May 2020 5:26 PM  
**To:** 'Adams, Cassandra' <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>  
**Cc:** Project Volar <[Volar@claytonutz.com](mailto:Volar@claytonutz.com)>; Tucker, Graeme <[gtucker@claytonutz.com](mailto:gtucker@claytonutz.com)>; Rayner, Dale (AU) <[Dale.Rayner@au.kwm.com](mailto:Dale.Rayner@au.kwm.com)>; Canning, John (AU) <[John.Canning@au.kwm.com](mailto:John.Canning@au.kwm.com)>; Pan, Philip (AU) <[Philip.Pan@au.kwm.com](mailto:Philip.Pan@au.kwm.com)>; Mew, Cameron (AU) <[Cameron.Mew@au.kwm.com](mailto:Cameron.Mew@au.kwm.com)>; Rajanayagam, Andrew (AU) <[Andrew.Rajanayagam@au.kwm.com](mailto:Andrew.Rajanayagam@au.kwm.com)>  
**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) [CU-Legal.FID3017446]

Thanks Cassandra.

And what of my second query? Was there an additional affidavit?

Cheers

**Gavin Rakoczy | Special Counsel**  
**King & Wood Mallesons**  
Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000  
T +61 2 9296 2136 | M +61 407 955 186 | F +61 2 9296 3999  
[gavin.rakoczy@au.kwm.com](mailto:gavin.rakoczy@au.kwm.com) | [www.kwm.com](http://www.kwm.com)

**This communication and any attachments are confidential and may be privileged.**

King & Wood Mallesons in Australia is a member firm of the King & Wood Mallesons network.  
See [www.kwm.com](http://www.kwm.com) for more information.

---

**From:** Adams, Cassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>  
**Sent:** Wednesday, 13 May 2020 5:10 PM  
**To:** Rakoczy, Gavin (AU) <[Gavin.Rakoczy@au.kwm.com](mailto:Gavin.Rakoczy@au.kwm.com)>  
**Cc:** Project Volar <[Volar@claytonutz.com](mailto:Volar@claytonutz.com)>; Tucker, Graeme <[gtucker@claytonutz.com](mailto:gtucker@claytonutz.com)>; Rayner, Dale (AU) <[Dale.Rayner@au.kwm.com](mailto:Dale.Rayner@au.kwm.com)>; Canning, John (AU) <[John.Canning@au.kwm.com](mailto:John.Canning@au.kwm.com)>; Pan, Philip (AU) <[Philip.Pan@au.kwm.com](mailto:Philip.Pan@au.kwm.com)>; Mew, Cameron (AU) <[Cameron.Mew@au.kwm.com](mailto:Cameron.Mew@au.kwm.com)>; Rajanayagam, Andrew (AU) <[Andrew.Rajanayagam@au.kwm.com](mailto:Andrew.Rajanayagam@au.kwm.com)>  
**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) [CU-Legal.FID3017446]

Dear Gavin,

Please find attached a copy of the Orders made by his Honour this morning.

Kind regards,

**Kassandra Adams, Senior Associate**  
**Clayton Utz**  
Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |  
[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)  
Please consider the environment before printing this e-mail

---

**From:** Rakoczy, Gavin (AU) <[Gavin.Rakoczy@au.kwm.com](mailto:Gavin.Rakoczy@au.kwm.com)>  
**Sent:** Wednesday, 13 May 2020 10:52 AM  
**To:** Adams, Cassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>  
**Cc:** Project Volar <[Volar@claytonutz.com](mailto:Volar@claytonutz.com)>; Tucker, Graeme <[gtucker@claytonutz.com](mailto:gtucker@claytonutz.com)>; Rayner, Dale (AU)

<[Dale.Rayner@au.kwm.com](mailto:Dale.Rayner@au.kwm.com)>; Canning, John (AU) <[John.Canning@au.kwm.com](mailto:John.Canning@au.kwm.com)>; Pan, Philip (AU) <[Philip.Pan@au.kwm.com](mailto:Philip.Pan@au.kwm.com)>; Mew, Cameron (AU) <[Cameron.Mew@au.kwm.com](mailto:Cameron.Mew@au.kwm.com)>; Rajanayagam, Andrew (AU) <[Andrew.Rajanayagam@au.kwm.com](mailto:Andrew.Rajanayagam@au.kwm.com)>

**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) [CU-Legal.FID3017446]

**Importance:** High

Hi Cassandra,

Can we please get a copy of the orders made today (even if in draft) as soon they are provided to the Court? I note the order numbering was a bit different to the IP so it was hard to follow what orders were made. Grateful if going forward we can please get a copy of the orders being sought ahead of the hearing.

Separately, please confirm if our letter of last night and amended protocol made it to the Judge ahead of this morning's hearing?

Kind regards

Gavin

**Gavin Rakoczy | Special Counsel  
King & Wood Mallesons**

Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000  
T +61 2 9296 2136 | M +61 407 955 186 | F +61 2 9296 3999  
[gavin.rakoczy@au.kwm.com](mailto:gavin.rakoczy@au.kwm.com) | [www.kwm.com](http://www.kwm.com)

**This communication and any attachments are confidential and may be privileged.**

King & Wood Mallesons in Australia is a member firm of the King & Wood Mallesons network.  
See [www.kwm.com](http://www.kwm.com) for more information.

---

**From:** Adams, Cassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>

**Sent:** Monday, 11 May 2020 11:57 PM

**To:** Canning, John (AU) <[John.Canning@au.kwm.com](mailto:John.Canning@au.kwm.com)>; Pan, Philip (AU) <[Philip.Pan@au.kwm.com](mailto:Philip.Pan@au.kwm.com)>

**Cc:** Project Volar <[Volar@claytonutz.com](mailto:Volar@claytonutz.com)>; Tucker, Graeme <[gtucker@claytonutz.com](mailto:gtucker@claytonutz.com)>; Rakoczy, Gavin (AU) <[Gavin.Rakoczy@au.kwm.com](mailto:Gavin.Rakoczy@au.kwm.com)>; Rayner, Dale (AU) <[Dale.Rayner@au.kwm.com](mailto:Dale.Rayner@au.kwm.com)>

**Subject:** In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) [CU-Legal.FID3017446]

**In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding)**

Dear Mr Canning and Mr Pan,

We understand you act on behalf of MUFG, Standard Chartered Bank (Hong Kong) Limited (as representatives for a syndicate of financiers), BNP Paribas (as representatives for a syndicate of financiers), Deutsche Bank AG (as representatives for a syndicate of financiers), Deutsche Bank AG, Singapore Branch, Bank of China (Australia) Limited (as representatives for a syndicate of financiers), HSBC, Goshawk, Bali Australia Leasing Pty Ltd - Bank of America Leasing, SMBC Aviation Capital, ICBC Leasing, Export Import Bank of the United States of America, BOC Aviation, Merx Aviation Finance, LLC, Pembroke Aircraft Leasing (UK) Limited, Jackson Square Aviation, Orix, Falko, Genesis, AerCap, Engine Lease Finance Corporation, GECAS, Rolls Royce, BBAM Aircraft Holdings 115SARL, Macquarie Aerospace Finance 39414-2 Limited, Dubai Aerospace Enterprise Limited, Aircraft Leasing IV Limited, Aircraft Leasing VI Limited, Wells Fargo Bank Northwest, NA - MSN 2906 (Databook indicates Macquarie AirFinance Leasing Services (Ireland) Limited as lessor), UMB Bank - MSN 3296 (Databook indicates Macquarie AirFinance Leasing Services (Ireland) Limited as lessor), Bank of America, Bellinger, Aero Capital Solutions Inc, Australia and New Zealand Banking Group Limited (as representatives for a syndicate of financiers), Australia and New Zealand Banking Group Limited, and Aviator Capital Management LLC.

We refer to the above matter and **attach** copies of the following documents:

1. interlocutory process filed in the Proceeding on 11 May 2020;

2. sealed affidavit of Vaughan Neil Strawbridge filed in the Proceeding on 11 May 2020;
3. a Mimecast Link to Exhibit "VNS-2", being a bundle of documents exhibited to the affidavit of Vaughan Neil Strawbridge filed in the Proceeding on 11 May 2020.
4. sealed supplementary affidavit of Vaughan Neil Strawbridge filed in the Proceeding on 11 May 2020; and
5. a Mimecast Link to Exhibit "VNS-3", being a bundle of documents exhibited to the supplementary affidavit of Vaughan Neil Strawbridge filed in the Proceeding on 11 May 2020.

We confirm that the Proceeding is listed for Hearing via Microsoft Teams (video-conference) in the Federal Court of Australia at **10:15am**, Wednesday **13 May 2020** before the Honourable Justice Middleton.

Details on how to attend the hearing are below:

**Link:** [Join Microsoft Teams Meeting](#)

**Join by Phone**

Phone: 02 9161 1229

Conference ID: 146 961 71#

**Join with a video conferencing device**

[862016018@t.plcm.vc](tel:862016018)

VTC Conference ID: 1371164547

Kind regards

**Kassandra Adams, Senior Associate**

**Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |

[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)

Please consider the environment before printing this e-mail

12 May 2020

To Graeme Tucker  
Partner  
Clayton Utz  
Level 15, 1 Bligh Street, Sydney, NSW, 2000

By email: [gtucker@claytonutz.com](mailto:gtucker@claytonutz.com)

Dear Graeme

**Virgin Australia Holdings Ltd and its associated entities (All Administrators Appointed) ("the Group")**

- 1 Thank you for your letter of 11 May 2020 and for clarifying the position with the Administrators' proposed court orders and timetable. Since your letter the Administrators have filed an urgent interlocutory application listed for tomorrow morning seeking various relief, including orders extending the administration moratorium period and orders limiting the Administrators' personal liability to the assets of the Group ("**Application**").
- 2 As requested, we enclose the draft Aircraft Protocol marked up with our clients' suggested changes.
- 3 Our letter of 8 May 2020 was written in the context that your Aircraft Protocol provided for our clients to consent to an extension of the existing court orders relieving the Administrators from their usual personal liability under section 443B of the *Corporations Act 2001* (Cth) ("**Act**") notwithstanding that our clients' aircraft assets are continuing to be used and the other prejudice to our clients set out in our letter of 24 April 2020 tendered to the Court. Further, the Administrators are seeking to compromise our clients' rights which have been acknowledged by them in the section 440B consents and pursuant to the overriding Capetown Aircraft Convention.
- 4 It is against this background that we have submitted the marked up draft Aircraft Protocol. We expect the relevant parts of the Aircraft Protocol may be able to form the basis for any further court orders or undertakings, given the obvious restraints in endeavouring to reach urgent binding bilateral arrangements in respect of each of the aircraft assets. You will note that we have made numerous compromises to the draft protocol which we circulated on 29 April 2020 to only address the main prejudice issues of immediate concern.
- 5 As to the Virgin intra-Group issues, you will no doubt appreciate that those issues need to be considered given that the aircraft assets currently being used are subject to complex and bespoke subleasing, financing and security arrangements which affect the real risk of prejudice to our clients.
- 6 On the basis of the Application, we note that the Administrators have now advised our clients that "there is no request made at this stage to extend the duration of the orders made under s443B" and

they are targeting completion of the protocol process by 20 May 2020. In our view, the limited recourse orders proposed in the Application should adequately deal with the Administrators' personal liability concerns, pending their decision whether to issue a notice of disclaimer under section 443B(3) of the Act or return the assets in accordance with the provisions of the Cape Town Convention.

