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AND TRANSPORT

Reference: Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007

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**SENATE STANDING COMMITTEE ON
RURAL AND REGIONAL AFFAIRS AND TRANSPORT
Monday, 16 July 2007**

Members: Senator Heffernan (*Chair*), Senator Siewert (*Deputy Chair*), Senators Adams, McEwen, McGauran, Nash, O'Brien, and Sterle

Participating members: Senators Adams, Allison, Barnett, Bartlett, Bernardi, Boswell, Bob Brown, Carol Brown, George Campbell, Carr, Chapman, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Fielding, Hogg, Hutchins, Joyce, Kemp, Lightfoot, Ludwig, Lundy, Ian Macdonald, Sandy Macdonald, McGauran, McEwen, McLucas, Milne, Nash, Nettle, Payne, Parry, Polley, Robert Ray, Stephens, Trood, Watson and Webber

Senators in attendance: Senators Adams, Hefferen, O'Brien and Sterle

Terms of reference for the inquiry:

To inquire into and report on: Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007

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Committee met at 8.33 am

ADAMS, Captain Colin Ernest, Past President and Member, Board of Management, Australian International Pilots Association.

MACLEAN, Mr Guy William, Government and Regulatory Affairs Advisor, Australian and International Pilots Association.

CHAIR (Senator Heffernan)—I declare open this public hearing of the Senate Rural and Regional Affairs and Transport Committee. The committee is hearing evidence for its inquiry into the Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007. I welcome everyone here today on this foggy morning—a typical winter’s morning in Canberra. This is a public hearing and a *Hansard* transcript of the proceedings is being made. Before the committee starts taking evidence, I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The committee prefers that all evidence be given in public, but, under the Senate’s resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to give evidence in camera. If a witness objects to answering a question, the witness should state the ground on which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground on which it is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such requests may, of course, also be made at any other time.

Finally, on behalf of the committee I would like to thank all those who have made submissions and sent representatives here today and for their cooperation in this inquiry. Welcome, Captain Adams and Mr Maclean. You may like to make an opening statement of some kind and then we will move to Senator O’Brien’s incisive questions.

Mr Maclean—Chair, we would like to make an opening statement. Captain Adams will do that.

CHAIR—Do you still fly?

Capt. Adams—Yes.

Mr Maclean—Captain Adams is a 747-400 captain, one of our senior captains.

CHAIR—We could have done with you in Wagga yesterday. It took us 2½ hours to get in!

Capt. Adams—Thank you, Mr Chairman, for this opportunity to make a submission. AIPA enthusiastically supports any measures that enhance safety in the aviation industry. Particularly, with the proposed legislation we support a number of the provisions, namely, expanding the definition of ‘unlawful interference with aviation’ to include activities beyond the boundary of an aerodrome. AIPA and IFALPA, the International Federation of Air Line Pilots Association, have previously raised concerns about the use of laser devices directed towards aircraft from locations beyond the airport boundary. These and other measures will be covered by this change to the legislation.

We support the extension of a new section 38B, dealing with unruly, disruptive or violent behaviour beyond the sterile operational area to include the passenger check-in, for instance. AIPA sees this as the appropriate evolution of security measures in response to a known developing risk. We support additional powers for certain Customs officers to stop and search persons, including directions to leave an aircraft or a designated zone of an aerodrome or to physically restrain persons until they can be dealt with by a law enforcement officer.

We agree that it is appropriate from a risk based perspective to exclude very senior dignitaries and heads of state from the security screening process. We do not, however, agree with the extension of this privilege to VIPs, who could include a wide range of people, from celebrities to the very wealthy. The underlying basis of this exemption appears to be status and privilege and not any objective risk assessment. This proposal therefore is strongly opposed by airline pilots.

AIPA believes that the security screening policy must be based upon the mitigation of risk as the underlying principle. A balance is required between hazard minimisation and operational facilitation. It is appropriate that passengers are screened for weapons that may be used to threaten the safety of an aircraft. This includes screening recently introduced to detect liquids, aerosols and gels—the LAGs legislation—although we note that the ICAO guidelines refer to the screening of passengers and not of members of the operating crew. We know of more than 25 countries, including members of the EEC, United States, Canada, UK and Japan, where aircrew are not subject to the LAGs screening.

When you think about it, the September 11 attacks occurred because terrorists gained access to the flight deck of an aircraft. I have access to the flight deck of an aircraft every time I go to work. What you must do is ensure that I am who I say I am, not that I am armed in some way, because if I am armed, it would not make any difference to the damage that I could do with an aircraft's controls in my possession. It is pointless screening pilots who already have access to the flight deck, where most damage can be done. We must positively identify the crew as being who they say they are.

We would like to express our ongoing disappointment with the lack of consultation by officers of DOTARS with AIPA. The introduction of the LAGs screening, a significant operational matter, occurred without any consultation with AIPA. We have recently been denied membership of the Aviation Security Advisory Forum, where we believe pilots would be able to make a valuable contribution. In a similar vein, CASA will not allow our pilots to be represented officially on the alcohol and other drugs project team, which will monitor the implementation of this legislation under discussion this morning. These are not mere oversights but exclusion by design to prevent any inconvenient objections to be heard where changes might be necessary, and we strongly object to them. None of this, of course, is in accord with the minister's statement on consultation with the industry.

AIPA accepts that there is clearly no place for impaired persons within the safety-sensitive operational environment. However, in relation to airline transport category aircraft—the flight crew—there is no defined risk that this legislation addresses. Quite simply, there has never been an accident of a large jet regular public transport aircraft where the causal factors have been ascribed to the problematic use of substances. In this regard, a one-size-fits-all strategy is not the appropriate hazard mitigation strategy to apply to airline transport flight crew. The

bill's explanatory memorandum contains some statements that we and other organisations have opposed, based on evidence. For example, the explanatory memorandum states:

... there are still significant concerns in relation to flight accidents and serious incidents attributable to the use of drugs and alcohol ...

AIPA submits that, for airline transport category operations and flight crew, there is simply no evidence to support this contention. Nevertheless, AIPA accepts that the government has determined that flight crew will fall under the proposed alcohol and other drugs testing legislation and therefore highlights to the committee that there are multiple factors contributing to performance impairment, with problematic use of substances being only one such risk.

Throughout the government's review of the safety clause for this legislation and with the CASA project team developing the key components, AIPA has advocated a holistic approach that supports the overall mitigation of human performance impairment, including related issues such as fatigue, work systems and environmental stresses. In my personal opinion, fatigue presents a far greater risk to aircraft safety than any of these other issues ever will. This approach is consistent with the Australian harm minimisation philosophy, which is based upon an underlying foundation of education, support and rehabilitation. The result is an intervention strategy that focuses on the substance user, not on abuse. It is a subtle but critical distinction.

We would like, finally, to highlight to the committee several other broad concerns that have been presented to the DOTARS and to the CASA AOD project team. The testing must only be conducted within Australia. The analysis must be conducted within Australia. The highest quality of testing analysis is necessary. The cost of testing is not to be borne by the individual and privacy aspects are to be respected, including protection of the security and access to testing records, and appropriate expungement provisions should apply. With that brief introduction, I welcome any questions.

CHAIR—Did I interpret you to say that you do not think pilots should go through security?

Capt. Adams—No. All you need to do with pilots is to ensure that they are who they say they are.

CHAIR—But if someone offered you half a million dollars to carry something from one country to another—

Senator O'BRIEN—Are you talking about Customs or are you talking about metal screening?

Capt. Adams—That would not necessarily—

CHAIR—Wouldn't it be fair enough, if you carry a bag on, for someone to look at the bag?

Capt. Adams—I do not personally have an issue with that.

CHAIR—What happens now?

Capt. Adams—We are screened to the same extent that the passengers are. But the result is that it certainly causes delays on occasions. The point I was making is that, in terms of aviation safety, it does not prove anything.

CHAIR—Yes, but, mate, people look for a soft entry point all the time and, if it is the pilots and you are paying off a mortgage and someone says, ‘I’ll give you \$100,000, mate, if you take this through for me,’ a lot of people would do it. Money speaks all languages.

Capt. Adams—I do not agree with that.

CHAIR—Well, there you go. Diplomatic bags are the same thing.

Mr Maclean—Can I say that, should a pilot bring an implement on board, it would have had—

CHAIR—I am not talking necessarily about implements.

Mr Maclean—If a pilot brings something on board, its stowage place would be in the cockpit traditionally, and that is on the secure side of the phase 3 door. Passengers do not have access to the location where a pilot’s baggage is stowed.

CHAIR—I am looking more at illegal activity rather than danger. When we got security here in parliament, it was beneath the dignity originally of a lot of MPs to think that they had to go through security, which was bullshit.

Mr Maclean—We are not saying that we should not be screened but screening needs to be appropriate to the risks presented by the particular population. Passengers need an offensive weapon to be able to realistically harm an aircraft. What we are saying is that pilots do not need an offensive weapon to harm an aircraft. I will give you an example: a pilot could not take an axe through a security checkpoint, obviously. However, as soon as the pilot gets to his workplace, there is one metre behind Captain Adams’s seat an axe in a readily accessible stowage, designed to be used as a safety axe. If they want an implement, they do not need to bring one with them.

CHAIR—You are on the wrong track completely. I think that what is good for the goose is good for the gander, it does not matter who you are, and I have grave reservations about this VIP thing. People look for soft entry points all the time, money speaks all languages and, as we have demonstrated time and time again, it does not matter who you are, you will be tempted.

Mr Maclean—If I can clarify one other point: we are not saying exclusion from screening. We are saying that the screening needs to be appropriate to the population. We believe that the appropriate screening for pilots is centred around identity issues. That is what we are saying, Senator.

Capt. Adams—I was specifically talking about aircraft safety. You do not make the flight any safer by screening the pilot for weapons.

CHAIR—No, I understand that.

Capt. Adams—I understood your point, too. Fair enough. If you are talking about smuggling prohibited substances, yes.

CHAIR—It is the same as drug testing.

Capt. Adams—Sure.

CHAIR—I have a strong view that, when Adam Shand, who was Alec Shand QC's grandson, writes an article in the *Bulletin* magazine, bragging about QCs sniffing cocaine to clear their head before they go to court, then we have a problem and we have to do something about it. But when you mention, 'Drug test judges, lawyers and politicians,' everyone thinks you want to cut their right arm off.

Senator STERLE—Captain Adams, I notice that certainly in larger airports cabin crew and pilots have preference to go through screening. Does that apply in every airport in Australia?

Capt. Adams—Yes. It is necessary, because we have designated tasks when we get to the aircraft, and if we have to wait in line with the passengers the aircraft would be delayed. That is done to expedite the departure. That happens everywhere.

Senator STERLE—Especially in Perth, and I can speak for Senator Adams. We are used to that.

Mr Maclean—I must say that it seems to be a developing trend that frequent flyers and high-yield customers are offered access to that Customs clearance point. For example, we go through the SmartGate system in Sydney, and my experience is that it is commercially advantageous for the airline operators to provide their high-yield passengers with access to that point. I think the passports that provide the biometric identifiers are being issued now and so we will, in the not too distant future, see a point where a crew will get down to the fast-track lane and find that there are 40 frequent flyers lined up there already.

Senator STERLE—But they are only offering that on international for the frequent flyers, are they?

Mr Maclean—That is in terms of international screening.

