



Australian Government

Attorney-General's Department

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Submission of the Attorney-General's Department

**Senate Rural and Regional Affairs and Transport
Legislation Committee**

***Transport Security Legislation Amendment
(Serious or Organised Crime) Bill 2016***

Introduction

The Attorney-General's Department (AGD) thanks the Senate Rural and Regional Affairs and Transport Legislation Committee for the opportunity to make a submission to its inquiry into the Transport Security Amendment (Serious or Organised Crime) Bill 2016 (the Bill).

AGD supports the Bill.

To assist the Committee's consideration of the Bill, this submission provides additional explanation of the background to the reforms and proposed operation of the revised eligibility criteria for aviation and maritime security identification card (ASIC/MSIC) schemes.

This submission has been drafted in consultation with, and is supported by, the Australian Crime Commission. In preparing this submission AGD consulted with the Department of Infrastructure and Regional Development.

AusCheck

ASIC and MSIC background checks are coordinated by AusCheck, a branch within AGD. A background check includes a criminal history check by CrimTrac, and a national security assessment by the Australian Security Intelligence Organisation. Where required, a background check will also include a citizenship status or legal right to work check by the Department of Immigration and Border Protection.

All individuals with an operational need to have unescorted access to secure areas of ports and airports must undergo a comprehensive background check coordinated by AusCheck. An individual cannot be issued with an ASIC or an MSIC without completing this background check. This is an existing statutory requirement in *Aviation Transport Security Act 2004* (ATSA) and the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFSA) that applies to all individuals regardless of nationality or citizenship. This requirement, and process, is unaffected by the Bill.

Context

Combating serious and organised crime is a key priority for this Government. The Bill forms a part of the reforms which deliver on the Australian Government's commitment to ensure that people with a relevant criminal history can never receive a security clearance to work at Australia's airports and seaports.

The Australian Government is fostering unprecedented joint efforts with state and territory counterparts to detect, disrupt and deter the business models of organised crime. The government's approach to serious and organised crime is set out in the National Organised Crime Response Plan 2015-18 (Response Plan).

The Response Plan sets the framework for how the Australian Government will address the key threats from serious and organised crime, including targeting the illicit drug market, and gun-related violence. Our ports and airports are one of the vulnerable sectors in Australia being used to facilitate this type of serious crime.

In recent years improvements have been made to counter the presence and prevalence of criminal activity in the aviation and maritime sectors. For example, in 2010, regulatory improvements were made to list

additional offences in the MSIC scheme and to introduce a second background check at the two year mark of a four year MSIC.

There is a multi-layered approach to maintaining security in airports and ports. There are detailed security programs in place in major airports and ports to ensure response measures are reflective of the security risks. There are also cooperative partnerships between state and territory law enforcement agencies, including joint state and territory law enforcement-led teams and taskforces tasked with investigating and detecting vulnerabilities in these sectors. For example, the AFP-led Joint Waterfront Taskforces, including Operation Polaris, Taskforce Trident and Taskforce Jericho were set up to identify vulnerabilities, investigate and disrupt serious and organised crime around the waterfront. The taskforces have provided valuable insight into the ways in which organised criminal groups exploit vulnerabilities in the maritime sector supply chain and potential ways of minimising this infiltration.

Serious and organised crime is an ever-changing cross-jurisdictional challenge faced by governments in Australia and beyond. Independent inquiries have identified the need to adjust to the evolving threat posed by serious and organised crime. In 2011 the Parliamentary Joint Committee on Law Enforcement (PJCLE) *'Inquiry into the adequacy of aviation and maritime security measures to combat serious and organised crime'* noted that serious and organised criminals are exploiting secure maritime and aviation areas in furtherance of criminal activity. The PJCLE recommended that the scope of the ATSA and the MTOFSA be widened to include combating serious and organised crime in addition to terrorist activity and unlawful interference.

Following the recommendation of the PJCLE, specific industry forums were set up to look into issues of organised crime in aviation and maritime environments. The reforms being progressed by this Bill respond to feedback from industry through these forums, as well as law enforcement and intelligence agencies.