- 7 We again confirm that our clients wish to work with the Administrators constructively to achieve the objects of the administration whilst mitigating the obvious prejudice to our clients as a result of any further court relief and extensions the Administrators may seek.
- 8 On the basis that the Aircraft Protocol will deal with any prejudice to our clients in relation to the orders sought in the Application, we do not propose to attend or object to the Application. We request that a copy of this correspondence be provided to the Court.

Yours faithfully

*King & Wood Mallesons*

Draft dated 1.05.2020 KWM: 12 May 2020

- Formatted: Highlight
- Formatted: Highlight
- Formatted: Highlight

# Aircraft Protocol Agreement

**Vaughan Strawbridge, John Greig, Richard Hughes and Salvatore Algeri** in their capacities as joint and several voluntary administrators of the Lessee  
Administrators

The Lessee specified in Schedule 1  
Lessee

The Lessor specified in Schedule 1  
Lessor

The Finance Parties (if any) specified in Schedule 1  
Finance Parties

*[KWM Note: This mark-up of the Protocol Agreement is to provide a baseline draft reflecting common Lessor/Finance Party comments, however, we anticipate each counterparty will have a separate set of comments for further amendments that are bespoke to each transaction. In particular, this Protocol Agreement has been prepared for a Lessor/Lessee relationship and will need to be adapted for secured lenders.]*

- Formatted: Highlight
- Formatted: Highlight

Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000  
GPO Box 9806  
Perth WA 6848  
Tel +61 8 9426 8000  
Fax +61 8 9481 3095  
[www.claytonutz.com](http://www.claytonutz.com)

Our reference 15336/14109/81005835

*[KWM Note: Other Virgin Group companies to be added as parties as applicable (for example, where VAH is guarantor)]*

- Formatted: Highlight
- Formatted: Highlight
- Formatted: Highlight
- Formatted: Font: Bold, Italic

L\335207422.1

## Contents

<b>1.</b>	<b>Definitions and interpretation</b> .....	<b>1</b>
1.1	Definitions .....	1
1.2	Interpretation .....	<del>332</del>
1.3	Limited recourse - Administrators .....	<del>443</del>
1.4	No recourse to the Administrators .....	<del>553</del>
1.5	Administrators' indemnity .....	<del>553</del>
<b>2.</b>	<b>Consideration</b> .....	<b>554</b>
<b>3.</b>	<b>Standstill</b> .....	<b>554</b>
3.1	Defaults .....	<del>554</del>
3.2	Standstill .....	<del>554</del>
3.3	Reservation of rights .....	<del>664</del>
3.4	PPS Registration and Registration on the International Registry .....	<del>666</del>
<b>4.</b>	<b>Lease Documents</b> .....	<b>775</b>
4.1	Inconsistency .....	<del>775</del>
4.2	Amendments to Lease Documents .....	<del>775</del>
4.3	Sub-Leasing and storage .....	<del>775</del>
<b>5.</b>	<b>Repossession</b> .....	<b>775</b>
<b>6.</b>	<b>Aircraft Status</b> .....	<b>886</b>
<b>7.</b>	<b>Secure Website</b> .....	<b>996</b>
<b>8.</b>	<b>Liens</b> .....	<b>997</b>
<b>9.</b>	<b>General</b> .....	<b>10107</b>
9.1	Notices .....	<del>10107</del>
9.2	When notice taken to be received .....	<del>10107</del>
9.3	Counterparts .....	<del>11118</del>
9.4	Electronic execution .....	<del>11118</del>
<b>10.</b>	<b>Governing law and jurisdiction</b> .....	<b>11118</b>
10.1	Governing law .....	<del>11118</del>
10.2	Jurisdiction .....	<del>11119</del>
	<b>Schedule 1 – Details</b> .....	<b>131310</b>
	<b>Schedule 2 - Adequate Protection Payments</b> .....	<b>151512</b>
	<b>Schedule 3 – Information undertakings</b> .....	<b>171714</b>
	<b>Schedule 4 - Usage</b> .....	<b>191915</b>
	<b>Schedule 5 - Maintenance</b> .....	<b>212116</b>
	<b>Schedule 6 - Insurance</b> .....	<b>222217</b>

## Aircraft Protocol Agreement

### Date

**Parties** **Vaughan Strawbridge, John Greig, Richard Hughes and Salvatore Algeri** in their capacities as joint and several voluntary administrators of the Lessee (**Administrators**)

The Lessee specified in Schedule 1 (**Lessee**).

Formatted: Font: Bold

The Lessor specified in Schedule 1 (**Lessor**)

The Finance Parties (if any) specified in Schedule 1 (**Finance Parties**)

### Background

- A. The Lessee is the lessee under a lease of the Aircraft and/or Engines specified in Schedule 1.
- B. The Lessor is the lessor of the Aircraft and/or Engines specified in Schedule 1 and the Finance Parties set out in Schedule 1 are the financiers (or their agents or trustees) to the Lessor in respect of those Aircraft and/or Engines.
- C. On 20 April 2020 (Appointment Date) Vaughan Strawbridge, John Greig, Richard Hughes and Salvatore Algeri were appointed as joint and several administrators of the Lessee.
- D. On 24 April 2020 the Administrators obtained court orders to extend the five Business Day period under section 443B of the Corporations Act to 26 May 2020.
- E. The Administrators intend to seek court orders further extending the period under the Middleton Orders from 26 May 2020 to 20 June 2020 and limiting their personal liability under this Protocol Agreement.
- F. The Lessor and Finance Parties agree to consent to those orders on the terms of this agreement. This Protocol sets out the terms and conditions the parties have agreed will govern all dealings with the Aircraft during the Administration.

Formatted: Highlight

Formatted: Highlight

### Operative provisions

## 1. Definitions and interpretation

### 1.1 Definitions

In this Protocol Agreement:

**Administration** means the voluntary administration of the Lessee under Part 5.3A of the Corporations Act.

**Aircraft** means the aircraft described in Schedule 1 ~~and includes the Engines.~~

**Business Day** means a day (other than a Saturday or Sunday) in which banks are open for general business in Sydney, New South Wales.



**Cape Town Convention** means the Convention on International Interests in Mobile Equipment (the **Convention**) and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the **CTC Protocol**) both signed in Cape Town, South Africa on 16 November 2001, together with any protocols, regulations, rules, orders, agreements, instruments, amendments, supplements, revisions or otherwise, that have or will be subsequently made in connection with the Convention or the **CTC Protocol** by the Supervisory Authority (as defined in the **CTC Protocol**), the International Registry or Registrar (as defined in the Convention) or an appropriate registry authority (as defined in the **CTC Protocol**) or any other international or national body or authority (in each case, utilising the English language version thereof).

Formatted: Font: Bold

**CASA** means the Civil Aviation Safety Authority.

**Corporations Act** means the *Corporations Act 2001* (Cth).

Formatted: Font: Italic

**COVID-19 Restriction** means any restriction imposed by any order, law or regulation made by a Government Agency in connection with or as a result of the COVID-19 pandemic.

**Engine** means the engine(s) described in Schedule 1.

**Fundamental Term** means the obligations of the Lessee listed in Schedule 2 and Schedule 6.

Field Code Changed

**Government Agency** means:

Field Code Changed

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person;
- (c) a person (whether autonomous or not) who is charged with the administration of a law; or
- (d) any self-regulatory organisation established under statute or any stock exchange.

**International Registry** means the registry established under, and as defined in, the Cape Town Convention.

**Lease** means *to insert*.

Formatted: Font: Italic, Highlight

**Lease Documents** means *the Lease and related finance documents described in Schedule 1*.

Formatted: Font: Not Bold

- (a) ~~the Lease and related finance documents described in Schedule 1; and~~
- (b) ~~this Protocol.~~

**Middleton Orders** means *order 9 made by Justice Middleton on 24 April 2020 in In re Virgin Australia Holdings Ltd (administrators appointed) NSD 464 of 2020*.

Formatted: Font: Bold

Formatted: Font: Not Bold

**Redelivery Notice** has the meaning in clause 4(a).

**Redelivery Trigger** means any of the following:

Formatted: Font: Bold

(a) the Administrators have not, on or before 20 June 2020:

Formatted: Font: Bold

(i) cured all defaults (other than the entry into the Administration) under the Lease Documents; and

(ii) undertaken by notice to the Lessor and the Finance Parties to perform all future obligations under the Lease Documents in form and substance satisfactory to the Lessor and the Finance Parties;

Formatted: DefinitionNum3

- (b) the Lessor or Finance Parties form the opinion that the relevant Aircraft and/or Engines are in jeopardy and/or are not being maintained, stored or insured in accordance with the Protocol Agreement;
- (c) the Administrators issue a notice under section 443B(3) of the Corporations Act in respect of an Aircraft or Engine;
- (d) the Administrators' breach any term of this Protocol Agreement and, where that breach is remediable, do not remedy the breach within 5 Business Days of written notice from the Lessor or Finance Parties;
- (e) the Lessor or Finance Parties notify the Administrators of the availability, or potential availability, of a superior economic return for the Lessor or Finance Parties from or in relation to the relevant Aircraft and/or Engines as compared to the economic return under this Protocol Agreement and the Administrators have not, within 5 Business Days:
  - (i) cured all defaults (other than the entry into the Administration) under the Lease Documents; and
  - (ii) undertaken by notice to the Lessor and the Finance Parties to perform all future obligations under the Lease Documents in form and substance satisfactory to the Lessor and the Finance Parties; or
- (f) the Administrators notify the Lessor or Finance Parties that the relevant Aircraft and/or Engines are, or are likely to be, surplus to the Virgin Group's business requirements.

Redelivery Rights has the meaning in clause 5(a).

**Section 440B Consent** means, if applicable, the Section 440B Consent given by the Administrators in their capacity as administrators of the Lessor, as described in Schedule 1.

**Secure Website** means the secure website the details of which are set out in Schedule 1.

Sub-lease means a sub-lease of any Aircraft or Engine by the Lessee as lessor, including to any Virgin Group company or any third party.

**VAIA** means Virgin Australia International Airlines Pty Ltd ACN 125 580 823.

**Virgin Group** means the Lessee and its related bodies corporate, together with VAIA.

## 1.2 Interpretation

In this Protocol Agreement:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (a) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (b) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
  - (c) a reference to a document (including this Protocol Agreement) is to that document as varied, novated, ratified or replaced from time to time;

Formatted: Highlight

Formatted: DefinitionNum2

Formatted: Highlight

Formatted: DefinitionNum3

Formatted: Outline numbered + Level: 2 + Numbering  
Style: a, b, c, ... + Aligned at: 1.7 cm + Tab after: 3.4 cm  
+ Indent at: 3.4 cm

Formatted: Font: Not Bold

- (d) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (e) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (f) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Protocol Agreement, and a reference to this Protocol Agreement includes all schedules, exhibits, attachments and annexures to it;
- (g) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (h) "includes" in any form is not a word of limitation.