CHAIR—Do you think that the screening there now is adequate?

Capt. Adams—I am sorry?

CHAIR—Do you think that screening at airports for passengers is adequate?

Mr Maclean—Yes, I do.

Capt. Adams—Yes, I believe it is. In fact, for entry to the United States it has really got to an extreme, where it is probably unnecessary. The extent to which it is carried out is certainly extreme—detailed bag searches and things like that.

Mr Maclean—An operating crew member will have any currently listed as unacceptable article removed from screening. They are effective and efficient in removing items that the legislation does not allow to pass the screening point. My experience going through these things a lot is that it is near on impossible to get something that is outside of the prescribed requirements past the screening point. The discussion we were having earlier about whether or not LAGs, for example, should be removed is a different discussion, but in terms of the effectiveness of the current system to remove those items, if they are so prescribed, it is very effective at doing that. A lot of resources have been spent on that. The operators are

experienced and their people are well trained, and we have confidence as the representative of pilots that passengers who are on an aircraft do not possess any dangerous implements.

Senator O'BRIEN—Could you detail again the advisory body that you sought membership of? I take it you have been told that you will not be granted membership.

Mr Maclean—We have been advised verbally so far and we are expecting a letter. We suggested, as a consequence of our experience with the air security officers, where we had a very high level and close consultative relationship with the development of that program, that that really added some significant value to the program. Both the cabin crew associations and the pilots' associations incrementally added, I think, a good deal of value to the program, and it was a great example of how we can bring our operational experience and a slightly different perspective to security matters to get the best outcome.

I would highlight that security is not academic for our members. They spend their entire working lives on these aircraft and, if the aircraft is harmed, they are just as likely to be harmed as anyone else. On that experience, we then sought that our representatives become more involved in security consultation. We noted that, prior to the implementation of the LAGs policy, there was no consultation with us. We then went to meet with DOTARS and the minister's office and highlighted what we thought were significant concerns: first of all, applying LAGs to a population that did not present that risk, that did not need that hazard mitigation and, secondly, the facilitation of commercial operations was impacted by the operations of LAGs.

No-one asked us about that prior to implementation and we pointed out that, in security matters, there was not really a specific forum for the representatives of aircrew to present our views. As a consequence of that, we applied for membership of the Aviation Security Advisory Forum, which is the body that meets to discuss these issues. We thought that was appropriate and we could add some incremental value to the working of that group. We see the experience of pilots as being a significant resource that we would like to offer to achieve the best outcome. We have just been informed that we will not be given access to that forum, and that seems to be a more commonly developing theme in terms of consultation.

We have had some significant issues with CASA lately, where we have been specifically excluded from forums where we believe that we should have been included and would have added value. In relation to this bill, we applied very early on for formal inclusion in the alcohol and other drug development project team that CASA is running, and that has been consistently denied. I must note, however, that we have been given observer status and that the project managers running that team have gone out of their way to ensure that we can have full participation, and we have contributed significantly.

However, we have not been given formal access. We are there as observers, and we think that that is in contradiction of the minister's consultation statement and the spirit and intent of the actual issue. If there is one issue above all where you need buy-in by all parties, it is drug and alcohol testing, and we are at a loss to understand why we have not been formally included and have been relegated to observer status, but I do highlight again that we have been given the opportunity—

CHAIR—Do you think, as pilots, that the drug and alcohol testing is a rock-solid process? We are all sinners, right? There obviously would be pilots who are drug takers and who are drunks.

Capt. Adams—I do not agree with that. Pilots may drink alcohol, but if you are inferring that they turn up to work drunk, then I—

CHAIR—No, that is not what I said.

Capt. Adams—You said they are drunks.

Senator O'BRIEN—It is a very broad statement, which you made.

CHAIR—It is a sweeping statement.

Capt. Adams—Yes, indeed.

CHAIR—It was not meant to impugn pilots in any way. I have a fond regard for Australia's aviation, and an especially fond regard for the likes of Qantas. You only have to experience American airlines to know how good Qantas is. But there is, in some elements of the community, a view that it is all right to sniff a bit of cocaine or do drugs, as long as you do not get caught.

Capt. Adams—That may be the view in the community, but I think pilots are very much aware of their responsibilities and they are very much aware of health because we are regularly tested for all manner of things.

CHAIR—And I applaud the pilots for that. I just want to apply the same regime to other decision-makers, opinion-makers and law-makers.

Capt. Adams—Certainly, but I have been flying for 40 years as a Qantas pilot. I can honestly say I have never once, ever, seen a case where a pilot has turned up to work unfit for duty in any way, and certainly not affected by alcohol or drugs, and I do not believe it would happen. I do not mind if we are tested for it. I just think you are testing for something that is not a problem, frankly. That is my personal view.

CHAIR—But it sends the right signal.

Senator O'BRIEN—It has happened—very rarely, but it has happened, unfortunately. I do not know that it has happened in Australia, but it has happened. Certainly it has been reported, and I have heard no contradiction of the news reports of officers who have turned up incapable of working. Fortunately, they were not allowed to fly. But I do not know that we are going to get a long way in terms of dealing with this legislation in that regard.

Capt. Adams—No.

Senator O'BRIEN—What I want to find out is what is your interpretation of the new clause 38B. What do you think 'disruption to or interference with the activities of the operator of a security controlled airport' means in the terms of the legislation?

Mr Maclean—We understood it primarily to be in relation to activities off the airport boundary or outside of the security screening area that may impact the good order and facilitation or direct safety of the aviation operations, and the most obvious one is the laser-

guided pointer pointed at an aeroplane, but there may be a whole range of other behaviours which we have yet to discover that people may wish to engage in.

Senator O'BRIEN—That laser is in relation to an aircraft operator, not an airport operator, surely? The example of pointing a laser at an aircraft in flight is more to do with the operation of an aircraft operator than an airport operator. That is why I asked about the airport operator, because it seems that the interpretation of that could be quite broad.

Mr Maclean—I do not have a copy of the legislation in front of me, but that is the component, as I understand it, that refers to screening in other zones of the airport outside of the traditional security operational zones, and we were pleased to see that disruption caused in baggage halls or, more particularly, in check-in areas—issues such as check-in rage or other disruption of the good order and facilitation of aviation—was being addressed. We feel that potential harm to aviation systems is not just confined to activities past the primary customer screening point but also can occur in the process of entering the aviation system, and that, we feel, makes aviation less accessible and less safe for the workers that conduct the tasks in those areas. I am aware of an International Transport Federation program addressing check-in rage, and we think that that in general, providing that those provisions are covered by safeguards, facilitates the good order of aviation from the beginning of the process.

Senator O'BRIEN—By 'check-in rage' do you mean assault or something like that?

Mr Maclean—Yes.

Senator O'BRIEN—Surely other laws already cover that.

Mr Maclean—Other laws do cover that, but, to bring it into an aviation context, it seemed appropriate.

CHAIR—What causes check-in rage? Is it that they are insulted because they have to go through security?

Senator O'BRIEN—Someone does not get the seat they want or they cannot get an upgrade.

Capt. Adams—They cannot use their frequent flyer points to get an upgrade when they believed that that is what they could get, or they have got too much baggage and they get charged excess baggage charges—things like that. And they are already stressed and tired before they get there, often, so you are dealing with people who are not in a relaxed state of mind.

Mr Maclean—And also the making of jokes about, 'There's nothing in my bag except—'

Senator O'BRIEN—It is already covered, isn't it? Most of those things are already covered. I understand what you are talking about in relation to the laser operation, but this terminology is as wide as Sydney Heads, basically. If someone decides they are having a commercial dispute and is not going to supply a tanker load of fuel, that might be the disruption or interference with the activities of an airport or an aircraft operator.

Mr Maclean—We acknowledge that the wording is fairly broad, and there may well be a strong case for that wording to be tightened and made more specific.

Senator O'BRIEN—Obviously the industrial organisations may from time to time want to consult with their members, whether the check-in staff or the security staff or the aircraft cleaners or the catering staff. Would that be disruption to or interference with the activities of an airport operator or an aircraft operator? It seems to me to be broad enough to encompass those matters, and I note that this is a prescription which will permit certain regulations, but it is delightfully vague as to what that might be.

Mr Maclean—Our support is in relation to the specific issues we have mentioned. If the provisions are broad enough to allow extrapolation or extension to the issues that you are referring to, that would be unacceptable, and it would therefore be advised to look more closely at the wording and perhaps ensure that the intent is more clearly focused on the developing threats that we highlighted.

CHAIR—Thank you very much.

Capt. Adams—Thank you.

[9.02 am]

ASKEW, Mr Geoffrey, Group General Manager Security, Qantas Airways Ltd

PEEL, Dr Graeme, Group General Manager Occupational Health and Safety, Qantas Airways Ltd

CHAIR—Welcome, gentlemen. There has been a suggestion that you might want to give evidence in camera. Is that true or false?

Mr Askew—That is true, Senator, just on the one issue about the exemption for our dignitaries, because some of the comments that I have are based on information from national security intelligence.

CHAIR—Fair enough. If you would like to make an opening statement, then we will figure out when we ought to go into camera.

Mr Askew—Thank you. Qantas does appreciate the opportunity to give evidence before this committee regarding this bill. I wish briefly to comment on five significant amendments to the bill. First is the proposed amendment to the Civil Aviation Act, which basically is the alcohol and drugs testing. Qantas Airways Ltd fully supports the amendments to the Civil Aviation Act of 1988 to enable the Civil Aviation Authority to introduce a mandatory drug and alcohol testing regime in the civil aviation industry in this country. Qantas has in place a longstanding alcohol and other drugs policy, which was enhanced in 2003 by the implementation of a comprehensive and best practice alcohol and other drugs program comprising education, rehabilitation and testing components.

Prior to its implementation, the Qantas alcohol and other drugs program underwent extensive consultation with all employees and unions, as well as external stakeholders such as CASA. The program provides education to all employees on the effects of alcohol and other drugs and allied safety implications. It incorporates pre-employment show cause, post incident, self-referral and follow-up breath, alcohol and urine drug testing and delivery and effective assessment and rehabilitation of affected employees where practicable.

Over the past 3½ years the program has been accepted by employees and has successfully enhanced workplace safety and productivity. Notwithstanding its effectiveness, a key deficiency in the program has been the limited application of full random testing across the group. Random testing is recognised as an essential proactive deterrent to alcohol and other drug use associated with work, similar to the principles underscoring roadside random breath testing and, more recently in some states, random drug testing.

As has been the experience in other safety-sensitive industries such as mining and rail, regulation of random testing is needed to support the implementation of full, effective and consistent alcohol and other drug programs in the Australian aviation industry. The Australian public should be confident that, as a minimum, pilots, cabin crew, engineers and ramp employees are routinely subjected to testing. The approach taken by CASA and DOTARS has been thorough and fair, and the amendment legislation will serve as a model for industry both in Australia and internationally. When implemented, the regulation of random alcohol and

other drugs testing will provide significant safety, employee health and productivity enhancements.

I would like to move on, if I may, to the proposed amendments to the Civil Aviation Act regarding the use of lasers. There is concern in the aviation industry about the increase in incidence of lasers being used to interfere with aircraft, particularly on approach to and take-off from airports. Qantas fully supports the proposed amendment that creates an offence for a person who threatens the safety of an aircraft either by laser or by other means. However, we would like to make the point that the offence must be the pointing of the laser at the aircraft and not the consequences of such an act.