**1.3 Limited recourse - Administrators**

(a) The Lessor and the Finance Parties agree and acknowledge that the liabilities of the Administrators (in their capacity as administrators of the Lessee) incurred with respect to any obligations arising out of, or in connection with, this agreement are in the nature of debts incurred by the Administrators in the performance and exercise of their functions as joint and several administrators of the Lessee. [KWM Note: from originating process]

(b) Notwithstanding that the liabilities in clause 1.3(a) are debts incurred by the Administrators in the performance and exercise of their functions as joint and several administrators of the Lessee, the Administrators will not be personally liable to repay such debts or satisfy such liabilities to the extent that the assets of the Lessee are insufficient to satisfy the debt and liabilities incurred by the Administrators arising out of, or in connection with, this agreement. [KWM Note: from originating process] [KWM Note: to extent that relevant revenue is not wholly paid to the Lessee and for its benefit, the liability cap will need to include not just the Lessee but also the Virgin entity receiving the benefit of the revenue from the aircraft/engine – to be discussed]

~~(a) The Administrators are only liable under this Protocol and the Lease Documents under section 443A of the Corporations Act on a limited recourse basis, namely limited to the Aircraft and Engines from which the Administrators are actually indemnified for the liability and in respect of which the Administrators have a lien under section 443D and 443F of the Corporations Act. This limitation of the Administrators' liability applies despite any other provision of any Lease Document and extends to all liabilities and obligations of the Administrators in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to the Lease Documents.~~

~~(b) In the event that the Administrators elect to do so, the Lessor will consent to (and the Finance Parties agree to the Lessor consenting to) an application being made by the Administrators for an order under s447A and under s443B(8) of the Corporations Act to limit the liability of the Administrators under the Lease Documents~~

~~(i) on the basis specified in clause 1.3(a) above,~~

~~(e) and the Lessor agrees to take all reasonable steps to assist the Administrators with such application.~~

Formatted: Font color: Red

Formatted: Font: Italic

Formatted: Font: Bold

Formatted: Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.7 cm + Tab after: 3.4 cm + Indent at: 3.4 cm

1.4 No recourse to the Administrators

- (a) The Lessor and the Finance Parties agree and acknowledge that the Administrators do not have any personal liability arising from:
  - (i) the Lessee's or the Administrators entry into this Protocol; or
  - (ii) the performance of any services to the Lessor or any of the Finance Parties in accordance with the terms of this Protocol or the Lease Documents except to the extent identified in clause 1.3 above.
- (b) If the assets of the Lessee are insufficient to satisfy in full the liability referred to in clause 1.3(a) above, the Lessor covenants not to claim, demand, sue or seek to recover any shortfall against the Administrators personally.

Formatted: Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.7 cm + Tab after: 3.4 cm + Indent at: 3.4 cm

Field Code Changed

Field Code Changed

1.5.1.4 Administrators' indemnity

This Protocol Agreement does not affect or prejudice the Administrators' right of indemnity (whether it arises by operation of the Corporations Act, any other statute, legal principles or equitable principles) in relation to costs, disbursements, fees, taxes or other liabilities incurred by the Administrators and any priority afforded to that right of indemnity under Part 5.3A of the Corporations Act, any other statute, legal principles or equitable principles.

1.5 Termination

This Protocol Agreement shall have effect for the period on and from the date of this Protocol Agreement until the earlier of:

- (a) the end of the Administration; and
- (b) 31 August 2020,
- (a) or such other date agreed in writing between the parties, provided that any undertaking referred to in the definition of 'Redelivery Trigger' shall survive any termination of this Protocol Agreement.

Formatted: Highlight

Formatted: Indent: Left: 1.7 cm, No bullets or numbering

2. Consideration

Each party acknowledges the receipt of valuable consideration in connection with its entry of this Protocol Agreement.

3. Standstill Leases and Sub-leases

3.1 Defaults

The parties acknowledge and agree that the appointment of the Administrators to the Lessee and certain other related and subsequent events amounted to a default under the Lease Documents (Defaults).

Standstill

Formatted: Font: 10 pt

The Lessor and the Finance Parties hereby irrevocably agree not to enforce any rights they may have arising out of or connected to the Defaults on and from the date of this Protocol until the end of the Administration or, in relation to the exercise of rights afforded to the Lessor other than:

- (a) as specified under this Protocol;

- (b) in relation to the appointment of receivers to the Lessor, if applicable, including in accordance with the Section 440B Consent (if applicable), provided that no Finance Party may appoint take any action in accordance with the Section 440B Consent without giving the Administrators 2 Business Days' prior notice;
- (c) if the Lessee breaches a Fundamental Term of this Protocol, and such breach is not remedied within 15 Business Days of receipt by the Lessee of written notice of that breach; and
- (d) where the Administrator gives to the Lessor a notice under section 443B(3) of the Corporations Act in connection with the Aircraft. [KWM Note: This clause is not required – Lessors are already precluded from enforcing recovering their aircraft/engines by s440B (subject to CTC, if applicable); for obvious reasons (eg LCs) they otherwise reserve their rights]

Formatted: Font: Bold

Formatted: Font: Bold

### 3.2 Reservation of rights

- (a) ~~Subject to clause 3.2 of this Protocol,~~ The Lessor hereby reserves all of its rights, powers and remedies under, or in connection with, the Lease Documents.
- (b) The Lessee and Administrators acknowledges and agrees that, ~~except as expressly contemplated under clause 3.2 of this Protocol,~~ nothing in this Protocol Agreement, nor any action or inaction or other conduct by the Lessor or any other person, operates:
  - (i) as a waiver, variation, abandonment, release or discharge, or as an estoppel precluding enforcement, of any of the Lessor's rights, powers or remedies under the Lease Documents which remain in full force and effect;
  - (ii) without limiting clause ~~3.2(b)(i)3.2(b)(i)3.3(b)(i)~~ of this Protocol Agreement, as an election or affirmation by the Lessor with respect to any right, power or remedy contemplated by the Lease Documents; or
  - (iii) to restrict the Lessor from taking any enforcement action in reliance on any default, other than the Defaults.
- (c) The Lessee and Administrators acknowledges and agrees that a right, power or remedy of the Lessor may only be waived, varied, abandoned, released or discharged expressly in writing, signed by the Lessor. Without limiting the previous sentence, an election or affirmation by the Lessor with respect to any right, power or remedy contemplated by the Lease Documents, must be evidenced expressly in writing, signed by the Lessor.
- (d) The Lessee and Administrators acknowledge and agree that nothing in the Protocol Agreement in any way impacts or prejudices the rights of the Lessor or Finance Parties to enforce any letters of credit, bank guarantees, guarantees or similar instruments which they may hold under or in relation to the Lease Documents or any related agreement.

### 3.3 PPS Registration and Registration on the International Registry

By entering this Protocol Agreement, the Administrators do not either accept or represent to the Lessor or the Finance Parties or any other person that their security interests under the Lease Documents are valid, effective and/or enforceable under the Personal Property Securities Act 2009 (Cth) or that any relevant registration on the Personal Property Securities Register or the International Registry is not defective.

Formatted: Font: Italic

3.4 **Sub-leases**

- (a) The Administrators will cause any Virgin Group company which is party to a Sub-lease to comply with the terms of this Protocol Agreement, including the payment of amounts required pursuant to Schedule 2.
- (b) The Administrators will not cause any Virgin Group company to vary or repudiate a Sub-lease without providing at least 5 Business Days prior written notice to the Lessor and Finance Parties (via their solicitors King & Wood Mallesons).

Formatted: Highlight

Formatted: Heading 3

**Lease Documents**

3.5 **Inconsistency**

To the extent of any inconsistency or conflict between this Protocol and the Lease Documents (other than this Protocol), this Protocol prevails at all times during the Administration. [KWM Note: This is not agreed. The purpose of this Protocol Agreement is to govern relations between the Lessors/Finance Parties and the VAs. Lessors/Finance Parties should not be reducing their provable debts by varying the Lease Agreement to include reduced payment obligations on a go-forward basis. The VAs' personal exposure to the Leases only arises under the Corporations Act. To the extent required, the Administrators can seek appropriate orders from the Court – our clients express no view on such orders at this time]

Formatted: Font: Bold

Formatted: Font: Bold

3.6 **Amendments to Lease Documents**

On and from the date of this Protocol, the parties agree for the period of the Administration the Lessee will comply with the obligations listed in Schedule 2 to Schedule 6. If there is any conflict between the provisions of Schedule 2 to Schedule 6 and the Lease Documents (other than this Protocol) then the provisions of Schedule 2 to Schedule 6 will prevail.

Formatted: Font: Bold

3.7 **Sub-Leasing and storage**

To the extent any Aircraft or Engine is subject to a sub-lease (other than to a member of the Virgin Group) entered into prior to the Administration or at the time of the Administration was in the possession of a third party for storage or maintenance, the provisions of Schedule 4 item (b) and Schedule 5 shall not apply. This does not limit the obligation of the Lessee to enforce its rights against any such Sub-Lessee in respect of any such matter.

**Repossession**

- (a) In respect of Aircraft or Engines that are subject to the Cape Town Convention, the parties agree that during the period from and including the date of this Protocol until the "Cape Town Convention Date" specified in Schedule 1:
    - (i) neither the Lessor nor any Finance Party shall exercise any rights it may have under the Cape Town Convention which arose as a result of the Administration; and
    - (ii) the Lessee shall not be required to give possession of the Aircraft to the Lessor, and the Lessor shall not be required to give possession of the Aircraft to any Financier, in accordance with Article XI of the Protocol to the Cape Town Convention;
- unless the Lessee breaches a Fundamental Term of this Protocol, and such breach is not remedied within 15 Business Days of the Lessor giving notice to the Lessee.

- (b) ~~Nothing in this Protocol is intended to limit the rights of the Lessor or any Finance Party under the Cape Town Convention except as expressly set out in the Protocol.~~
- (c) ~~The Finance Parties confirm that the Cape Town Convention applies to the Aircraft and Engines specified in Schedule 1 and that it does not apply to any Aircraft or Engines to which it is specified not to apply in Schedule 1.~~
- (d) ~~The obligations of the Lessee and the Administrators under this Protocol in relation to any Aircraft or Engine will immediately terminate without notice upon:~~
  - (i) ~~repossession of that Aircraft or Engine; or~~
  - (ii) ~~the Administrator giving notice to the Lessor under section 443B(3) of the Corporations Act in connection with that Aircraft or Engine. **[KWM Note: This is not agreed. Lessors/Finance Parties should not be giving up CTC rights and we note the VAs' confirmation on our recent all Lessor/Financier call that no orders will be sought by the VAs which would cut across the Lessors'/Finance Parties' CTC rights]**~~

Formatted: Font: Bold

#### 4. Repossession

- (a) Subject to clause 5(a), on or after the occurrence of a Redelivery Trigger, the Lessor may provide the Administrators with written notice requiring the redelivery of some or all of their Aircraft and/or Engines in the possession or control of the Virgin Group (Redelivery Notice).
- (b) On 20 June 2020 (or such other date that the parties agree in writing), the Administrators agree to cause the Lessee to comply with any obligations under the Lease Documents governing the redelivery and/or recovery of Aircraft and/or Engines.
- (c) For the avoidance of doubt, this clause has application regardless of whether the relevant Aircraft and/or Engines are subject to the Cape Town Convention.
- (d) Upon redelivery of an Aircraft or Engine to a Lessor or Finance Party in accordance with the Protocol Agreement, the Protocol Agreement ceases to have further application to that Aircraft or Engine.
- (e) Clause 5(b) does not impact any accrued rights or obligations under the Protocol Agreement.

#### 5. Notice and Redelivery Rights

- (a) The Lessor and Finance Parties will provide the Administrators with at least **5** Business Days' written notice prior to issuing a Redelivery Notice or otherwise enforcing a right to require redelivery or repossession of some or all of their Aircraft and/or Engines, whether pursuant to any security agreement (including the appointment of receivers or receivers and managers) or pursuant to the Convention or CTC Protocol (together the **Redelivery Rights**).
- (b) The Administrators will provide the Lessor and Finance Parties (via their solicitors King & Wood Mallesons) with at least **3** Business Days' notice of any application to court relating to the Virgin Group, together with copies of any associated court documents.

Formatted: Highlight

Formatted: Highlight

## 6. Aircraft Status

The Lessee will use reasonable endeavours to identify as soon as practicable whether the Aircraft or Engines are or are likely to be, surplus to the Virgin Group's business requirements, and will notify the Lessor and Finance Parties as soon as reasonably practicable possible after such a determination being made.

Formatted: Font: Bold

## 7. Secure Website

- (a) The following provisions will apply to the Secure Website:
- (i) access will be restricted to the Lessor, the Finance Parties, the Administrators, the Lessee and the members of the Virgin Group and their respective financial and legal advisers;
  - (ii) only the Lessee, the members of the Virgin Group and the Administrators (and their representative and agents) will be permitted to post information to the Secure Website;
  - (iii) the Website will send a notification to the nominated addressees specified in Schedule 1 (**Nominated Addressees**) upon posting of information to the Secure Website;
  - (iv) (without limiting the rights of the Lessee to give notices or provide communications in accordance with the terms of the Lease Documents) any communication or document posted by the Lessee, the members of the Virgin Group or the Administrators (or their representatives or agents) will be taken to have been validly provided to the Lessor and the Finance Parties for all purposes of this Protocol Agreement and the Lease Documents upon:
    - A. a communication or document being posted on that Secure Website; and
    - B. either:
      - 1) receipt by the Nominated Addressee of an email from the Secure Website confirming that new information has been posted to the Secure Website; or
      - 2) the Secure Website containing or providing confirmation that the communication or document has been opened by a Finance Party or Lessor (other than a Lessor that is member of the Virgin Group).
- (b) It is the responsibility of the Lessor and the Finance Parties to ensure that the email addresses nominated for the Nominated Addressees are up-to-date.

## 8. Liens

Upon becoming aware of any lien being claimed in connection with the-an Aircraft and/or Engines Aircraft which is not permitted under the Lease Documents, the Lessee shall:

- (a) promptly notify the Lessor; and



(b) work together with the Lessor and the Finance Parties to procure that such lien, or claimed lien, is promptly withdrawn, provided that nothing in this clause requires the Lessee to make payment to any third party in connection with any lien.

and for the avoidance of doubt, any obligations under the Lease Documents in respect of liens continue to apply.

Formatted: Heading 3, Indent: Left: 1.7 cm

## 9. General

### 9.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Protocol Agreement:

- (a) may be given to a Lessor or Finance Party through the Secure Website or in accordance with the Lease Documents (other than this Protocol Agreement);
- (b) given to the Lessee or the Administrators must be given:
  - (i) using one of the following methods (and no other method) namely, hand delivery, courier service, or email; and
  - (ii) using the address or other details for the party set out below (or as otherwise notified by that party to each other party from time to time under this clause 8):

Formatted: Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.7 cm + Tab after: 3.4 cm + Indent at: 3.4 cm

Formatted: Outline numbered + Level: 4 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 3.4 cm + Tab after: 5.1 cm + Indent at: 5.1 cm

#### Lessee and Administrators

*insert notice details*

Formatted: Font: Italic

- (c) must be in legible writing and in English;
- (d) (in the case of communications other than email) must be signed by the sending party or by a person duly authorised by the sending party;
- (e) (in the case of email) must:
  - (i) state the name of the sending party or a person duly authorised by the sending party and state that the email is a communication under or in connection with this Protocol Agreement; and
  - (ii) if the email contains attachments, ensure the attachments are in PDF or other non-modifiable format the receiving party can open, view and download at no additional cost,

Formatted: Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.7 cm + Tab after: 3.4 cm + Indent at: 3.4 cm

Formatted: Outline numbered + Level: 4 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 3.4 cm + Tab after: 5.1 cm + Indent at: 5.1 cm

and communications sent by email are taken to be signed by the named sender.

### 9.2 When notice taken to be received

Without limiting the ability of a party to prove that a notice has been given and received at an earlier time, each communication (including each notice, consent, approval, request and demand) under or in connection with this Protocol Agreement is taken to be given by the sender and received by the recipient:

- (a) in the case of posting on the Secure Website, at the time specified in clause 7(a)(iv);
- (b) (in the case of delivery by hand or courier service) on delivery;

- (c) (in the case of email, whether or not containing attachments) the earlier of:
- (i) the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the party sending the email receives an automated message that the email has not been delivered;
  - (ii) receipt by the sender of an automated message confirming delivery; and
  - (iii) the time of receipt as acknowledged by the recipient (either orally or in writing),

provided that:

- (d) the communication will be taken to be so given by the sender and received by the recipient regardless of whether:
- (i) the recipient is absent from the place at which the communication is delivered or sent;
  - (ii) the communication is returned unclaimed; and
  - (iii) (in the case of email) the email or any of its attachments is opened by the recipient;
- (e) if the communication specifies a later time as the time of delivery then that later time will be taken to be the time of delivery of the communication; and
- (f) if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales and on which banks are open for business generally, in the place to which the communication is delivered or sent).

### 9.3 Counterparts

This Protocol [Agreement](#) may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the ~~deed~~ [agreement](#) of each party who has executed and delivered that counterpart.

### 9.4 Electronic execution

Each party consents to the execution of this Protocol [Agreement](#) by electronic means.

---

## 10. Governing law and jurisdiction

### 10.1 Governing law

This Protocol [Agreement](#) is governed by and must be construed according to the law applying in New South Wales.

### 10.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Protocol [Agreement](#); and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 10.2(a).

Draft

**Schedule 1 – Details**

**Lessee**

[insert name and ACN of Lessee entity] (Administrators Appointed)

**Lessor**

[insert name and ACN of Lessor entity]

**The Finance Parties**

[Insert details]

**Lease Documents**

[insert details of relevant documents, including the lease and associated loan and security]

**Airframe (if applicable)**

Aircraft Manufacturer:	[insert]
Model:	[insert]
Serial Number:	[insert]
Australian Registration Mark:	[insert]
Cape Town Convention	[Applies][Does not apply]

**Engines**

Engine Manufacturer:	[insert]
Model:	[insert]
Serial Numbers:	Position 1: [insert] Position 2: [insert]
Cape Town Convention	[Applies][Does not apply]

**Section 440B Consent (if applicable)**

[To insert details of 440B consent]

**Cape Town Convention Date**

[After 31 August 2020]

**Secure Website**

[Insert]

**Nominated Addressees (for clause 7(a)(iii)).**

[Insert (note that multiple addressees may be specified)]

Draft

Schedule 2 - Adequate Protection Payments

[KWM Note: Each counterparty may revert with requirements for the usage payments on a bilateral basis, however, common sample language is provided below]

Without limiting the limited recourse provisions in the Protocol Agreement, the Lessee will make the following payments to the Lessor in accordance with (a) the payment mechanics set out in the Lease Documents and (b) in the case of sub-leased and charter Aircraft and Engines, on the 15th day of each calendar month (or within ten (10) Business Days of receipt by the Lessee of the relevant revenue specified below, if later):

1. All Engines and Aircraft (except sub-leased aircraft), including VARA charters

Unless otherwise agreed in writing between the Lessor and the Lessee, for the period from the date of this Protocol Appointment Date and ending on 31 August 2020, where an Aircraft or Engine is used for a commercial revenue flight, the Lessee shall pay the Lessor:

(a) for each Engine:

- (i) the US\$ rate per Flight Hour for engine performance restoration specified and calculated in accordance with the Lease Documents ("Engine PR Rate");
(ii) the US\$ rate per Flight Cycle for Engine LLPs specified in and calculated in accordance with the Lease Documents ("Engine LLP Rate"),

multiplied by the number of Flight Hours or Flight Cycles, as applicable, consumed on the Engines in each calendar month (or part thereof in the case of May);

(b) for the Airframe:

- (i) an amount equal to US\$[ ] per month;

(c) for the Landing Gear:

- (i) an amount equal to US\$[ ] per month;

(d) for the APU:

- (i) an amount equal to US\$[ ] per APU Hour operated;

(e) where no monthly cash maintenance reserves are payable for Engines in the Lease Documents, the relevant rate used in paragraphs (a) - (d) shall be the rates that apply at the end of lease in calculating the return or "end-of-lease" compensation amounts for engine performance restoration and Engine LLPs the relevant components (in Jan 2020 \$'s); and

(f) where the Lease Documents do not provide the payment of any cash maintenance reserves or return or end-of-lease compensation, the relevant rate shall be:

- (i) in the case of the Engine PR Rate, the average corresponding rate payable under the applicable lease documents for engines of that type in the Virgin Group fleet of an equivalent age, as determined in good faith by the Lessee rate shall be based on the Engine Manufacturer's guidance, adjusted for de-rate and Flight Hour to Cycle ratio, as agreed reasonably between Lessor and Lessee; and
(ii) in the case of the Engine LLP Rate, the rate determined by the cost of each Engine LLP (determined by the Engine Manufacturer's then current data) divided by the total life of such Engine LLP;

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

Formatted: Indent: Left: 0 cm, Tab stops: 1.7 cm, List tab + Not at 3.4 cm

Formatted: Indent: Left: 1.7 cm, Tab stops: 3.4 cm, List tab + Not at 5.1 cm

Formatted: Indent: Left: 1.7 cm

Formatted: Schedule\_4, Indent: Left: 0 cm, Tab stops: Not at 1.7 cm

Formatted: Indent: Left: 0 cm, Tab stops: 1.7 cm, List tab + Not at 3.4 cm

Formatted: Indent: Left: 1.7 cm, Tab stops: 3.4 cm, List tab + Not at 5.1 cm

~~provided that the Administrators are satisfied (acting reasonably) that the Virgin Group has received revenue in respect of the relevant flights that at least exceeds the total monthly payment specified above.~~

## 2. Sub-leased Aircraft

~~Unless otherwise agreed in writing between the Lessor and the Lessee, for~~ For the period from the date of ~~this Protocol~~ the Appointment Date and ending on [31 August 2020], where an Aircraft is sub-leased to an ~~third-party~~ operator, the Lessee shall direct the Sublessee to pay the following amount directly to the Lessor ~~(and also pass on any amounts that it otherwise receives from the Sublessee)~~, namely the rent and any other amounts received from the sublessee under the sub-lease (other than in relation to any CAMO services) provided that:

- (a) the Administrators are satisfied that the Virgin Group has received all rent and other payments due from the Lessee for the period prior to commencement of this Protocol Agreement, which amount shall be retained by the Administrator; and
- (b) no sub-lease default has occurred and is continuing.

Nothing in this Protocol Agreement shall limit Lessee's right to call a default or event of default under the sub-lease and/or terminate the sub-lease and repossess the Aircraft in accordance with the terms of the sub-lease arrangements.

## 3. General

- (a) The payment to the Lessor (or to the Finance Parties, as directed by Lessor) shall be in accordance with the payment mechanics set out in the Lease Documents, as if such payment were maintenance reserves or maintenance compensation (or equivalent term) under the Lease.
- (b) Without limiting the rights of the Lessor or Finance Parties to make a claim in the Administration, except as set forth above, no other payment shall be made by the Lessee to the Lessor for the period commencing on the date of this Protocol Agreement and ending on [31 August 2020].
- (c) The Lessor and Finance Parties shall treat each payment as a payment of the relevant maintenance reserves, or where the Lease Documents do not provide for payment of maintenance reserves for Engines, then as a prepayment of the relevant return or end of lease maintenance compensation.