With regard to the amendment to the Aviation Transport Security Act regarding enhanced powers for Customs officers, Qantas supports the proposed amendments that will permit eligible Customs officers to provide initial and immediate response to potential acts of unlawful interference with aviation. A further amendment to the act is in respect of interference with operations of security-controlled airports or aircraft. Qantas supports the amendments that will enable regulations to be made that prohibit activities or conduct outside the boundaries of a security controlled airport, or within those parts of a security controlled airport not screened, that disrupt or interfere with the operations of a security controlled airport or aircraft. I note the comments of Senator O'Brien, and I would be happy to discuss those a bit later, if you wish.

With regard to the amendments for the screening and clearing of dignitaries as proposed for the Aviation Transport Security Act, Qantas does not support these amendments and, as I said before, would be pleased to provide further information to the committee in camera.

In conclusion, Qantas has built a reputation for excellence in safety and security over its 87-year history. We are committed to achieving high standards in both disciplines and see ourselves as an innovative leader that will continue to seek ways for continuous improvement in both aviation safety and security. Again, Senators, I thank you for the opportunity of appearing before you this morning.

CHAIR—Thanks very much for that.

Senator O'BRIEN—Mr Askew, will you deal with the issue of 38B? Obviously you have some comments, and I understand that there are circumstances where you would want the law to deal with disruption or interference with the activities of an airport operator or an aircraft operator in circumstances that were appropriate, but this seems to be a very broad power.

Mr Askew—I agree, it is broad. Without trying to understand fully the intent of the legislation here, the industry is changing so much at the moment and I think that airports are trying to divest themselves of their vulnerabilities. I know, for instance, that a lot of computer activities are being moved off airport. The operation of an airport is obviously dependent on that sort of thing, but as they become more security conscious, they are taking a lot of those vulnerabilities out of the airport terminal. Fundamentally, most airports in Australia have been driven by the international terminal, the headquarters of the airport. The owners of the airport own the international terminal. As they have become more security conscious, a lot of this is being moved outside the airports. I know that some of the government agencies on airport

have moved some of their facilities off airport. Airport check-in is being moved off airport in some cases.

As the industry grows, a lot of the activities that have traditionally been inside the fence are moving outside, and I think that if this is intended to address some of those vulnerabilities, then we would support it. I heard your comment to the pilots association. I am not sure if that was their intention. It was not what we were thinking about when we—

CHAIR—Did they move the fence as well? Did they put up a new fence? How secure is where you move it to?

Mr Askew—It may be a file server that they move into an office complex in the same suburb. If there was an interruption to one part of the airport, the off airport check-ins—

CHAIR—By the nature of the interconnectivity, it would want to be secure. That would be the softest entry point if it were not secure.

Mr Askew—Absolutely.

CHAIR—So they would want to have screening and all that to access that.

Mr Askew—Absolutely, but the current legislation—

CHAIR—Do they?

Mr Askew—Yes. There is certainly security around whatever that function is. If there was a check-in process off airport, it would be identical processes and security as it would be on airport, absolutely. However, I am not sure that the current legislation that tends to be airport specific is complementing some of those now off airport activities.

CHAIR—So it might not be within the legislative might of the legislation to deal with that.

Mr Askew—Indeed.

Senator O'BRIEN—I do not have an alternative form of words at this stage, but it seems that there are activities which might fall into the category of disrupting or interfering that, on the basis of other rights and activities, should not be illegal.

Mr Askew—I guess that is possible. I have not considered it in that way, I have to concede.

Senator O'BRIEN—Heaven forbid an aircraft operator having a commercial dispute who seeks to use regulations arising from this prescription to require a supplier to continue to supply.

Mr Askew—Again, Senator, that is not something, to be honest, that I have even considered. In relation to our operations at Mascot, which is where our pilots and flight attendants and engineering are managed from, you could interfere with the Qantas operations and the operations of Sydney airport quite significantly by some form of interruption to the Qantas corporate head office there. I had never considered this legislation industrially, that's for sure!

Senator O'BRIEN—I guess it is our job to consider it in the light in which it might be used.

Senator STERLE—Especially if there are some of the high-profile occupational health and safety issues that have been around Qantas in the last couple of years. You could put a road train through that clause.

CHAIR—He's an old truck driver!

Senator STERLE—Not so much old!

CHAIR—A young truck driver!

Mr Askew—I am not a legislator, I am not a lawyer. I accept your comment.

Senator O'BRIEN—Is it the policy of Qantas to widely consult with the organisations representing its employees on matters that affect them?

Mr Askew—As a principle, Senator, yes. We have a history of consultation with the associations that represent our workforce. It is a public statement that is well known.

Senator O'BRIEN—Does Qantas find that assists it in the management of its affairs?

Mr Askew—I think that we understand that there needs to be a healthy relationship between the employer and employee for the benefit of all. It is that principle that we operate to. Our operations have changed as community standards and the community's expectations have changed but that underlying principle is one that we would still adhere to.

Senator O'BRIEN—In terms of health and safety and security, would it be fair to say that Qantas would rely on the cooperation of representative organisations to get the best outcome in those areas?

Mr Askew—I leave the occ health and safety to my colleague here, but certainly on the security one I see that the responsibility for security within the Qantas group rests with 38,000 employees, not just with the CEO or the head of security.

Senator ADAMS—As far as security screening is concerned, as in passengers going through the screens, who bears the cost of extra screens? Is that the airport owner or the company that leases it, or is it Qantas as far as your area goes?

Mr Askew—This is a complex question and I will try and answer it as best I can. We have a complex way of managing security in the aviation industry in Australia. Because of the privatisation of airports and the way that the two airlines had evolved over time, you have a situation in Australia now where at the international terminals it is the terminal operator—and in every case in Australia, that is the airport owner—who is responsible for the provision of passenger screening services at those airports.

In the domestic terminals, that varies from terminal to terminal. In the Qantas case, in Qantas terminals, Qantas is responsible. We are also responsible in some of the regional airports, where we have been asked to provide those services on behalf of the airport operator. Legislation puts the responsibility with the terminal operator. If you had four or five terminals—a Heathrow—in Australia, then at each of those terminals the responsibility for the provision of passenger screening would or could rest with a different organisation.

As far as the cost is concerned, the ultimate cost is shared between I think the screening authority and the travelling public. A lot of those costs are passed on to the public. Some are borne by the industry itself, whether that is the airport operator or the airline operators.

Senator ADAMS—As far as Perth goes with Qantas, is that yours?

Mr Askew—That is ours.

Senator ADAMS—Right!

Mr Askew—May I say, Senator, that we are aware of the facilitation issues with regard to the screening point there. The CEO has approved some significant expenditure immediately to try to remedy the situation at the Perth screening point.

Senator ADAMS—Yesterday, Senator Sterle and I—we travel every Sunday practically.

CHAIR—Are you declaring an interest here?

Senator ADAMS—Definitely declaring an interest. It is ridiculous. The people waiting to go through security, two screens, were right down outside the taxi rank and we were just lucky it was not pouring with rain. We are trying to attract people to Perth. Listening to the queues of people trying to get their bags checked or going through the screening, it was just ridiculous. Both of us had to push our way to the head of the queue and there were lots of nasty comments. The point was, our aircraft was going; I was there three-quarters of an hour before. Talking about road rage, I can tell you the rage is starting to appear here. We are lucky. We tried to fight our way through the business class entry, but they were flat out trying to deal with economy anyway. It has become ridiculous and it is not good for us to have to push our way to the front, but it is the only way.

CHAIR—You jumped the queue?

Senator ADAMS—We had to.

CHAIR—Queue rage?

Senator ADAMS—Yes, definitely.

Mr Askew—Senator, I will make sure that the CEO is made aware of your comments. We are aware of it. There are two things there. One is a compliment to the way that the aviation industry has grown. You would recall better than most when that terminal was built. It was not built to handle and facilitate the number of travellers that are passing through it today. We know that we have facilitation issues there that we need to remedy very quickly.

Senator ADAMS—That is the point. It is traffic and the whole congestion, but this is getting beyond a joke and I feel sorry for your security staff. They are working as hard as they possibly can but they are getting abused. The whole thing is practically out of control.

Mr Askew—There is no easy fix. We have to do some major infrastructure work. There is very little space there for us to put another one or two X-ray units at the screening point, so we have to undertake some major works to see any minor improvement, unfortunately, in your experience, but the plans are well under way to do that immediately. It is a priority within the business, Perth.

CHAIR—I suppose in a way it is a comfort to the travelling public—it should be, even though it is a discomfort to people in the queue—that, just because there is a boom in Perth—the new capital of Australia if you get your way, Senator Adams—everyone is treated in the same way and much care is taken even if the queue is three miles long. They do not dislodge the security of the operation.

Mr Askew—As much as I appreciate the senator's inconvenient travel arrangements yesterday, compared with most other places around the world, in Australia the experience is better, still, than most.

Senator STERLE—Can I go to part IV of the amendment, the drug and alcohol management plans and testing. How will this amendment differ from Qantas's drug and alcohol policy and testing regime?

Mr Askew—Can I just ask Dr Peel to answer your question?

Dr Peel—Currently Qantas has limited random testing of its employees. We random test in two areas. One is our security staff. The personnel who belong to Geoff undergo annual random testing to ensure their integrity. We also randomly test all our Qantas Defence Services staff. That is a contractual arrangement between Qantas Defence Services and the Australian Defence Force.

Senator STERLE—So you do not have random testing in your D and A policy?

Dr Peel—We have it in our policy and in our education program. We have been unable to implement it to date and so we do pre-employment, self-referral, post-incident, show-cause and follow-up testing but we do not do random testing of any part of our organisation other than those which I have just described.

Senator STERLE—Do you fully support this new amendment?

Dr Peel—Yes, we do.

Senator STERLE—Why?

Dr Peel—Because we have good evidence from the 3½ years of testing results from our program to say that Qantas requires random testing to act as a deterrent to further reduce our risk.

Senator STERLE—So you think that you have a drug and alcohol problem within your workforce?

Dr Peel—I am prepared to talk about the results we have had so far. In our pre-employment testing to date, we have tested 3,882 personnel and, of those, 1.4 per cent tested positive for illicit drugs. On average over the 3½ years it has been about two per cent. So two per cent of all the people applying for jobs with Qantas test positive for illicit drugs. They are actually told that they will be tested and they still test positive.

Post-incident testing occurs after a serious incident where equipment damage occurs or somebody is injured or there is a high potential for injury. We have undertaken 937 of those tests and 2.8 per cent have been positive for drugs—that is, illicit drugs. Zero were positive for alcohol. Show-cause testing occurs where an individual comes under suspicion as a result of their behaviour. We use a series of indicators there which were provided to us by the ACTU. When we developed the program over a period of 18 months, we had extensive consultation with all 16 Qantas affiliated unions and the ACTU. Some examples of indicators are, if somebody turns up to work with the smell of alcoholic beverages on their breath, they are observed to use alcohol or drugs, or they have unusual, aggressive or abnormal behaviour and so on. We have undertaken 85 of those tests. Of those, 33 per cent were positive for

alcohol or drugs—that is, 32 per cent positive for alcohol, 34 per cent positive for drugs. So we have had individuals in the workplace: a third of all those tested for show cause were using alcohol or drugs.

We also do self-referral testing where an individual asks for assistance, and we undertake testing normally, which assists with the clinical assessment and the rehabilitation process. So the grand total of our testing is 5,295 tests to date, and 2½ per cent overall have been positive. When we did the risk assessment prior to introducing the program and looked at our history—what we knew of reported problems with alcohol and drugs in our employees—we determined that we had a high risk of occupational health and safety issues. And this is a safety issue, as far as Qantas is concerned. We had to introduce the program but it is as yet incomplete without the deterrent factor of random testing. To me, it is no different from random breath testing and random drug testing. When I was a resident medical officer in the seventies in Queensland, in emergency rooms routinely on Saturday nights and Sunday nights we would treat horrific injuries from alcohol use, and a lot of that went away with random breath testing over the years.

Senator STERLE—Let me just put this on the record: I do not think you will find a stronger supporter of a drug-free environment in the workplace. I do not argue with that. I live by the saying, ‘Only mugs do drugs.’ I am trying to establish if you have the ability now to test workers if there is a suspicion of impairment for work.

Dr Peel—Yes, we can. But we cannot do random testing because of the opposition.

Senator STERLE—So random would be that you might line up all your employees, as long as it is not a busy morning.

Dr Peel—In random testing we would anticipate that somewhere between five and 10 per cent of employees, selected on a random basis, would be tested each year. We test 15 per cent of the Qantas Defence Services staff each year and we test 10 per cent of our full-time employee security staff.

CHAIR—That begs the question, doesn’t it: what do you do with them when you catch them?

Dr Peel—We have a very comprehensive rehabilitation program. We use specific alcohol and drug clinical assessment teams. If it is clinically appropriate, we offer individuals who accept that they need rehabilitation—some people do not; some people leave the company—and who wish to undergo rehabilitation either private or public hospital level rehabilitation programs. To date, we have had a 90 per cent return to work of those that we have rehabilitated.

Senator STERLE—How do you do the testing?

Dr Peel—Testing is standard breath alcohol testing using an evidential breath tester similar to that used by the police. That is very straightforward. Then we do urine drug screening, where the individual privately supplies a sample of urine and it is provided to the independent tester who tests it for integrity. They test it for temperature, dilution, and then there is an on-site sampling test of that urine and then that sample goes off to the laboratory. Just like in sports, there is an A and a B sample.

Senator STERLE—You breath-test first and, if that comes out positive, you then have the urine test?

Dr Peel—No. We do both breath and urine testing, irrespective of whether one is positive or not.

Senator STERLE—There are certain drugs—and I am not saying that any drug is more acceptable than the other—that may stay in the system for up to six weeks. I believe marijuana is one of them.

Dr Peel—Yes.

Senator STERLE—And it is quite possible that an employee might have had a party four or five weeks ago and it is still in the system, but the employee has turned up fit for duty.

Dr Peel—Yes.

Senator STERLE—So the test would come up positive?

Dr Peel—It may come up positive; 65 per cent of our positive illicit drug tests have been for cannabis. An individual who may, say, smoke a joint on a Friday night, come to work on a Monday morning, would have a reasonably predictable level of cannabis in their urine sample. The majority of those that we have tested have been extremely high levels. The cut-off level for samples in the Australian standard is about 15 micrograms per litre for cannabis. We have had some employees who have been in the thousands of micrograms per litre which indicates an habitual heavy use of cannabis.

Senator STERLE—What about the ones that are low? Do you test them a week later or are they off the job? How do you do it?

Dr Peel—Before anybody can go back to work, they have to produce a negative test. If we have somebody who has tested positive to cannabis, a low level of cannabis, we would test them a couple of days later. If they are negative, then they would go through the counselling and rehabilitation program, and they would go back to work.

Senator STERLE—Even though there is an acceptable level of 15 micrograms per litre, if they have tested positive, come back, and if it is still between zero and 15, even though 15 is the allowable amount—

Dr Peel—They would remain stood down until their test is below the cut-off level.

CHAIR—Is it illegal to buy marijuana?

Dr Peel—I understand it is, yes.

CHAIR—So you are actually condoning it. This is a terrible point, but out there in the community in this debate there is the view that, ‘Oh well, a bit of ecstasy on Saturday nights won’t hurt anyone,’ but you are actually breaking the law. In effect, you either should change the law, if you think the law is bad, or obey the law. So, Senator Sterle, even if it is recreational marijuana or recreational ecstasy, you are still breaking the law and you are condoning it by saying, ‘Well, it’s not going to hurt.’

Senator STERLE—I am going through the Australian standards, Chair. There are certain levels of barbiturates that you are allowed to have.

CHAIR—I am talking about illegal substances. It is a bit of a dilemma. Are we ready to go into camera?

Senator STERLE—I could go all day on this.

CHAIR—So could I, Senator Sterle, and I could go a lot harder.

Senator STERLE—I can tell you now, I love the debate.

Senator ADAMS—Regarding the military aircrew, I think you are saying that they are testing randomly.

Dr Peel—All Australian Defence Force personnel are randomly tested, not just aircrew.

Senator ADAMS—If they are positive, do they go under the military guidelines or under yours?

Dr Peel—I should not talk in detail about that. I had 27 years service in the Air Force prior to joining Qantas and I was partly involved with the development of the alcohol and drug program for the Australian Defence Force. They are managed within the Australian Defence Force.

Senator ADAMS—They do not have random testing?

Dr Peel—The Australian Defence Force pilots do, yes. Our pilots do not.

Mr Askew—We are talking about Qantas Defence Services who are Qantas employees in a separate subsidiary who work on Defence aircraft. They are not Defence personnel; they are Qantas employees, employed to work on contracts for the Australian defence services.

Senator ADAMS—They come under your jurisdiction.

Dr Peel—Yes, they do.

Mr Askew—These people do, yes.

Senator ADAMS—I have been in another committee questioning the military on their drug and alcohol procedures and guidelines and, at the moment, they do not have random testing anywhere. That was the reason I asked the question.

Dr Peel—The military actually does have random testing. I remain in the Reserve, and I have observed random testing being undertaken in the Australian Defence Force.

Senator ADAMS—That is very interesting, thank you.

CHAIR—In the Australian standards, Senator Sterle has informed me that there is an acceptable level for the presence of heroin.

Dr Peel—Yes. The Australian standards for urine drug screening look at five different drug groups: the opiates, which include heroin; sympathomimetic amines, which are the amphetamines; cocaine; cannabis; and benzodiazepines, which are the Valium type of sedatives which are prescription drugs but they are often used in association with illicit drugs. So, yes, in the cut-off levels in that Australian standard, it includes heroin.

CHAIR—In the Australian standards they accept the illegal taking of heroin?

Dr Peel—I am not sure that they accept it.

CHAIR—Well, they must do, if the standard says it is all right to have a lower presence, as long as you do not have too much.

Dr Peel—No. The Australian standards really reflect prescription drug medication as well as illicit drug medication. For example, a number of people that we have tested have been using codeine containing—

CHAIR—I would understand that that is the cover or the way out, but the great bulk of people who use heroin stick it in their arm or stick it somewhere, and we say under the Australian standards, ‘As long as you haven’t got too much of that in you, you’re all right’—in other words, you accept the proposition that when you put it in you break the law, but when they catch you, you are not breaking the law because you do not have enough of it.

Dr Peel—The Australian standard is couched more in terms of impairment.

CHAIR—Yes, I understand all that.

Dr Peel—If your levels are high—

CHAIR—But it turns a blind eye to the illegal activity, the same as brown cafes in Amsterdam, where it is illegal to supply cannabis to the cafe but it is legal to use it out the front of the cafe, which is bloody crazy.

Dr Peel—Yes.

CHAIR—I think we will now move in camera, with great respect.

Evidence was then taken in camera but later resumed in public—

[9.57 am]

O'HARA, Mr Simon Francis, National Legal Officer, Liquor, Hospitality and Miscellaneous Union

CHAIR—I welcome the Liquor, Hospitality and Miscellaneous Union. Thank you, Mr O'Hara. If you would like to, make an opening statement, and then we will ask you a few questions. With a bit of luck, we'll get a headlock on you!

Mr O'Hara—I look forward to it. The Liquor, Hospitality and Miscellaneous Union, LHMU, welcomes this opportunity to make a submission to the Senate Rural and Regional Affairs and Transport Committee inquiry into the Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007. The LHMU represents security screeners at airports across Australia. Screeners perform one of the most vital roles within airports. They screen individuals and baggage for prohibited items that have not been allowed in airports or on aeroplanes. As a consequence, they have a great deal of responsibility. Since the 11 September 2001 attacks in the United States of America, screeners have had to work harder and shoulder more duties due to the understandable security focus on air travel. Their workload and responsibilities have increased as a consequence.

The LHMU has been a responsible stakeholder that has worked effectively on balancing the needs of our members with the greater public interest of ensuring the highest levels of security at airports across Australia. Also, the LHMU has been a strong advocate, particularly with reference to the Aviation Transport Security Bill 2003 which has been amended into the act, of stronger security measures at all airports—not just major city airports but also the smaller regional airports.

In relation to the bill before the Senate committee, I will take this opportunity to make additional comments to the LHMU's written submission. The LHMU does not oppose drug and alcohol testing, nor provisions that require employers to ensure the safety of passengers and employees in aviation security. These things are paramount in today's environment. The LHMU believes that employees have a positive obligation placed upon them to not attend work under the influence of drugs or alcohol. On saying that, the LHMU also believes that employers—and now, to a certain extent, CASA—have a positive obligation to ensure that employees who have a drug or alcohol problem are identified, educated and assisted along the road to sobriety by way of rehabilitation and not by way of punitive measures. Further, it should be recognised that not everyone in the Australian workforce is drug-tested and that there are privacy concerns that need to be considered for employees, and, to a certain extent, employers and CASA should respect these concerns. Whilst the LHMU believes that security at airports is of the highest priority, that security should not come at the cost of the hardworking men and women who make airports safe.

The difficulty the LHMU has with this bill is that each proposed section of the bill refers to regulations that seem to contain information on drug and alcohol testing. For instance, I would direct the committee's attention to proposed section 36 entitled 'Drug and alcohol testing'. I would direct it merely as a sample. Each section seems to refer to regulations. Section 36 says, in part:

- (1) Regulations made for the purposes of subsection 34(2) may make provision for and in relation to any one or more of the following:
- (a) the persons who may be required to provide a body sample for a drug or alcohol test;
 - (b) the persons who may require the persons covered by paragraph (a) to provide a body sample for a drug or alcohol test;
 - (c) the conduct of random drug or alcohol tests and the other circumstances in which drug or alcohol tests may be conducted;
 - (d) the provision of body samples for drug or alcohol tests ...
... ..
 - (g) the manner of conducting drug or alcohol tests;
 - (h) the devices used in conducting drug or alcohol tests ...
... ..
 - (j) the notification of test results to the person tested and to CASA;
 - (k) the other persons to whom test results may be notified—

and so it goes on. In relation to section 34(2)(a), this person would be covered by a definition of safety-sensitive aviation activities, which is a definition that is far from clear. This definition is ambiguous and potentially applies to a wide range of persons at airports. In relation to (b), who will be the persons requiring the provision of the body sample? In relation to (c), how will the drug and alcohol testing be conducted and what are the circumstances mentioned? In relation to (d), in what way will the body sample be provided? In relation to (g), what will the manner be of conducting drug and alcohol tests? In relation to (h), what will the devices used to conduct drug or alcohol testing be? In relation to (j) and (k), there are aspects of this that may affect employees' privacy. And so it goes on.