Except as aforesaid, the Lessor and the Finance Parties agree that payment of all rental and other amounts ~~otherwise~~ payable by the Lessee under the Lease Documents for the period commencing on the ~~date of this Protocol~~ Appointment Date and ending on 31 August 2020 will be deferred but will remain payable by the Lessee ~~(and for the avoidance of doubt, will form part of any provable debt)~~. This does not affect the limitations on the liability of the Administrators in clauses 1.3 to 1.5 of the Protocol Agreement.

**Formatted:** Indent: Left: 0 cm, Tab stops: 1.7 cm, List tab + Not at 3.4 cm

**Formatted:** Indent: Left: 0 cm, Tab stops: 1.7 cm, List tab + Not at 3.4 cm

**Formatted:** Font: Bold

### Schedule 3 – Information undertakings

The Lessee agrees during the Administration to provide the Lessor and the Finance Parties with the additional information set out below by posting that information to the Secure Website (or any other method as agreed in writing between the Lessor and the Lessee), in each case within a reasonable period of that information becoming available to the Lessee and ~~with a view to providing in any event shall provide~~ the information within ~~three weeks~~ five (5) working days of the date of this Protocol.

- (a) The Lessee will identify the Continuing Airworthiness Management Organisation (CAMO) and the Continuing Airworthiness Manager (CAM) for the Aircraft and Engines.
- ~~(b)~~ The Lessee will download digital scanned copies of all Aircraft Documents relating to the Aircraft and Engines that are retained by Lessee and provide a copy of same to Lessor's representatives.
- ~~(c)~~ The Lessee will support the Lessor in the compilation of the Aircraft Documents and status reports outlined in Annex II of the Guidance Material and Best Practices for Aircraft Leases issued by IATA in May 2017, including the provision of additional Lessee Engineering Contacts and facilitating Lessor's representatives access to scan the physical records. Lessee shall provide Lessor with a full inventory of the physical records in relation to the Aircraft and Engines and hereby represents that the physical records for the Lessor's Aircraft and Engines are located at [address].
- ~~(b)~~~~(d)~~ The Lessee will provide the Lessor and Finance Parties with regular reporting on the use of the Aircraft and Engines (at least every two (2) weeks), unless there has been no change in its status (for example, stored Aircraft).
- ~~(e)~~~~(e)~~ The Lessee will identify the operational status and location (by airport) of the Aircraft.
- ~~(d)~~~~(f)~~ The Lessee will identify the location (by geographical location or airframe) of the Engines.
- ~~(e)~~~~(g)~~ The Lessee will identify the location of the documents associated with the Aircraft, Engines and related parts and equipment.
- ~~(f)~~~~(h)~~ Other than pursuant to usage where rental payments are being made in accordance with Schedule 2, the Lessee will ~~notify of any intention to not~~ move the Aircraft or Engines to a different airport than where it is currently located ~~and specify the intended new airport storage location~~ without the Lessor's prior written consent (not to be unreasonably withheld).
- ~~(i)~~ Any claimed lien in respect of the Aircraft or any Engine. Lessee will make best efforts to discharge any liens in respect of the Aircraft or any Engine and shall keep Lessor apprised of efforts being made to discharge any such liens.
- ~~(g)~~~~(j)~~ The Lessee shall provide a certified breakdown of outstanding payments applicable to the Aircraft and Engines, including but not limited to Airport Authority fees, GST, fuel and storage bills and third party maintenance fees.

Formatted: Font: Italic

The Lessor and the Finance Parties ~~nominate [insert details] as~~ shall provide details of their representative at the appropriate time (Lessor Representative) for purposes of conducting inspections of the Aircraft, Engines, related documents and records, log books and CASA records ((at the cost of the Lessor and the Finance Parties)).

The Lessee nominates the Lessee Engineering Contact as its representative (**Lessee Representative**) for purposes of liaising with the Lessor Representative in relation to the conduct of inspections of the Aircraft, Engines, related documents and records, log books and ~~CASA records~~ Aircraft Documents.



The Lessee Representative will work in good faith with the Lessor Representative to arrange a schedule for inspections, having regard to the corresponding inspection requests made by other aircraft financiers to the Virgin Group. All such inspections will be reasonable "walk-around" inspections and verification of major assembly serial numbers, subject to any safety, security and regulatory requirements of the Lessee and the requirements of CASA and taking into account any COVID-19 Restrictions, agrees to facilitate a physical inspection of the Aircraft and/or Engine(s) upon the provision of reasonable notice by the Lessor, subject to the terms of the Lease Documents.

In this Schedule 2:

**Continuing Airworthiness Management Organisation (CAMO)** means a person who holds an approval under CASA regulation 42.590 that is in force.

**Continuing Airworthiness Manager (CAM)** for a continuing airworthiness management organisation, has the meaning given by CASA regulation 42.575(1).

**Lessee Engineering Contact** means:

[#for VAA/VAIA and Tiger B737 Aircraft#[#EngineeringAircraftTransfers@virginaustralia.com#]

[#for VARA Aircraft#[#Mr Phil Hargrave ([phil.hargrave@virginaustralia.com](mailto:phil.hargrave@virginaustralia.com))#]

[#for Tiger Aircraft A320 Aircraft#[#Mr Robin Furber ([robinfurber@tigerair.com.au](mailto:robinfurber@tigerair.com.au))#]

Draft

**Schedule 4 - Usage**

For the period commencing on the date of this Protocol Agreement and ending on the last day of the Administration the Lessee will comply with the following obligations, in each case in a manner consistent with compliance by the Virgin Group at the commencement of the Administration:

- (a) any restrictions or prohibitions on further sub-leasing contained in the Lease Documents; and
- (b) all CASA requirements and applicable law and regulations of relevant governmental authorities in respect of the Aircraft and the Engines
- (c) not use, or suffer or permit the use of, that Aircraft in any manner contrary to any mandatory requirement of any manufacturer of that Aircraft or any Engine or Part, applicable law or any mandatory authorisation issued by the Aviation Authority or for any purpose for which that Aircraft is not designed or reasonably suitable;
- (d) ensure that the crew and engineers employed in connection with the operation and maintenance of that Aircraft have the qualifications and hold the licences required by the Aviation Authority and applicable law;
- (e) ensure that that Aircraft is used solely in commercial or other operations for which the Lessee or any sublessee is duly authorised by the Aviation Authority and applicable law;
- (f) not use, or suffer or permit the use of, that Aircraft for the carriage of any goods, materials or items of cargo which could reasonably be expected to cause damage to that Aircraft or which would not be adequately covered by the Insurances, or any item or substance whose possession or carriage is illegal under any applicable law;
- (g) not cause or permit the Aircraft to move:
  - (i) if currently in the active fleet pool, out of the active fleet pool; or
  - (ii) if currently out of the active fleet pool, into the active fleet pool,without the Lessor's prior written consent;
- (h) not cause or permit the Aircraft to proceed to any jurisdiction other than that where the Aircraft is situated on the date of this Protocol without the Lessor's prior written consent;
- (i) not cause or permit the Aircraft to proceed to, or remain at, any location which is for the time being the subject of a prohibition order (or any similar order or directive) or sanctions or restrictions by:
  - (i) any Government Authority of the Country of Registration;
  - (ii) any Government Authority having jurisdiction over the Lessee, any sublessee or that Aircraft; or
  - (iii) the United States, the United Kingdom, the European Union (including any of its member states) or the United Security Council;
- (j) not use, operate, or locate the Aircraft or suffer or permit that Aircraft to be used, operated or located in any:
  - (i) area excluded from coverage by the Aircraft insurances; or
  - (ii) declared war zone or area of recognised hostilities (as determined by the issuer of the Insurances) unless the Lessee or sublessee has obtained

**Formatted:** Indent: Left: 0 cm, Tab stops: 1.7 cm, List tab + Not at 3.4 cm

**Formatted:** Schedule\_3, Indent: Left: 1.7 cm, Space After: 0 pt, Tab stops: 1.7 cm, List tab

**Formatted:** Schedule\_3, Indent: Left: 1.7 cm, First line: 0 cm, Space After: 0 pt, Tab stops: 1.7 cm, List tab

**Formatted:** Indent: Left: 1.75 cm, No bullets or numbering

**Formatted:** Schedule\_3, Indent: Left: 1.7 cm, First line: 0 cm, Space After: 0 pt, Tab stops: 1.7 cm, List tab

**Formatted:** Schedule\_4, Space Before: 0 pt, After: 0 pt

**Formatted:** Schedule\_4, Space After: 0 pt

**Formatted:** Schedule\_3, Indent: Left: 1.7 cm, First line: 0 cm, Space Before: 0 pt, After: 0 pt, Tab stops: 1.7 cm, List tab

**Formatted:** Schedule\_4, Indent: Left: 0 cm, Space After: 0 pt

**Formatted:** Schedule\_4, Space Before: 0 pt, After: 0 pt

[war risk insurance \(as described in Schedule 6\) or indemnification from the Commonwealth of Australia:](#)

(a) =

Formatted: Schedule\_4, Indent: Left: 3.4 cm, Hanging: 1.7 cm, No bullets or numbering

Draft

## Schedule 5 - Maintenance

For the period commencing on the date of this Protocol [Agreement](#) and ending on the last day of the Administration, the Lessor and the Finance Parties agree that the Lessee will comply with the following obligations, in each case in a manner consistent with compliance at the commencement of the Administration and reflecting the COVID-19 Restrictions:

- (a) each Aircraft/Engine will be maintained to the requirements of its Approved Maintenance Program [and Lessee will pay for any such required maintenance \(including all heavy maintenance visit requirements\) on the earliest date it falls due](#), including any storage requirements, under the control of the applicable Continuing Airworthiness Management Organisation (CAMO);
- (b) maintain all Continuing Airworthiness Records, including operating records, in accordance with the terms of the Lease Documents (other than this Protocol [Agreement](#));
- (c) keep the Aircraft registered with CASA; and
- (d) preserve the Aircraft and Engines and related parts in their current state and not permit any removal or dealings with the Engines or parts, in each case other than ~~in accordance with the ordinary course of business~~ [with the prior written consent of the Lessor](#).

Formatted: Indent: Left: 0 cm, Tab stops: 1.7 cm, List tab + Not at 3.4 cm

In this Schedule 5:

**Approved Maintenance Program** means a maintenance program for the aircraft that has been approved in accordance with CASA regulation Subpart 42.J, including any variations to the program that have been approved in accordance with Subpart 42.J.

**Continuing Airworthiness Record** has the meaning given by CASA regulations 42.1085, 42.1090 and 42.1095 of CASA regulation Subpart 42.N—Record-keeping requirements.

**Continuing Airworthiness Management Organisation (CAMO)** means a person who holds an approval under CASA regulation 42.590 that is in force.

**Continuing Airworthiness Manager (CAM)** for a continuing airworthiness management organisation, has the meaning given by CASA regulation 42.575(1).