For the LHMU, this bill raises more questions than answers. For instance, the LHMU represents members in Qantas Flight Catering Ltd, QFCL. These employees prepare the food that is consumed by passengers on planes. Will this CASA policy apply to them, as they are occasionally airside and may or may not indirectly impact on civil air operations? In order for the LHMU to come before you and deliver a constructive submission, notwithstanding CASA's education programs that have been travelling the country taking submissions, there needs to be a greater transparency as to laws that are going to affect our members. The LHMU is basing its submission on the material we have been provided for this bill, not the CASA travelling roadshow. To that end, we would submit that the LHMU requests the ability to work with the federal government on the proposed regulations.

I understand there will be an education campaign following royal assent on this bill. Whilst the LHMU welcomes that education campaign, for the purposes of this bill the LHMU is more concerned about how these amendments will affect members in this industry before the bill is made law. For instance, will a member be stood down the first time he or she has positive results for a drug or alcohol test? Will the employee be stood down on full pay if found to have tested positive to D&A? Will employees have a right to representation from a workplace representative during drug and alcohol testing? I understand there are many variables to this question, and this may turn on the individual companies that employ our members as much as the CASA regulations. However, these questions are important for our

members, who carry on the important responsibility but earn a fraction in wages of what their responsibility is worth. I thank the Senate committee for the opportunity of making this submission on behalf of the LHMU.

CHAIR—Thanks. Is your union of the view that the Australian standards are that it is all right if you have heroin in your body and you are a heroin user, as long as it is only at a certain level?

Mr O'Hara—No, the LHMU would not be of that view. The LHMU would be of the view that, if there is a standard there, then employees should abide by that standard.

CHAIR—Yes, that is the point. The Australian standard says it is all right to have heroin in your body—you could argue that it was codeine, but obviously most of it goes in with a needle—as long as it is at a certain level, a maximum level. Isn't that sending a signal to everyone in the workplace that it is all right as long as you do not have too much or you do not get caught?

Mr O'Hara—There are two aspects to that. The first is that the use of heroin is a criminal offence. The second is that the Australian standard sets a certain standard by which people in employment may be affected during the course of their work.

CHAIR—But it condones the illegal drug-taking just by the fact that it has a standard. The standard ought to be zero.

Mr O'Hara—I cannot speak on whether a certain standard condones—

CHAIR—Would your union support a zero tolerance for some of those illegal drugs?

Mr O'Hara—Our union would work constructively with other unions, particularly the ACTU, to formulate a policy response on that, yes.

CHAIR—Do you think we need a policy response on that?

Mr O'Hara—I think that the standard that has been set there right now has been set for a reason.

CHAIR—It has probably been set for a reason, because you would lose too much of the workforce if you applied a zero tolerance.

Mr O'Hara—That is correct. In screening, particularly, the workforce is thin on the ground. Many members do double shifts and work quite long hours, so you are quite correct insofar as employees are thin on the ground in some—

CHAIR—Have we lost the battle then? It is all right to take drugs as long as you do not get caught or have too much?

Mr O'Hara—I am not saying that, Senator.

Senator STERLE—I think in all fairness to Mr O'Hara, these standards are set by professors and experts in the field—

CHAIR—I accept that.

Mr O'Hara—certainly not by unions in Australia.

CHAIR—As you have pointed out to me, Senator Sterle, it seems bloody stupid, but anyhow.

Senator O'BRIEN—In terms of the employment circumstances of those operating the security screening, are they employed by the airlines or are they employed by contracting companies?

Mr O'Hara—They are employed by contracting companies. In the past, companies such as Chubb Security have been big players in that particular industry. I believe that ISS and SNP Security are now players in screening. The actual contracts are more of a state by state affair and, as Qantas have said in their submissions, almost a terminal by terminal affair. But it is the contractors who employ our members.

Senator O'BRIEN—So that will vary state by state and, indeed, different employers may well have different standards which they require to be observed in relation to the performance of staff.

Mr O'Hara—Perhaps, yes.

Senator O'BRIEN—When you say the employees are thin on the ground, why is that? Is that just a labour shortage or is it an occupation to which it is difficult to attract people? What is the reason?

Mr O'Hara—I think it is both of those things. The work of screeners has increased since the attacks in America. They have had to do more and they have had to screen more baggage, for instance. Now the onus is on them to screen all baggage that goes onto aeroplanes. Again, it can be a bit like all positions: when someone does not turn up to work, somebody has to fill that position. Contractors normally do not overemploy, if you know what I mean. They do not necessarily want to have too many employees on the books that are increasing their labour costs. My experience has been that contractors will normally employ just up to the amount that they need.

Senator O'BRIEN—Is there any problem getting temporary staff? Can you tell us how they are security checked?

Mr O'Hara—They are security checked by way of the ASIC card. Do you mean a security check on the employees of those contractors?

Senator O'BRIEN—Yes.

Mr O'Hara—I believe there is a certificate II course that employees have to pass in order to be considered for a screening role. There are background checks on those screeners, particularly the ASIC card, which is something that has come out of the 2001 attacks, in which they are screened by ASIO.

Senator O'BRIEN—What happens where there is a labour shortage and labour is needed on short notice? Do you know how that works?

Mr O'Hara—My understanding is that from time to time many employees do double shifts, for instance. They may be working longer hours than they would like.

Senator O'BRIEN—What level of consultation, if any, has taken place between CASA or the department and the LHMU in relation to the provisions of the legislation?

Mr O'Hara—CASA have been travelling across the country spruiking drug and alcohol seminars and education, and that is something that we welcome. The LHMU have not directly approached CASA, other than through the ACTU and submissions that have been made in the past, particularly the submission I refer to in my written submission to the standing committee. So essentially we have worked through the ACTU for the purposes of consulting with CASA.

Senator O'BRIEN—Thank you, Mr O'Hara.

Senator ADAMS—You mentioned your members being involved with the Qantas food supply. Are they off the airport? Whereabouts are they located?

Mr O'Hara—In Sydney they are quite close to the airport. You have the Qantas head office and then you have the domestic airport itself further down, but they are off the airport itself.

CHAIR—Do they go on the airport?

Mr O'Hara—They do—this is not all QFCL members—because they are making meals—

CHAIR—So they have an ASIC card?

Mr O'Hara—I believe so. The person that would come onto the airport site would be driving a truck, and sometimes you see them come onto the airport to fill the planes with food.

CHAIR—So the screening on those people would be equal to the screening on anyone else on the airport.

Mr O'Hara—You would think so.

CHAIR—But you don't know so?

Mr O'Hara—I do not know so, no.

Senator ADAMS—Despite these people not being on the airport, they are still your members and they are working under Qantas. Would they come under this drug and alcohol policy?

Mr O'Hara—The definition that is contained within the bill is a definition in name only, I think. It is quite wide and has many loopholes insofar as being able to affect individuals that may have airside access that may directly or indirectly impact on safety. I think that you would want to tighten it up to be a bit more prescriptive, and perhaps the regulations might be a bit more prescriptive. In my opinion, this definition can apply to a wide range of persons.

Senator STERLE—Mr O'Hara, your membership amongst security officers could probably write a book about queue rage, couldn't they?

Mr O'Hara—They could. I heard with interest the senator's point earlier.

Senator STERLE—Senator O'Brien and I believe we could sort it out in 10 minutes. We reckon we have worked out how to make it better. Does Qantas come down and actually ask the boys and girls on security, 'How can we do it better?' Do they have those toolbox meetings nowadays or love-ins or whatever they may be?

Mr O'Hara—They might. I would have to take that question on notice and give you a reply in due course.

Senator STERLE—If you could, please. It is a question I should have asked Qantas, standing in queues and watching a lot of the happenings that go on. We must be mindful that the people going through the screening are not all passengers, because of the shops upstairs and the bars and everyone wants to go and see nanna off and all that sort of stuff.

Mr O'Hara—That is correct.

Senator STERLE—Could you take that on notice. I should have a chat to Qantas after.

CHAIR—You would agree that if you were an employee at an airport and you had a drug habit and it was costing you more than you could afford, you would be vulnerable to an offer of money to do a job that might break the law.

Mr O'Hara—You well could do.

CHAIR—Thanks very much.

[10.17 am]

CARMODY, Mr Shane, Deputy Chief Executive Officer, Civil Aviation Safety Authority

MRDAK, Mr Michael, Deputy Secretary, Department of Transport and Regional Services

TONGUE, Mr Andrew, Deputy Secretary, Department of Transport and Regional Services

CHAIR—I welcome the officers of the department. I remind senators that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about how and when policies were adopted. Officers of the department are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim. Would you like to make an opening statement and then we will go to questions.

Mr Mrdak—Thank you, Chair. We do not have an opening statement and are happy to go to questions.

CHAIR—Making exemptions from screening for VIPs—and a lot of people think they are VIPs—doesn't that set a precedent? For instance, if a minister of a foreign country says, 'Well, it's beneath my dignity and my girlfriend's dignity and my girlfriend's bag carrier to be screened,' and you give them an exemption, you just open the gate. Where do you start and where do you stop? Bearing in mind it is a global community, how do you distinguish between one VIP and another? I notice Elton John thought it was beneath his dignity at some function recently in London because he's a pop star or whatever he is. Where do you stop and where do you start, once you open the gate?

Mr Tongue—Senator, all that the proposed changes do is give us a power to grant exemptions. We are very conscious about the number of people who think they are VIPs, and we and the airlines and the airports deal with them on a daily basis. However, Australia does have some obligations under, I believe, the Vienna protocol with regard to foreign diplomats. We have generally had a tougher position than the rest of the world with regard to the screening of foreign diplomats and, in benchmarking ourselves against the UK and the US in particular, it is fair to say that we have been a little out of kilter.

All that we are doing with the amendment is creating a power to grant an exemption. The actual granting of exemptions is typically the sort of thing that would be a policy decision by government around a class of people. It is certainly not creating a catch-all power that is going to see thousands and thousands of people with exemptions. It was a bit of a gap in the act that we felt, because of our international obligations, we needed to give ourselves the power.

CHAIR—You can define the Pope and the Queen and one or two others around the planet as a bit different from the rest of us, but that does not necessarily mean that the aide-de-camp and the aide-de-camp's boyfriend or girlfriend and everyone else is any different to the greatest rogue on the planet.

Mr Tongue—That is absolutely true. In looking at the sorts of people that the government may consider at policy level, it might want to give exemption to, particularly say in an APEC year where we have got APEC Leaders Week, trade ministers, finance ministers—all of those sorts of things. It could be a situation where there are particular sensitivities, where an individual minister—not their entourage—

CHAIR—But it also applies to girlfriends and boyfriends and hangers-on.

Mr Tongue—It depends what policy judgements are—

CHAIR—If you are the mistress of a minister, 'I'll tell your missus unless I get through for nothing,' sort of thing.

Mr Tongue—All the change does is create a head of power in the act to allow it. The judgements, though, about who and what and in what circumstances are still policy judgements to be made by the government. It is not a judgement that Qantas would make or an individual screener would make; it is a judgement that the government would make.

CHAIR—Other than one or two people that I could think of, I just do not think that there should be exemptions. Some of the world's VIP ministers are the greatest and most corrupt people on the planet. I will not detail them, but some of the world's greatest rogues are heads of state and ministers. So why open the gate? I think it is bloody stupid.

Mr Tongue—Simply because we have certain obligations as a nation to foreign diplomats. Talking, for example, to the Department of Foreign Affairs and Trade with regard to, say, resident ambassadors, in some cultures our position with regard to those dignitaries has resulted in tit for tat action with our diplomats overseas.

CHAIR—What is wrong with that?

Mr Tongue—It raises a set of issues about how we—

CHAIR—Do the United States let a whole lot of dignitaries through?

Mr Tongue—The United States has specific exemptions, as does the UK, for certain sorts of foreign diplomats.

CHAIR—It is well documented—I will not go back to the inquiry some years ago—that diplomatic bags were used to traffic all sorts of things, everything from child porn to God knows what, because they had immunity. It is a soft entry point, you get into it, and away you go.

Mr Tongue—Yes. That is the set of international obligations that Australia has signed up to.

CHAIR—One of the great things about Australia is that a lot of other countries wish they had our border security.

Mr Tongue—True.

CHAIR—So why would we play around just because they are putting pressure on us? I mean, if I were a dignitary—I am a disgraced senator—and I was going to somewhere overseas, it would not matter a rat's to me how much security I went through. It is like trying to cash a cheque at the bank: I do not mind how much trouble they go to to check that it is me and it is my money when they cash the cheque.

Mr Tongue—With a very small group of people, Senator, it turns on appropriate dignity and, according to the Vienna arrangements and our international obligations, foreign diplomats and ministers from overseas need to be treated with appropriate dignity. There is a range around appropriate dignity: at one end there is the sort of knockabout Australian approach; at the other end there are some real sensitivities around particular countries and cultures. We are seeking to simply create a head of power under the act that exemptions could be given. I do not anticipate that it will be a large group of people. I think we are talking about a handful.

CHAIR—You can make arrangements now. Surely you can put people through a private lounge or something.

Mr Tongue—We do have arrangements at the moment—

CHAIR—Some of the world's greatest rogues are the world's greatest VIPs. There is nothing to talk about: it is just a matter of fact.

Mr Tongue—Certainly, Senator, we have arrangements in place with airports and airlines for private screening at the moment. However, that still involves a physical screening process that, our legal advice is, is not consistent with Australia's international obligations. We are moving to address our international obligations but at the same time I really do not want to create the impression that we are talking hundreds of people. We are talking tens.

CHAIR—But with great respect to our status as a nation—both clean, green and free in an AQIS sense, and a security sense—a lot of countries wish they had our tougher regime. This committee in another forum gets quoted OIE certification, and it turns out that half of that is bloody rubbish. But it is OIE, it is an international standard; therefore, we are supposed to apply ourselves to it, but we do not because it is rubbish. I think the idea that it is beneath some people's dignity to walk through a bloody screen somewhere is rubbish. There are MPs at the building here, at the doors of this building, who thought it was beneath their dignity to go through security, when we started. I think in London a lot of MPs avoid their security in their parliament, but I think we ought to stick to our dig.

Mr Tongue—In giving ourselves the power, it is still a policy decision for government about how wide or not it would want to go.

CHAIR—But you are opening the gate. Sure, I was over in Wombatland and I had a cocktail with His Honour Sir Whatever. 'Mate, you'll be right when you come to Australia. We'll give you an exemption. Bring your girlfriend, bring your boyfriend, bring whoever,' and he can bring whatever he wants. If he sniffs a bit of cocaine, that will get through. Why open the gate?

Mr Tongue—The why is a simple one. We have some international obligations and the act was not consistent with our international obligations, so we are trying to move to address

those obligations. But in doing so, we are not suggesting that it is going to be a free-for-all. Those policy decisions will still be with the National Security Committee of cabinet.

Senator STERLE—Mr Tongue, if you have a dignitary coming in from another country, whom you granted the exemption for, and he or she performs like a trained seal because the entourage has to go through the security screen, without upsetting them and their culture, how are you going to deal with that?

Mr Tongue—A lot of it—and we are getting more practised at this—depends on the ceremonial and hospitality arrangements that are put in place around these particular individuals and making clear the set of expectations at the start. All that has been suggested here is that it is that group of people; the individuals rather than their entourages.

Senator STERLE—It does not say that. It just says ‘case by case’. But if someone plays up and you are afraid of offending him or her, it does not say in this amendment, ‘Tough.’ It does not go any further than the dignitary.

Mr Tongue—It is hard to write a set of laws without codifying particular individuals. The key to this is the arrangements at the policy level behind it and, as everything to do with national security, we go back to the National Security Committee of cabinet for policy calls on all of this.

CHAIR—Will you get two months notice of who is coming? For instance, if I am a dignitary—Idi Amin or Mugabe or someone—I demand dignity status and I say, ‘Damn you and your security. I’m Mugabe.’ You say, ‘We don’t want to cause an international incident. We’ll let him through.’ Then the next rogue bloke says, ‘You let him through. What about me?’ and so on. In five years time, you might as well open the gate, because otherwise you will cause an international incident. If 50 per cent of the world’s population is going to be water-poor in 50 years time, I know what the greater crisis than energy is going to be. It is going to be food and water and sovereignty. So I do not think we should put a chink in the armour at all.

Mr Tongue—It is certainly the case, and you would have seen it from the press reporting, that where we do not know that a foreign dignitary is coming through—and there have been some cases involving the New Zealand Prime Minister, the Speaker of the Indian parliament—it is difficult for us to put in place arrangements that I would say reflect the dignity with which we would normally like to handle people who deserve recognition by the system. Where we do know, we can. Even with 24 hours notice, we can usually put in place appropriate arrangements.

CHAIR—Even then, bar the Queen and the Pope, I do not know who else there would be. That might offend a lot of people, even saying that; but there would be an odd person around the place. I would not get beyond the person. Some of the staff—I will not quote here, because it will alarm people—that work for some of these people are prominent rogues. I do not see how you can say, ‘That person is a VIP that we do not need to screen and that person is a VIP that we do need to screen.’

Mr Tongue—In looking at how other countries have handled this—

CHAIR—Why are we interested in how other countries handle it?

Mr Tongue—Because we were out of kilter with our international obligations and it was highlighted to us that we were not consistent with international practice. We went and had a look at how other countries were handling this. It is possible to draw classes of people. For example, foreign ministers, foreign and trade ministers, foreign and other senior ministers, and then you get into ambassadors; so you can classify people.

CHAIR—Let us just stay with foreign ministers. What about their entourage?

Mr Tongue—They would not receive any sort of special treatment.

CHAIR—So you say to the foreign minister, ‘You walk through there, mate. The rest of you, through there.’

Mr Tongue—Typically what we would do is handle them as a group of people. The minister would be facilitated through the system, but their entourage would still be fully screened.

Senator STERLE—Where does it say that in the amendment?

Mr Tongue—The amendment is simply giving us the power under the act. It is the policy in behind the amendments and the regulations—we do have the right.

CHAIR—The difficulty is that this is weakening the hand. It is implying an obligation. I think it is going to be harder to do that than you think, because there is going to be pressure. ‘Hey, mate, hang on! I’m his wife,’ or his whatever. ‘What’s all this?’

Mr Tongue—I certainly expect that there will be pressure. There is pressure every day to let people through the system.

CHAIR—I went to Amsterdam a couple of years ago and I thought in Amsterdam they were all blond people with clogs. It turned out you would not recognise the place, because it has an open border. They do not even know who is there. If you want to send a strong message, what is good for the goose is good for the gander.

Mr Tongue—That is definitely true, Senator. However, we have international obligations and the act was not reflecting those obligations.

CHAIR—In what way was it not reflecting the obligations? Do they say that we ought to let VIP crooks through?

Mr Tongue—Because there are specific requirements for handling the dignity of people who are recognised as diplomats, ambassadors and so on.

CHAIR—Even if they are rogues?

Mr Tongue—Even if they are rogues, they still have particular privileges and immunities under our law and the act was not reflecting them.

CHAIR—I had better go back to the farm.

Senator O’BRIEN—Doesn’t the passage of this provision inevitably lead to more pressure on the Australian government for exemptions from screening? At the moment, the excuse you might give, Mr Tongue, is, ‘I’m sorry. The act doesn’t allow it.’ I understand what you say about the convention and we can have a debate about what the convention means. But it is not so much of a problem to step through the screen, is it, or to say, ‘Let’s take you aside to this

room, and someone will pass a hand wand over you because we are required by law to do that,' which is probably what you do now? I do not know. I am not asking what you do now. Don't we adequately deal with the matter now, and won't the passage of these provisions inevitably lead to the debate where the ambassador will ring and say, 'I know you passed a law that allows you to let these people through. You let Ambassador X and Minister Y through, so why not our Minister Z?'

Mr Tongue—Looking at it from a whole-of-government perspective, the advice that we have received is that we are not adequately handling it now, even though there are specific arrangements in place to deal with people who might likely be privately screened and do that in a way that we would call dignified. The advice we have is that we are not adequately handling that. Does it create a chink that then leads to a pressure wave of people who might say, 'I want to be treated differently now'?

CHAIR—We know the answer.

Senator O'BRIEN—The answer is yes.

Mr Tongue—The answer is that there are lots of provisions in acts across all areas of public policy that could be argued to create chinks that people do not exploit.

CHAIR—Why create a grey area? If I am a prominent VIP and my girlfriend, boyfriend or the bloke who supplies my cocaine or whatever wants to come to Australia and I ring up and say, 'I am the minister for or the head of' whatever the country is, 'I want this exemption,' you would feel obliged to give it.

Mr Tongue—Any exemption would be treated first against policy considered by the National Security Committee of cabinet and then by a whole-of-government committee chaired by—

CHAIR—This is not going to go to cabinet, because my boyfriend or my girlfriend wants to come through. It puts pressure on Qantas or whoever has to make the decision, unnecessarily.

Mr Tongue—There are two sets of decisions here. There is the decision that the Australian government can make to give somebody an exemption. Then the carrier still has right of carriage, so even if the Australian government has granted an exemption to a very senior foreign minister, Qantas could still say, 'We won't carry you without your being screened.'

CHAIR—Let me tell you what would happen then, Mr Tongue. The dignitary would say, 'Well, we're banning flying on Qantas.' That is what would happen. These blokes are up themselves by two and a half and that is the attitude some of these characters have.

Mr Tongue—There is a danger that they would be unhappy with that sort of outcome.

CHAIR—You can bet.

Mr Tongue—Ultimately, though, the aviation security system, like the border control system, sits in a whole-of-government consideration of the national interest, and there is a danger that, if we lack the power, we could inadvertently cause some real international rifts around some of these issues, and those judgements ultimately have to be made by governments.

Senator ADAMS—Mr Tongue, how many complaints have we had to date on what we do at the moment?

Mr Tongue—We have had a few high-profile problems that have made the media and we have had a handful of complaints. The complaints can either come to airlines, they can come to us, or they can go to the department of foreign affairs.

CHAIR—Are any of those a public document?

Mr Tongue—Not that I am aware of.

Senator STERLE—Maybe a pair of shoes had to come off publicly.