## Schedule 6 - Insurance

For the period commencing on the date of this Protocol [Agreement](#) and ending on the last day of the Administration, the ~~Lessor and the~~ Lessee will maintain all insurances in place in respect of the Aircraft in accordance with the Lease Documents, including renewing the existing insurances on or about the current expiry on 14 May 2020 and procure that new Certificates of Insurance in respect of each Aircraft/Engine are issued to each Lessor. [The proceeds of any insurance policy will be paid and applied in accordance with the Lease Documents.](#)

Draft

CLAYTON UTZ

Formatted: Font: Not Italic  
Formatted: Space After: 0 pt

Draft

Executed as an agreement

**Voluntary Administrators**

Executed by [##] in his capacity as one of the Joint and Several Administrator of [##] (Administrators Appointed) for and on behalf of each of the Joint and Several Administrators of [##] (Administrators Appointed) in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full name of witness

Executed by [insert name of Lessee] (Administrators Appointed) by its joint and several voluntary administrator in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
[insert name of administrator]

\_\_\_\_\_  
Full name of witness

[Insert execution blocks for lessor/finance parties]

Formatted: Font color: Black

This and the following 7 pages is **Annexure O** referred to in the affidavit of Kassandra Suzann Adams

Sworn on \_\_\_\_\_

Before me

**McCloy, Madeleine**

---

**From:** Adams, Kassandra  
**Sent:** Thursday, 14 May 2020 11:49 PM  
**To:** McCoy, Noel  
**Cc:** Sackar, Timothy; Tucker, Graeme; Casellas, Kate; Casamento, Vittorio; Khan, Safiyya  
**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) (4030007)[NRF-APAC.FID2771231] [CU-Legal.FID3017446]

Dear Noel,

Thank you for your email.

We have discussed the orders with various parties during today, and we have not received any opposition to the orders sought by our clients.

The limitation of liability clause is not intended to affect pre-appointment agreements or agreements that have been entered into post-appointment but before the orders are made with which specific relief is not sought.

The purpose of seeking the orders is to alleviate the need and significant expense (which will in turn effect the return to creditors) on the estate every time an agreement is entered into going forward.

I also take the opportunity to remind you that should your client consider the need to address the court on such matters, there is a proposed that a protection mechanism to be put in place, being, to allow an interested party, to bring the matter back before the court on one business days' notice to seek to vary or discharge the orders.

We will in any event, bring your letter to the Court's attention.

Kind regards,

**Kassandra Adams, Senior Associate**

**Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |

[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)

Please consider the environment before printing this e-mail

---

**From:** McCoy, Noel <[noel.mccoy@nortonrosefulbright.com](mailto:noel.mccoy@nortonrosefulbright.com)>

**Sent:** Thursday, 14 May 2020 10:24 PM

**To:** Adams, Kassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>; Khan, Safiyya <[safiyya.khan@nortonrosefulbright.com](mailto:safiyya.khan@nortonrosefulbright.com)>

**Cc:** Tucker, Graeme <[gtucker@claytonutz.com](mailto:gtucker@claytonutz.com)>; Casellas, Kate <[KCasellas@claytonutz.com](mailto:KCasellas@claytonutz.com)>; Casellas, Kate <[KCasellas@claytonutz.com](mailto:KCasellas@claytonutz.com)>; Casamento, Vittorio <[vittorio.casamento@nortonrosefulbright.com](mailto:vittorio.casamento@nortonrosefulbright.com)>

**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) (4030007)[NRF-APAC.FID2771231] [CU-Legal.FID3017446]

Dear Kassandra

We refer to our various communications and in particular our letters dated 11 May 2020 and 12 May 2020, re-attached for convenience.

We **attach** our clients' proposed amendments to the draft Aircraft Protocol dated 1 May 2020 (**Protocol**). While these comments reflect our clients' instructions, we and our clients are continuing to review the document and may propose further amendments or comments.

Our clients' proposed amendments to the Protocol should be read in conjunction with our letters referred to above, which identify the key principles underpinning those proposed amendments. Most relevant to the administrators' application under section 447A(1) of the Corporations Act and section 90-15 of the IPSC to limit the administrators' personal liability consistent with the Protocol, the drafting amendments proposed by our clients accommodate the areas of common ground – limited recourse personal liability of the administrators and deferral of rental payments



(other than the payments identified in Schedule 2) during the administration – but otherwise seek to preserve the post-appointment priority of lessors as discussed in our letter.

We are instructed to request your clients give consideration to our clients' proposed amendments to the Protocol. We are also instructed to again invite your clients to defer their application till our respective clients have had a proper opportunity to consider and discuss the Protocol in light of these amendments.

Kind regards

**Noel McCoy** | Partner  
Norton Rose Fulbright Australia  
Level 5, 60 Martin Place, Sydney, Australia  
Tel +61 2 9330 8133 | Mob +61 414 764 525 | Fax +61 2 9330 8111  
noel.mccoy@nortonrosefulbright.com

## **NORTON ROSE FULBRIGHT**

*Law around the world*  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

Please be aware that all Australian staff other than those required to provide essential services and facilities are working remotely, so we are not currently hosting meetings in our offices. To find out more, [click here](#).

---

**From:** Adams, Cassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>  
**Sent:** Wednesday, 13 May 2020 9:22 AM  
**To:** McCoy, Noel <[noel.mccoy@nortonrosefulbright.com](mailto:noel.mccoy@nortonrosefulbright.com)>; Khan, Safiyya <[safiyya.khan@nortonrosefulbright.com](mailto:safiyya.khan@nortonrosefulbright.com)>  
**Cc:** Tucker, Graeme <[gtucker@claytonutz.com](mailto:gtucker@claytonutz.com)>; Casellas, Kate <[KCasellas@claytonutz.com](mailto:KCasellas@claytonutz.com)>; Casellas, Kate <[KCasellas@claytonutz.com](mailto:KCasellas@claytonutz.com)>; Casamento, Vittorio <[vittorio.casamento@nortonrosefulbright.com](mailto:vittorio.casamento@nortonrosefulbright.com)>  
**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) (4030007)[NRF-APAC.FID2771231] [CU-Legal.FID3017446]

Dear Noel,

I hope the below answers your queries:

1. The form of words for the limitation of liability clause is to reflect the form of the orders proposed in the interlocutory application;
2. As I understand it, the Aircraft Protocol with your clients are being discussed and we have not received any comments from your clients on the current Aircraft Protocol other than letters to reflect your high level concerns. The form of the limitation of liability clause will reflect the orders proposed.

Kind regards,

**Kassandra Adams, Senior Associate**  
**Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |  
[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)  
[Please consider the environment before printing this e-mail](#)

---

**From:** McCoy, Noel <[noel.mccoy@nortonrosefulbright.com](mailto:noel.mccoy@nortonrosefulbright.com)>  
**Sent:** Tuesday, 12 May 2020 11:18 PM  
**To:** Adams, Cassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>; Khan, Safiyya <[safiyya.khan@nortonrosefulbright.com](mailto:safiyya.khan@nortonrosefulbright.com)>  
**Cc:** Sackar, Timothy <[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)>; Tucker, Graeme <[gtucker@claytonutz.com](mailto:gtucker@claytonutz.com)>; Casellas, Kate <[KCasellas@claytonutz.com](mailto:KCasellas@claytonutz.com)>; Casellas, Kate <[KCasellas@claytonutz.com](mailto:KCasellas@claytonutz.com)>; Casamento, Vittorio <[vittorio.casamento@nortonrosefulbright.com](mailto:vittorio.casamento@nortonrosefulbright.com)>  
**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) (4030007)[NRF-APAC.FID2771231] [CU-Legal.FID3017446]

Kassandra

To clarify, our queries below seek to understand with sufficient precision the scope of the orders limiting the administrators liability relative to any standstill agreement with lessors.

Among other matters, to the extent that any such orders operate with respect to an agreement on the terms of a particular draft or an agreement substantially in accordance with that draft, that will necessarily limit the scope of any negotiations of the terms of the standstill agreement as presumably the administrators will not enter an agreement to which the Court orders do not apply.

From the below, we understand the administrators' position to be:

1. the administrators' application seeks protection from personal liability in respect of an agreement on the terms of, or substantially in accordance with the Aircraft Protocol circulated on 1 May 2020 (being the version that will be put before the Court) but it is expected that the actual terms of the Aircraft Protocol to be entered into with lessors, at least the form of words limiting liability (being the subject matter of the orders) will be different to the version of the Aircraft Protocol before the Court;
2. at the same time, the administrators have provided a revised form of limitation of liability wording that is substantially different to the wording contained in the Aircraft Protocol circulated on 1 May 2020 and is intended to be included in the actual terms of the Aircraft Protocol to be entered into with lessors but this form of revised wording is not being put before the Court on the application.

Please kindly let us know if our understanding is correct, or if it is not, please kindly clarify.

Kind regards

**Noel McCoy** | Partner  
Norton Rose Fulbright Australia  
Level 5, 60 Martin Place, Sydney, Australia  
Tel +61 2 9330 8133 | Mob +61 414 764 525 | Fax +61 2 9330 8111  
noel.mccoy@nortonrosefulbright.com

## **NORTON ROSE FULBRIGHT**

*Law around the world*  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

Please be aware that all Australian staff other than those required to provide essential services and facilities are working remotely, so we are not currently hosting meetings in our offices. To find out more, [click here](#).

---

**From:** Adams, Cassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>

**Sent:** Tuesday, 12 May 2020 6:21 PM

**To:** Khan, Safiyya <[safiyya.khan@nortonrosefulbright.com](mailto:safiyya.khan@nortonrosefulbright.com)>

**Cc:** Sackar, Timothy <[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)>; Tucker, Graeme <[gtucker@claytonutz.com](mailto:gtucker@claytonutz.com)>; Casellas, Kate <[KCasellas@claytonutz.com](mailto:KCasellas@claytonutz.com)>; Casellas, Kate <[KCasellas@claytonutz.com](mailto:KCasellas@claytonutz.com)>; McCoy, Noel

<[noel.mccoy@nortonrosefulbright.com](mailto:noel.mccoy@nortonrosefulbright.com)>; Casamento, Vittorio <[vittorio.casamento@nortonrosefulbright.com](mailto:vittorio.casamento@nortonrosefulbright.com)>

**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) (4030007)[NRF-APAC.FID2771231] [CU-Legal.FID3017446]

Dear Safiyya,

As described in the IP and the Affidavit, we are seeking an order that it be an agreement on the terms of, or substantially in accordance with the Aircraft Protocol circulated on 1 May 2020.

This does not mean that it needs to remain the same just substantially in the same form. I also note that the order will only apply if your client enters into the agreement, not if they don't. The purpose of the order is to alleviate the need to attend Court every time an agreement is entered into in order to limit the administrators personal liability. The form of limitation of liability to ultimately be included in the Aircraft Protocol will be one that is consistent with the orders, rather than the version included in the circulation of 1 May 2020.

Kind regards,

**Kassandra Adams, Senior Associate  
Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |  
kaadams@claytonutz.com | [www.claytonutz.com](http://www.claytonutz.com)  
Please consider the environment before printing this e-mail

---

**From:** Khan, Safiyya <[safiyya.khan@nortonrosefulbright.com](mailto:safiyya.khan@nortonrosefulbright.com)>

**Sent:** Tuesday, 12 May 2020 3:42 PM

**To:** Adams, Kassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>

**Cc:** Sackar, Timothy <[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)>; Tucker, Graeme <[gtucker@claytonutz.com](mailto:gtucker@claytonutz.com)>; Casellas, Kate <[KCasellas@claytonutz.com](mailto:KCasellas@claytonutz.com)>; McCoy, Noel <[noel.mccoy@nortonrosefulbright.com](mailto:noel.mccoy@nortonrosefulbright.com)>; Casamento, Vittorio <[vittorio.casamento@nortonrosefulbright.com](mailto:vittorio.casamento@nortonrosefulbright.com)>

**Subject:** In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) [CU-Legal.FID3017446] (4030007)[NRF-APAC.FID2771231]

Hi Kassandra

Thank you for your email below.