CHAIR—Anyhow, we will not get into detail.

Mr Tongue—There are issues like that in all of this, Senator, yes.

CHAIR—Don't you think this fails the commonsense test for the ordinary punter? I am not talking about the person who lives at the front of the courthouse or in diplomatic immunity somewhere. Just for the ordinary old Joe Bloggs who thinks Australia is a great place to raise a family, drink clean water and breathe fresh air, don't you think this fails the test? Isn't it saying we are about to complicate our lives because we are about to have a special class of people: international travellers? And isn't it a fact that there is still a soft entry point into countries through the diplomatic bag for all sorts of inappropriate entry?

Mr Tongue—I think we have to run the system looking at the wider sweep of national interest rather than what might be domestically politically popular. The legal advice we received was that we were not in step with international practice.

CHAIR—Not with the international law, with the international practice. I think we ought to get rid of two-thirds of the world's lawyers. There are too many lawyers. Give them some more gainful employment.

Mr Tongue—And diplomatic bags do have a status in the system. Ours do too.

CHAIR—And it has been well documented that they have been inappropriately used on numerous occasions.

Mr Tongue—They are a means of moving documents that are relevant to the interests of countries, including our own, so we would not necessarily want to be out of kilter, again.

CHAIR—But it just points out that there are rogues even in the diplomatic bag service, and, if we are going to open the gate on this other business, that will become a soft entry point in a rogues' gallery because people will get to know about it.

Mr Tongue—Certainly people will get to know about it and the key for us is the policy guidance that is put around it and our work with particularly the Department of Foreign Affairs and Trade and the Department of Prime Minister and Cabinet, who are the relevant people here in terms of the foreign diplomatic service.

CHAIR—But we are not breaking the law with our present practice.

Senator O'BRIEN—Can we find out how this would work?

Senator ADAMS—Yes, the practical side of it.

Senator O'BRIEN—Can someone get a certificate so that they wander up to the screen at Sydney domestic and say, 'I'm exempt from screening. Here you are. Let me through'?

Mr Tongue—No. How we envisage this would work is that, in the first instance, defining a class of people who might receive an exemption is a decision that will be taken by the National Security Committee of cabinet.

Senator O'BRIEN—Not individuals but a class of people?

Mr Tongue—Say, for example, ambassadors. Then we work with the Department of Foreign Affairs and Trade and their consular operations that support foreign ambassadors in Australia. Those ambassadors are then given an accreditation, but if they wish to avail themselves of an exemption they first need to notify us in advance. They cannot just turn up at an airport and say, 'I'm special and different and don't want to be screened.' They have to notify us in advance.

CHAIR—But how do you make a judgement on it? One of the world's largest, most corrupt bodies, which is like a big lump of blubber that you cannot measure, is the UN. There are all sorts of rogues operating in the UN. How the hell do you ever work out who is a rogue and who is not when they have VIP status?

Mr Tongue—We need to draw on the Department of Foreign Affairs and Trade and the Department of Prime Minister and Cabinet to make that sort of judgement; but, again, under the relevant international arrangements we are talking about classes of people. If you are an ambassador, you are an ambassador, and if you present your credentials we, Australia, accept that you have a particular status.

CHAIR—But the law says that we are not breaking the law at the present time; we are just interfering with what some people might say is people's dignity or pomposity. Out where I come from, if you do not put the bulls in with the cows you go broke; it is a black-and-white sort of set-up. We are about to enter a grey area, to invent a grey world here. Why bother? Most people wish they had our set-up. Why go to the lowest common denominator? Why not set the bar?

Mr Tongue—I think the problem is setting the bar and then being able to defend it in the relevant international—

CHAIR—But if we have had two or three complaints—say we have had 50 complaints—I bet you that if you follow home those people that have complained you would find some extraordinary things that we could complain about about them—that they yell at their missus or whatever they do. It is all a charade. We are all equal.

Mr Tongue—We are all equal; although we, Australia, have obligations to international organisations and other countries to treat their senior ministers and foreign officials in a particular way, and the judgement was made, looking at advice from Foreign Affairs and the relevant lawyers at Attorney-General's, that we did not have appropriate arrangements in place. So we are moving to give ourselves the power to do that, but, having given ourselves the power to do that, then there are political and policy judgements that need to be made by the government about how far it might want to extend those arrangements.

Senator STERLE—Surely we could treat them with dignity. It does not have to be lining up like we all do, which—no dramas—has to be done; it is providing, touch wood, a safe aviation industry. I just find it ludicrous to completely exempt them from any form of scrutiny or screening.

Mr Tongue—There is limited infrastructure at our airports to handle people in what I would call a dignified way.

Senator STERLE—Are we talking dollars, infrastructures, no-one wants to spend any money?

Mr Tongue—We are talking private rooms; we are talking staff.

CHAIR—How often would this be an issue? Ten times a day, or 50 times a day, or once a month?

Mr Tongue—I think it would be a particular issue at particular airports. For example, Canberra airport would be one, given the diplomatic communities here.

CHAIR—But for God's sake, it is Canberra airport. I think it is dignified. If you do not think Canberra airport is dignified, go and try some of those rat holes over in America where it is worse than cattle herding, and as for the tucker, you could not eat the rubbish.

Mr Tongue—But if you were a senior Australian minister travelling in the US, or our ambassador, you would still be entitled to an exemption from screening.

CHAIR—But here at Canberra airport, if you walk down the ramp and you are met by a diplomatic aide or someone and he says, 'This way, Minister' or 'Your Honour' or 'Your Excellency', what is undignified about that? And then you walk out and away you go. What is wrong with that? Do you want gold-plated taps? This is opening a minefield, because every VIP thinks he is as VIP as the next VIP. There is no such thing as classes of VIP.

Mr Tongue—Lots of people think they are very important, Senator, but ambassadors have a particular status, for example, in the system. They are a bit special and different, as one group of people.

CHAIR—How often does an ambassador travel? Surely to God you could meet him with two blokes instead of one and say, 'This way, Your Honour.'

Senator O'BRIEN—Ambassadors do travel around the country.

Mr Tongue—Yes, ambassadors definitely travel frequently.

Senator O'BRIEN—And their staff.

Mr Tongue—Their staff would not be getting an exemption.

CHAIR—I will bet a year's wages to a peanut that in five years time this will become a nightmare. It is just human nature. The protection you have at the moment is, 'We're not breaking the law.' You said that we are not breaking any international law. We just say, 'Sorry, old mate, but that's the way the game is played. Like it or lump it. Don't come here.' These people that have VIP status are just ordinary humans. They probably go home and yell at their kids.

Mr Tongue—And some of them are very reasonable people.

CHAIR—I have no doubt that most of them are very reasonable people, and that is why I think they ought to be treated just like the rest of us.

Senator O'BRIEN—Some of them.

Senator STERLE—How many?

CHAIR—No, you do not want to make any assumptions. We are all sinners and we all have faults, but in my view, before the eyes of the law and everything else, we ought to all be equal.

Mr Tongue—There are some genuine national interest questions, though, that do arise if we are, by our arrangements, offending people who are used to a different cultural paradigm and a different way of operating, and then that offence turns into subsequent events that damage Australia's interests. That is probably not a good place for the country to be.

CHAIR—I do not think we should be going anywhere near that, I agree with you. You can have a culture where this comes as a culture shock to a lot of people. You have a dignified system that says, 'Your Excellency, down those stairs there, through that room there, and thanks for coming to Australia,' or, 'Thanks for coming to Wagga,' and the rest of mob, 'You go through over there.' No doubt there are millions of world dignitaries—VIPs—none more precious than rock stars and God knows who else—burnt-out diplomats and burnt-out politicians who become ambassadors and get used to people opening doors and travelling at the front of the plane and become important because they have been to a thousand meetings. I do not think we should try and define them. I think we should just say, 'Them's the rules, mate,' and we are not breaking an international law.

Mr Tongue—We are certainly not consistent with the arrangements that are contemplated under the Vienna arrangements that guard the dignity of foreign diplomats. We are certainly not consistent with that at the moment.

CHAIR—But we are not going out of our way to lessen the dignity of our dignified diplomats under the present system.

Mr Tongue—No, we are not.

CHAIR—We treat everyone with respect. Qantas is the world's best airline. They treat every passenger with respect.

Mr Tongue—I think that there are some important cultural differences, though, about what Australians regard as respect and—

CHAIR—In some parts of the world it is all right to have sex with a 12-year-old kid, and that absolutely offends me, but we are not going to lower our level to that. So why play around with what our standards are?

Mr Tongue—So that we are meeting relevant international laws and so that we can manage our relationships with a whole range of foreign countries.

CHAIR—So are you saying that there is risk, if we do not do this, that some international VIPs—travellers, diplomats, presidents, vice-presidents or whatever they are—are going to say, 'We're not going to Australia because we've got to go through some—'

Mr Tongue—There is certainly that risk, Senator, and there is certainly a risk of retaliatory behaviour towards our senior diplomats.

CHAIR—Yes, but as long as it is what every other person going into that country goes through, what is wrong with that? I think that is fair. If I were an ambassador for Australia and I were going to Wombatland somewhere and what was good for the goose was good for gander and then I had to go through security, as long as it did not fry my brain, that would be fair enough. Why define? It absolutely goes against an ordered society. Some of the world's greatest rogues are VIPs—murderers.

Mr Tongue—It is certainly the case that Australia's value set on this issue is very different from other countries, where they are used to dealing with hierarchy and facilitating people that are perceived to be important. We are trying to give ourselves a head of power that will enable the government to make some policy judgements that give us some marginal degrees of freedom around a handful of people.

CHAIR—We have marginal degrees of freedom now, I am instructed.

Mr Tongue—We have some, to put in place private screening arrangements, but arguably that still is not consistent with the dignity that some countries expect.

Senator O'BRIEN—The government has not prosecuted itself for that, has it?

Mr Tongue—No, it has not.

Senator O'BRIEN—It found that it had enough scope to do what it has done, and there has been no public outcry.

Mr Tongue—We have inadvertently offended a few very senior people.

Senator O'BRIEN—I understand that there are some people who are offended.

CHAIR—And I am sure it was inadvertent, by the way. We are not in the business of offending foreign dignitaries.

Mr Tongue—No, absolutely not.

CHAIR—Once you try and define dignitaries—'You're not as dignified as this dignitary'—this will be—a pound to a peanut and a year's wages—in five years a nightmare; a bloody nightmare.

Senator O'BRIEN—Can I ask some questions about the process of consultation in relation to the drug and alcohol management plans and testing. We have had some evidence from the Australian and International Pilots Association with regard to the lack of adequate consultation and refusal to involve that organisation in the aviation security forum, for example. Is that because it is government policy that industrial organisations and organisations representing employees not be so involved or is that a policy decision taken at a departmental or authority level?

Mr Carmody—There has been a great deal of consultation on drug and alcohol programs. We have conducted 34 national awareness workshops around Australia. We have an extensive working group which has representatives from the airports and airlines association, the RAAA, Virgin Blue, Qantas, National Jet, Airservices Australia, Flight Training Adelaide, the Flight Attendants Association of Australia and Aerospace Aviation. It is a very broad

consultative group. I understand that there have been some questions raised by AIPA in terms of representation, but in response to that I would say that we have consulted very broadly. I think AIPA represents about 2,000 members. We are covering about 120,000 people with this program across the industry and we think we have consulted very broadly.

Senator O'BRIEN—Is there someone representing the various employee organisations or has the department decided who will do that?

Mr Carmody—All the organisations that I have mentioned are broadly representative, in my view. We have not particularly excluded anybody.

Senator O'BRIEN—Your view, the department's view or the government's view?

Mr Carmody—Mine, Senator. In terms of establishing consultation for the drug and alcohol program, as I said, we have gone out very broadly. We cannot involve everybody in the working group. It goes through the standards consultative committee, which has 60 representatives on it. It gets to the stage where I think that we have covered the ground very adequately. I know that in terms of the AIPA question, there is a representative from the FAAA who is on that working group who also cross-represents for them, so their views are heard. In my view also, notices of proposed rule-making are published very broadly. There is considerable consultation.

Senator O'BRIEN—What about the aviation security forum and AIPA's status in relation to that?

Mr Tongue—The Aviation Security Advisory Forum is chaired by me and it is a consultation arrangement with the 11 designated airports—the major airports—and the major airlines. The group really reflects some of the Wheeler philosophy about our consultation arrangements. We do not then extend ASAF membership to a whole range of other players. It is the regulated entities that are represented there, so it is the transport security program holders, the people that we have a direct regulatory relationship with. To extend it, frankly, given the breadth of the aviation industry, means we could have hundreds of people in the room. We are trying to limit it to the parties that we directly regulate.

CHAIR—I understand your problem.

Mr Tongue—It is already around 20 players, by the time you have those interests and the Australian government agencies. It is starting to get to be a pretty big meeting and a big resource commitment.

Senator O'BRIEN—Obviously, with the number of players involved, it could be a large meeting, but I think there are probably four or five main employee organisations that have a specific security interest. Whether it is 20, 24 or 25, it is not much of a difference, is it?

Mr Tongue—I think there is a core policy question, though, about who it is that we are regulating. For example, we regulate Qantas. Qantas then has an employer relationship with its pilots but we are going to hold Qantas to account for the security outcome. So in terms of who we are making policy with and consulting with about the formulation of regulations and those sorts of things, it is Qantas or Virgin or Sydney airport; it is not the whole range of employee—

Senator O'BRIEN—That is not true. You will hold individuals to account, won't you, under certain aspects of the legislation?

Mr Tongue—We will hold Australians to account, certainly, but we would not necessarily consult with them.

Senator O'BRIEN—The people who interface with the airports every day are the people who work there.

Mr Tongue—At the high end, when we are taking the next steps around locking industry in to spending hundreds of millions of dollars, we are talking to those key players that hold TSPs and that we are going to regulate.

Senator O'BRIEN—That, frankly, is a bit of a convenient answer. What about the impacts on the individual which the legislation talks about? Clearly, there are individual impacts. What you are saying is that you regulate the operators but with this legislation you are regulating the individuals who work for those operators.

Mr Tongue—Certainly, and we regulate everybody that flies.

Senator O'BRIEN—All their contractors.

Mr Tongue—But in the creation of the regulations, we are principally concerned with what I will call systems impacts. In the formulation of policy we are often approached by a variety of interests—be they people that have small white vans that handle parcels or pilots or baggage handlers. We are approached by a range of people and we are always available for those conversations. But when we are crunching the big numbers about a \$150 million commitment to check bag screening systems—that is the sort of Aviation Security Advisory Forum conversation we have—then it is appropriate that we are talking to the core regulated entities.

Senator O'BRIEN—The people who are operating those machines probably are not even in the room then. The companies are there because they contract security for those—

Mr Tongue—That is true. If airports or airlines want to have a set of contracting arrangements, we still hold them—the airports and the airlines—accountable for the outcome. If we started to try and bring everybody else into the room, we then start to interact with hundreds, if not thousands, of entities.

CHAIR—You would never get it done.

Mr Tongue—We try at the high end to limit it to the players that effectively make the pace on all of these issues.

CHAIR—I want to ask a question about the Australian standards, on the drug thing. The Australian standard says it is all right to have a certain level of heroin in your system—'You're okay'—which would indicate to many people that they were heroin users. Do you think it is a good idea to allow heroin users—

Mr Carmody—Senator, in response, the difficulty is that you need to adhere to a standard. You do not want to have an open-ended—

CHAIR—But why wouldn't you have a zero tolerance?

Mr Carmody—The standard is not something that we are involved with in setting but it is something which we have to stick to.

CHAIR—Don't you think it is a stupid standard? What it says is, 'It's all right to be a drug user, especially recreational, as long as you don't get caught. It's okay, mate,' because if the Australian standard says you can go to work and have whatever the level is—Senator Sterle is familiar with the level—in your system—

Senator STERLE—Yes, 0.15.

CHAIR—that does say that you are a heroin user, and that sends a very bad signal. Especially in the aviation industry, I would have thought that is bloody stupid.

Mr Carmody—The reality for us is that we need to adhere to a standard. If the Australian standard were zero, then the Australian standard would be zero.

CHAIR—Can I just say, with great respect, though, that the OIE standard for beef and foot and mouth would have allowed foot and mouth into this country. Forget about what everyone says is a fair thing; let us set our own bar. Why would you allow known heroin users to be employed in sensitive areas of anything?

Mr Carmody—As far as I know, the Australian standard covers prescription medication. I do not think that it covers the amount of particular drugs that you might have in your body.

CHAIR—Senator Sterle is going to inform you about this.

Mr Carmody—I think that the reason there is a standard is that at some levels it is very difficult to determine what is actually in people's blood. Physiology is different, people are different, and so there is a standard set at a level. I presume testing does not pick up everything.

CHAIR—My difficulty is that, if you are a drug user and you work in a sensitive area, you are vulnerable. It is a bit like being a councillor in local government where there is a lot of development; inevitably a developer will come along and say, 'Hey, mate, I need assistance with this development.' If you are funding your drug habit and it is beyond your means to fund it then, mate, you are on the lookout for an opportunity. That is the difficulty that I have with non-zero tolerance. Bear in mind, I appreciate—and the union said earlier—that if you took it to the extreme, you might lose a proportion of your workforce. So I'm buggered if I know.

Senator O'BRIEN—The division 5, 38B amendment, 'causing disruption or interference', is clearly wide enough to encompass any activity, isn't it, that might be seen to be disruptive: commercial, industrial, whatever? If a contractor withdrew their services because of a dispute with an airport operator, regulations could be made which the contractor would fall foul of, wouldn't they?

Mr Carmody—Is this in the context of drug and alcohol?

Senator O'BRIEN—No.

Mr Carmody—Sorry. More broadly?

Senator O'BRIEN—Page 6 of the bill: division 5, 38B, 'Offences for causing disruption or interference in relation to security controlled airports'.

Mr Tongue—My apologies, I should have been onto that one. This stems from what I call the growth of the aviation security framework, following Wheeler particularly; our movement, what I would call, off airport. Traditionally, the aviation security system has really been about the protection of aircraft, but we have found, as we have looked at both the evolution of the threat, Wheeler's injunction to start to look more at criminality, and also public expectations about how we control the aviation security environment, we have started to move more broadly. These are issues that might be to do with laser lights or some of the—

Senator O'BRIEN—I understand that there are probably things that you would reasonably want to intercept.

Mr Tongue—Yes.

Senator O'BRIEN—The point I make is that this provision is so wide that it could allow for regulations to be made soon or at some time in the future which would impact upon the commercial relationship between an airline or an airport operator and a contractor, or it could interact in terms of the relationship between an airport operator or an aircraft operator and their staff in relation to industrial matters.

Mr Tongue—I think our track record on that, particularly the industrial issues, is pretty good in making a distinction between security and other issues. In framing the regulations, I anticipate that we would be trying to clarify that we are not trying to take security into an industrial realm, for example. What we are trying to do is give ourselves a broader head of power to craft regulations that allow us to address some real threats, and I think our record has been pretty good on that front.

Senator O'BRIEN—Let us take an example in relation to evidence we have had, and I am not suggesting that this is how it would happen, but the LHMU cover the security screeners. They say that people regularly have to work double shifts because of the lack of staff, the lack of qualified staff, the lack of people with appropriate security clearances, whatever. At some stage it gets out of hand and the staff say, 'We're not working overtime.' Potentially, that would lead to an offence under this provision. I hear what you say about what your intentions are, but this legislation permits a regulation which would make that an offence.

Mr Tongue—I think you need to go back to the purposes of the act. The act is framed around unlawful interference, with a series of definitions in there around unlawful interference. I cannot see that it would be consistent with the purposes of the act for us to write what I would call emergency services type regulations saying, 'If you're a qualified screener, you must work if we say you must work.' I think it would be outside the purposes of the act.

Senator O'BRIEN—But this provision looks like an emergency services provision, with respect. It certainly can be read that way: 'disruption to or interference with the activities of an airport operator or an aircraft operator at a security controlled airport'.

Mr Tongue—I think it is trying to capture the sense that the way the act is currently drafted, our offence provisions tend to be very limited to what is happening in the terminal, whereas, even looking at recent events, we are being driven to go beyond the terminal and outside the confines of the airport simply because of the nature of the threat. I think in the creation of the regulations under this provision, we will be able to craft them in such a way as

to give comfort, and I think, given the purposes of the act, there really are some constraints on how widely we could read into this provisions to start interfering in people's basic employment conditions, and all those sorts of things.

Senator O'BRIEN—What is the status of the regulations? A disallowable instrument—this provision?

Mr Tongue—It would be a disallowable instrument, as are any regulations, I think.

Senator O'BRIEN—We might have to have a look at this in the context that you suggest and also in the context of other similar provisions with exemptions for certain types of activity. This is very broad.

Mr Tongue—Senator, it has just been drawn to my attention that section 10(2) of the act regarding unlawful interference with aviation excludes lawful activity, protest, dissent, or industrial activity.

Senator O'BRIEN—So can we include that exemption in this provision safely?

Mr Tongue—This provision will operate in the context of that exemption.

Senator O'BRIEN—Are you sure?

Mr Tongue—Yes. We can pick 10(2) up in the creation of the regulations.

Senator O'BRIEN—Or we could pick the 10(2) exemptions up here.

Mr Tongue—Yes. That is the intention. The intention is to be consistent with that.

Senator ADAMS—Just how far outside the boundaries of the airport do you think this will cover?

Mr Tongue—Looking at the air cargo stream, the air cargo stream begins with somebody handing a parcel to a cargo agent. Some of our older airports are heavily constrained and are starting to move on-airport operations off airport. Catering is an example. There are a range of other things that are going off airport. The intention is that this be for when you are interacting with the aviation flight stream. We are anticipating that we need to be able to ensure that we can address issues wherever people are interacting with things that might end up on aircraft.

Senator ADAMS—We had some evidence earlier on that the Qantas food handlers and food suppliers may be off site, off an airport, so they would come under that?

Mr Tongue—Yes.

CHAIR—We had a submission this morning from the pilots that it would be convenient if in some way there were a level of alleviation to their screening, which I disagree with, and I am sure they will not be surprised. You wouldn't be giving consideration to that, would you?

Mr Tongue—No, Senator.

CHAIR—There are no further questions. We are very grateful for everyone's time and consideration and the thoughtfulness with which you answered our questions. We look forward to seeing you on another occasion. Thank you.

Committee adjourned at 11.13 am