With respect to the Aircraft Protocol contained at Tab 12 of the Strawbridge Affidavit, we note that this document contains the limitation of liability provisions included in the first draft of this document circulated by Clayton Utz on 1 May 2020. Pursuant to Kate's email to us on 11 May 2020 at 9.20 pm, we understood that the intention was for the new limitation of liability provisions contained in the **attached** rider to the Aircraft Protocol (**Rider**) to replace clauses 1.3, 1.4 and 1.5 of the draft Aircraft Protocol.

Are you able to please clarify whether the position with respect to the limitation of liability provisions outlined to us in the email we received yesterday (and as discussed on our call this morning) is being withdrawn or if the intention is still to seek orders that the administrators' personal liability is limited on the terms contained in the Rider at tomorrow's hearing.

Kind regards

**Safiyya Khan** | Senior Associate  
Norton Rose Fulbright Australia  
Level 5, 60 Martin Place, Sydney, Australia  
Tel +61 2 9330 8581 | Mob +61 407 013 918 | Fax +61 2 9330 8111  
[safiyya.khan@nortonrosefulbright.com](mailto:safiyya.khan@nortonrosefulbright.com)

## **NORTON ROSE FULBRIGHT**

*Law around the world*  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

Please be aware that all Australian staff other than those required to provide essential services and facilities are working remotely, so we are not currently hosting meetings in our offices. To find out more, [click here](#).

---

**From:** Adams, Kassandra [<mailto:kaadams@claytonutz.com>]

**Sent:** Tuesday, 12 May 2020 2:35 PM

**To:** McCoy, Noel <[noel.mccoy@nortonrosefulbright.com](mailto:noel.mccoy@nortonrosefulbright.com)>

**Cc:** Sackar, Timothy <[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)>; Tucker, Graeme <[gtucker@claytonutz.com](mailto:gtucker@claytonutz.com)>; Casellas, Kate <[KCasellas@claytonutz.com](mailto:KCasellas@claytonutz.com)>; Khan, Safiyya <[safiyya.khan@nortonrosefulbright.com](mailto:safiyya.khan@nortonrosefulbright.com)>; Casamento, Vittorio <[vittorio.casamento@nortonrosefulbright.com](mailto:vittorio.casamento@nortonrosefulbright.com)>

**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) [CU-Legal.FID3017446] (4030007)[NRF-APAC.FID2771231]

Dear Noel,

Reference to Tab 15 should be a reference to Tab 12.

In relation to the adjournment, there is an order providing an interested party to have liberty to apply to vary or discharge the orders on 1 business days' notice.

Kind regards,

**Kassandra Adams, Senior Associate  
Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |  
[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)

Please consider the environment before printing this e-mail

---

**From:** McCoy, Noel <[noel.mccoy@nortonrosefulbright.com](mailto:noel.mccoy@nortonrosefulbright.com)>

**Sent:** Tuesday, 12 May 2020 2:17 PM

**To:** Adams, Kassandra <[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com)>; Tucker, Graeme <[gtucker@claytonutz.com](mailto:gtucker@claytonutz.com)>; Casellas, Kate <[KCasellas@claytonutz.com](mailto:KCasellas@claytonutz.com)>

**Cc:** Sackar, Timothy <[tsackar@claytonutz.com](mailto:tsackar@claytonutz.com)>; Khan, Safiyya <[safiyya.khan@nortonrosefulbright.com](mailto:safiyya.khan@nortonrosefulbright.com)>; Casamento, Vittorio <[vittorio.casamento@nortonrosefulbright.com](mailto:vittorio.casamento@nortonrosefulbright.com)>

**Subject:** RE: In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) [CU-Legal.FID3017446] (4030007)[NRF-APAC.FID2771231]

Dear Kassandra

Thank you for your email received this morning.

We also refer to our telephone discussions with Graeme Tucker earlier today, yesterday and on 5 May 2020 and our correspondence sent to you yesterday and today on behalf of Perth Aircraft Leasing and Aviation Capital Group respectively.

We note that the administrators seek, at paragraph 14(a)(i) of the interlocutory process filed on 11 May 2020, an order pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, that Part 5.3A of the Corporations Act is to operate in relation to the administrators as if section 443A(1) of the Corporations Act provides that the liabilities of the administrators incurred with respect to any obligations arising out of, or in connection with, any future agreement on the terms of, or substantially in accordance with, the Aircraft Protocols document in the form exhibited at Tab 15 of Exhibit VNS-2 to the Strawbridge Affidavit.

We note that there is no Tab 15 of Exhibit VNS-2 as referred to in the affidavit (there is no Tab 15 in the exhibits we downloaded) and we do not otherwise seem to have received it. Would you kindly provide us with Aircraft Protocol document in the form intended to be exhibited at Tab 15 of Exhibit VNS-2.

In the meantime, we will not be in a position to deal with the application tomorrow. In that regard, we note that our clients are in different time zones which do not coincide easily with ours (Israel and US) and we do not anticipate being in a position to obtain meaningful instructions prior to tomorrow's proposed hearing.

In any event, from the conversations referenced above, we had understood that the administrators were seeking to negotiate with lessor creditors with a view to concluding negotiations by 20 May 2020 with any Court application to follow thereafter. The drafting of the Aircraft Protocol provided to us on 1 May 2020 also contemplated a Court application following entry into any such agreement. We have been conducting those discussions in good faith and on the understanding of a timeline which would not require us to deal with matters which we understood to be the subject of ongoing discussions and negotiations in such short order.

In the circumstances, would you kindly indicate whether the administrators would be prepared to consent to an adjournment of the application insofar as it affects the orders sought in clause 14(a)(i) for a period of one week?

Kind regards

**Noel McCoy** | Partner  
Norton Rose Fulbright Australia  
Level 5, 60 Martin Place, Sydney, Australia

---

**From:** Adams, Cassandra <kaadams@claytonutz.com>

**Sent:** Tuesday, 12 May 2020 12:07 AM

**To:** john.mckean@aviationcapital.com; helen.zhu@aviationcapital.com; McCoy, Noel  
<noel.mccoy@nortonrosefulbright.com>; gayle.toney@aviationcapital.com; Casamento, Vittorio  
<vittorio.casamento@nortonrosefulbright.com>

**Subject:** In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding) [CU-Legal.FID3017446] (4030007)[NRF-APAC.FID2771231]

**In the matter of Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226 & ORS - Federal Court of Australia Proceeding Number NSD 464 of 2020 (Proceeding)**

We refer to the above matter and **attach** copies of the following documents:

1. interlocutory process filed in the Proceeding on 11 May 2020;
2. sealed affidavit of Vaughan Neil Strawbridge filed in the Proceeding on 11 May 2020;
3. a Mimecast Link to Exhibit "VNS-2", being a bundle of documents exhibited to the affidavit of Vaughan Neil Strawbridge filed in the Proceeding on 11 May 2020;
4. sealed supplementary affidavit of Vaughan Neil Strawbridge filed in the Proceeding on 11 May 2020; and
5. a Mimecast Link to Exhibit "VNS-3", being a bundle of documents exhibited to the supplementary affidavit of Vaughan Neil Strawbridge filed in the Proceeding on 11 May 2020.

We confirm that the Proceeding is listed for Hearing via Microsoft Teams (video-conference) in the Federal Court of Australia at **10:15am**, Wednesday **13 May 2020** before the Honourable Justice Middleton.

Details on how to attend the hearing are below:

**Link:** [Join Microsoft Teams Meeting](#)

**Join by Phone**

Phone: 02 9161 1229

Conference ID: 146 961 71#

**Join with a video conferencing device**

[862016018@t.plcm.vc](tel:862016018)

VTC Conference ID: 1371164547

Kind regards

**Kassandra Adams, Senior Associate**

**Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | D +612 9353 4200 | F +612 8220 6700 | M +61 435014318 |

[kaadams@claytonutz.com](mailto:kaadams@claytonutz.com) | [www.claytonutz.com](http://www.claytonutz.com)

Please consider the environment before printing this e-mail

CONFIDENTIALITY NOTICE: This email, including any attachments, is confidential and may be privileged. If you are not the intended recipient please notify the sender immediately, and please delete it; you should not copy it or use it for any purpose or disclose its contents to any other person. Norton Rose Fulbright Australia and its affiliates reserve the right to monitor all email communications through their networks.

Norton Rose Fulbright Australia is a law firm as defined in the legal profession legislation of the Australian states and territory in which it practises.

Norton Rose Fulbright Australia, Norton Rose Fulbright LLP, Norton Rose Fulbright Canada LLP, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are available at [nortonrosefulbright.com](http://nortonrosefulbright.com).

We collect personal information in the course of providing our legal services. For further information please see our Australian privacy collection notice available on our website.

**CONFIDENTIALITY NOTICE:** This email, including any attachments, is confidential and may be privileged. If you are not the intended recipient please notify the sender immediately, and please delete it; you should not copy it or use it for any purpose or disclose its contents to any other person. Norton Rose Fulbright Australia and its affiliates reserve the right to monitor all email communications through their networks.

Norton Rose Fulbright Australia is a law firm as defined in the legal profession legislation of the Australian states and territory in which it practises.

Norton Rose Fulbright Australia, Norton Rose Fulbright LLP, Norton Rose Fulbright Canada LLP, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are available at [nortonrosefulbright.com](http://nortonrosefulbright.com).

We collect personal information in the course of providing our legal services. For further information please see our Australian privacy collection notice available on our website.

**CONFIDENTIALITY NOTICE:** This email, including any attachments, is confidential and may be privileged. If you are not the intended recipient please notify the sender immediately, and please delete it; you should not copy it or use it for any purpose or disclose its contents to any other person. Norton Rose Fulbright Australia and its affiliates reserve the right to monitor all email communications through their networks.

Norton Rose Fulbright Australia is a law firm as defined in the legal profession legislation of the Australian states and territory in which it practises.

Norton Rose Fulbright Australia, Norton Rose Fulbright LLP, Norton Rose Fulbright Canada LLP, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are available at [nortonrosefulbright.com](http://nortonrosefulbright.com).

We collect personal information in the course of providing our legal services. For further information please see our Australian privacy collection notice available on our website.

**CONFIDENTIALITY NOTICE:** This email, including any attachments, is confidential and may be privileged. If you are not the intended recipient please notify the sender immediately, and please delete it; you should not copy it or use it for any purpose or disclose its contents to any other person. Norton Rose Fulbright Australia and its affiliates reserve the right to monitor all email communications through their networks.

Norton Rose Fulbright Australia is a law firm as defined in the legal profession legislation of the Australian states and territory in which it practises.

Norton Rose Fulbright Australia, Norton Rose Fulbright LLP, Norton Rose Fulbright Canada LLP, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the

members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are available at [nortonrosefulbright.com](http://nortonrosefulbright.com).

We collect personal information in the course of providing our legal services. For further information please see our Australian privacy collection notice available on our website.





11 May 2020

make the decision; there is no evidentiary or other basis for any period of free availability for use of the aircraft in excess of the statutory 5 days where the decision is ultimately made to retain it.

2. This is where the common ground ends, as the administrators do not wish the “rent or other amounts payable” under the leases to receive the statutory priority accorded to these payments under Part 5.3A of the Corporations Act. The administrators’ position is that it is not enough that they have been relieved of personal liability beyond the assets of the company, and had their cash flow concerns addressed; they also seek to invert the statutory order of priority to prefer the claims of pre-appointment creditors over this class of post-appointment creditor.
3. It will be well known to you, but it is worth setting out here for proper context, that it is a basic tenant of developed insolvency systems that “post appointment creditors” receive a priority over the debts of pre-appointment creditors. In debtor-in-possession regimes, this is reflected in a statutory priority that prescribes that “post” claims be met before any proceeds are made available to address “pre” claims. In insolvency regimes similar to Australia, the same objective is achieved by rendering the appointed administrator/liquidator/judicial manager personally liable for such post-appointment debts (or for the debts to be priority expenses). In Australia this outcome is achieved in the voluntary administration regime by operation of section 443A and section 443B. (In a liquidation, it is reflected in such liabilities being an expense of the liquidator and prioritised accordingly – ie before pre-appointment creditors.) This priority represents a basic foundation of insolvency law and policy here and elsewhere. The prioritisation of the claims of pre-appointment unsecured creditors over the debts of post-appointment creditors that the administrators propose in the Aircraft Protocol would be an extraordinary step, particularly given the reversal can have no bearing on the achievement of the objectives set out in section 435A of the Corporations Act, and is unprecedented so far as we are aware. We would respectfully invite you to identify how you would say that the proposed inversion of creditor priorities is consistent the objectives set out in section 435A of the Corporations Act, and to provide another example, whether in this jurisdiction or elsewhere, evidencing such a re-ordering of priorities to, in effect, subordinate post-appointment creditors’ claims below the claims of pre-appointment creditors.
4. Upon resolution of this issue of principle, the drafting of clauses 1.3 and 1.4 of the Aircraft Protocol can be readily addressed. Much of the complexity of the present drafting will fall away once agreement is reached on this single remaining area of dispute.

#### **Maintenance and regulatory compliance**

5. In circumstances where our client is denied recourse to their aircraft and engines by the administrators declining to return them, it is from our client’s perspective imperative that all maintenance required to be undertaken, and other steps that must be observed to ensure that regulatory and aviation requirements are fully observed, be taken. Given that the administrators have made the conscious decision to withhold possession of our client’s property, we consider this imperative may be achieved by the administrators assuming responsibility to ensure that the contractual and other legal obligations associated with maintenance and regulatory compliance are observed by the lessees/sub-lessees. By “observed”, we mean observed in a way that is consistent with the maintenance practices existing prior to the appointment.
6. From a drafting perspective, this can be simply addressed by including an obligation on the administrators to procure that the Lessees’ maintenance and regulatory obligations are observed during the administration process in the same ways and in a manner consistently with the manner that such obligations were observed prior to the commencement of the administration. If our client formed the view that such requirements were not being adhered to, it would, among other matters, have the ability to exit the standstill and move to repossess its aircraft and engines.
7. We expect the administrators would be aware of the substantial loss and damage that may flow from a failure to observe regulatory or maintenance requirements, but please let us know if this is not the case and we will have our client provide further details to them.

#### **Proposed lease amendments**

8. The Aircraft Protocol appears to propose substantial amendment to the lease documents by removing (not only for the period of the proposed standstill but beyond) the promises of compliance with all but a handful of the covenants in the document. We do not understand the rationale behind this approach, and

11 May 2020

in particular why it is perceived necessary in circumstances where promises of forbearance and standstill, as well as the statutory regime set out in Part 5.3A of the Corporations Act, appear adequately to protect the interests of the estate. Our client does not wish to limit its claims. Would you kindly let us know the interests that are sought to be protected here.

9. From a drafting perspective, this can be addressed by deleting the attempt to vary the documentation, and instead for the administrators to identify the interests they are seeking to protect, and seek agreement for protecting those interests through the forbearance and standstill provisions of the Aircraft Protocol.

**Term of the forbearance**

10. The Aircraft Protocol contemplates that the proposed standstill be in place during the period of the administration. This cuts across our client's rights which would require the Administrators to turn over aircraft and engines within 60 calendar days of their appointment. It is appropriate that any standstill have a "hard" deadline rather than an open ended one, which would align with the expiry of the 60 calendar days. To do otherwise would bring about too much uncertainty. As the administration develops and a clearer picture emerges as to the administration the administrators can approach lessors and renegotiate a further standstill if it is warranted in the circumstances.

We await your urgent response.

Yours faithfully



Noel McCoy  
Partner  
Norton Rose Fulbright Australia

Encl.

This and the following 2 pages is **Annexure Q** referred to in the affidavit of **Kassandra Suzann Adams**

Sworn on \_\_\_\_\_

Before me \_\_\_\_\_

12 May 2020

NORTON ROSE FULBRIGHT

Norton Rose Fulbright Australia

ABN 32 720 868 049

Level 18, Grosvenor Place

225 George Street

SYDNEY NSW 2000

AUSTRALIA

Tel +61 2 9330 8000

Fax +61 2 9330 8111

GPO Box 3872, Sydney NSW 2001

DX 368 Sydney

nortonrosefulbright.com

**Direct line**

+61 2 9330 8133

**Email**

noel.mccoy@nortonrosefulbright.com

**Your reference:**

**Our reference:**

4030007

Timothy Sackar  
Clayton Utz  
Level 15, 1 Bligh Street  
Sydney NSW 2000

**By email:** tsackar@claytonutz.com

Dear Mr Sackar

**Bank of Utah as owner trustee for Aviation Capital Group LLC and Virgin Australia Group (administrators appointed) – Aircraft Protocol**

---

We refer to our telephone conversation on Tuesday, 5 May 2020.

Our client remains supportive of the administrators' efforts to restructure the Virgin Airlines group.

Following Tuesday's discussion around the key issues, and the respective interest of the parties that underpin them, our client wishes to move forward towards a prompt resolution of the proposed Aircraft Protocol.

Set out below is an identification of the key issues. To be clear, the absence of an identification of a particular matter found in the first draft of the Aircraft Protocol does not mean that there is no issue in relation to that matter or that the drafting relating to that issue currently found in the draft Aircraft Protocol is accepted.

**Administrators' liability/limitation of recourse**

1. There is very considerable common ground here between our client and the administrators on this issue. Subject to the important proviso that agreement can be reached on the other aspects of the Aircraft Protocol, our client agrees:
  - a) The liability imposed by section 443B of the *Corporations Act 2001* (Cth) (**Corporations Act**) (and section 443A, if relevant) is limited in recourse to the assets of the respective lessees and sub-lessees.
  - b) Payment of the liability imposed under section 443B (and section 443A, if relevant) may be deferred until the conclusion of the voluntary administration.
  - c) No challenge to the extension up to 26 May 2020 of the period referred to in section 443B(2)(a), provided that where a notice of the type referred to in section 443B(3) is not issued, the "rent or other amounts payable" referred to in subsection (2) will be in respect of the period commencing on the 6<sup>th</sup> business day after the administration began. (This will need to be recorded in an order of the Court.) The principled basis for this position is that where the administrators' considered decision is to not issue such a notice, there is no reason in principle why the timing for the accrual of liability to pay the rent and other amounts referred to in the section should not commence from the date specified in the statute, namely day 5. That is, the amendment to the statutory regime should be confined to the underlying rationale for the section 447A order on this point, namely the additional time required to

12 May 2020

make the decision; there is no evidentiary or other basis for any period of free availability for use of the aircraft in excess of the statutory 5 days where the decision is ultimately made to retain it.

2. This is where the common ground ends, as the administrators do not wish the “rent or other amounts payable” under the leases to receive the statutory priority accorded to these payments under Part 5.3A of the Corporations Act. The administrators’ position is that it is not enough that they have been relieved of personal liability beyond the assets of the company, and had their cash flow concerns addressed; they also seek to invert the statutory order of priority to prefer the claims of pre-appointment creditors over this class of post-appointment creditor.
3. It will be well known to you, but it is worth setting out here for proper context, that it is a basic tenant of developed insolvency systems that “post appointment creditors” receive a priority over the debts of pre-appointment creditors. In debtor-in-possession regimes, this is reflected in a statutory priority that prescribes that “post” claims be met before any proceeds are made available to address “pre” claims. In insolvency regimes similar to Australia, the same objective is achieved by rendering the appointed administrator/liquidator/judicial manager personally liable for such post-appointment debts (or for the debts to be priority expenses). In Australia this outcome is achieved in the voluntary administration regime by operation of section 443A and section 443B. (In a liquidation, it is reflected in such liabilities being an expense of the liquidator and prioritised accordingly – ie before pre-appointment creditors.) This priority represents a basic foundation of insolvency law and policy here and elsewhere. The prioritisation of the claims of pre-appointment unsecured creditors over the debts of post-appointment creditors that the administrators propose in the Aircraft Protocol would be an extraordinary step, particularly given the reversal can have no bearing on the achievement of the objectives set out in section 435A of the Corporations Act, and is unprecedented so far as we are aware. We would respectfully invite you to identify how you would say that the proposed inversion of creditor priorities is consistent the objectives set out in section 435A of the Corporations Act, and to provide another example, whether in this jurisdiction or elsewhere, evidencing such a re-ordering of priorities to, in effect, subordinate post-appointment creditors’ claims below the claims of pre-appointment creditors.
4. Upon resolution of this issue of principle, the drafting of clauses 1.3 and 1.4 of the Aircraft Protocol can be readily addressed. Much of the complexity of the present drafting will fall away once agreement is reached on this single remaining area of dispute.

#### **Maintenance and regulatory compliance**

5. In circumstances where our client is denied recourse to their aircraft and engines by the administrators declining to return them, it is from our client’s perspective imperative that all maintenance required to be undertaken, and other steps that must be observed to ensure that regulatory and aviation requirements are fully observed, be taken. Given that the administrators have made the conscious decision to withhold possession of our client’s property, we consider this imperative may be achieved by the administrators assuming responsibility to ensure that the contractual and other legal obligations associated with maintenance and regulatory compliance are observed by the lessees/sub-lessees. By “observed”, we mean observed in a way that is consistent with the maintenance practices existing prior to the appointment.
6. From a drafting perspective, this can be simply addressed by including an obligation on the administrators to procure that the Lessees’ maintenance and regulatory obligations are observed during the administration process in the same ways and in a manner consistently with the manner that such obligations were observed prior to the commencement of the administration. If our client formed the view that such requirements were not being adhered to, it would, among other matters, have the ability to exit the standstill and move to repossess its aircraft and engines.
7. We expect the administrators would be aware of the substantial loss and damage that may flow from a failure to observe regulatory or maintenance requirements, but please let us know if this is not the case and we will have our client provide further details to them.

#### **Proposed lease amendments**

8. The Aircraft Protocol appears to propose substantial amendment to the lease documents by removing (not only for the period of the proposed standstill but beyond) the promises of compliance with all but a handful of the covenants in the document. We do not understand the rationale behind this approach, and

12 May 2020

in particular why it is perceived necessary in circumstances where promises of forbearance and standstill, as well as the statutory regime set out in Part 5.3A of the Corporations Act, appear adequately to protect the interests of the estate. Our client does not wish to limit its claims. Would you kindly let us know the interests that are sought to be protected here.

9. From a drafting perspective, this can be addressed by deleting the attempt to vary the documentation, and instead for the administrators to identify the interests they are seeking to protect, and seek agreement for protecting those interests through the forbearance and standstill provisions of the Aircraft Protocol.

**Term of the forbearance**

10. The Aircraft Protocol contemplates that the proposed standstill be in place during the period of the administration. This cuts across our client's rights under the Cape Town Convention which would require the Administrators to turn over aircraft and engines within 60 calendar days of their appointment. It is appropriate that any standstill have a "hard" deadline rather than an open ended one, which would align with the expiry of the 60 calendar days. To do otherwise would bring about too much uncertainty. As the administration develops and a clearer picture emerges as to the administration the administrators can approach lessors and renegotiate a further standstill if it is warranted in the circumstances.

We await your urgent response.

Yours faithfully



Noel McCoy  
Partner  
Norton Rose Fulbright Australia