In its final report released December 2015, the National Ice Taskforce noted the work being done by government to include serious and organised crime considerations in the ASIC and MSIC eligibility criteria, including the introduction of a tiered approach to eligibility based on the seriousness and risk associated with criminal offences. The Taskforce recommended the Government continue to protect the aviation and maritime environments against organised crime by strengthening the eligibility criteria.

Revised Eligibility Criteria

The Bill amends legislative purposes clauses in ATSA and MTOFSA and introduces new division 4A. This new division provides for certainty regarding the ability to consider serious and organised crime when assessing eligibility to hold an ASIC/MSIC.

One of the key components of the reforms is to introduce certain serious offences not currently included under the ASIC and MSIC schemes and by doing so broaden the focus to include more serious criminal offending and high risk criminal activities. Among other things, the current eligibility criteria will be revised in both schemes to include more serious offences, such as offences relating to involvement with a criminal organisation or gang.

The reforms will not change the framework under which the eligibility criteria is considered or the process by which AusCheck conducts a background check. On application, the same reporting and appeal mechanisms, including access to the discretionary process, will continue to apply.

The revised eligibility criteria has been developed to address uncertainties in the existing eligibility criteria and to address the vulnerabilities law enforcement and intelligence agencies have identified as being exploited in aviation and maritime sectors. The existing criteria do not provide for certain offences to be considered when assessing suitability to access secure areas. This has resulted in individuals with serious criminal histories being cleared to work at our ports and airports.

One example is the introduction of specific offences relating to firearms in the ASIC scheme.

Offences involving the illegal possession, use or trafficking of firearms and other weapons represent a high level of risk to the security of these areas. The reforms fill a gap between the two schemes; ensuring individuals with convictions for firearms-related offences cannot gain access to secure aviation areas without a thorough examination of their circumstances. Meaning, an individual would receive an adverse assessment with any form of conviction for this offence, and only able to receive access to secure areas following a further satisfactory assessment into their particular circumstances and whether they pose a risk to aviation security.

Currently, there are differences between the offences that can be considered when assessing suitability to hold a security card in the MSIC scheme and those in the ASIC scheme. The regulations will harmonise the two eligibility criteria lists of security relevant offences. Aviation and Maritime sectors are both high risk sectors for exploitation, and standardised eligibility criteria would create consistency of outcomes for applicants under the two schemes. An individual who has operational need to apply for a card under one scheme while already having a valid card under the other would not be required to undergo a separate check. This provides greater mobility between the two schemes and improved employment outcomes.

The revised criteria introduce new offences that are increasingly present in Australia. These reflect the global nature and resourcefulness of organised criminals and reduce vulnerabilities in the current criteria. One example of this is the introduction of anti-criminal association offences and foreign incursion offences. Australia continues to be targeted by sophisticated offshore organised crime groups, with some groups looking to establish a presence and personnel in Australia. Having these listed as relevant aviation and maritime offences puts beyond doubt the ability to consider these when assessing suitability to access secure areas.

Not all offence categories pose equal risk in the aviation and maritime environments. An assessment of the likely risk an individual might pose with certain convictions was conducted when setting imprisonment thresholds under the revised eligibility criteria. As a result, the proposed thresholds are appropriately and proportionately tiered to the risk to unlawful interference or furtherance of criminal activities in the aviation or maritime secure environments.

Importantly, consideration of imprisonment thresholds places emphasis on the sentence handed down by the courts. Courts have information relevant to a particular case before them, including details of the offending conduct and the individual's personal circumstances (including previous convictions). Given this, the courts are in the best position to determine the seriousness of a particular offence and it is appropriate that the sentence handed down by a court is viewed as indicative of the seriousness of that specific offence.

The proposed thresholds will introduce a minimum level at which an offence would be considered relevant when assessing suitability to hold a security identification card. Under the current eligibility criteria this

results in a higher minimum threshold for certain offences. For example, for offences involving theft the current threshold under the aviation scheme is any form of imprisonment. Under the revised criteria an individual would need to be sentenced to 30 months or more imprisonment before being found ineligible to hold an ASIC or MSIC. This recognises that serious theft-related convictions indicate a high-level of significant criminality that is incompatible with trusted access to secure areas.

The impact of the introduction of imprisonment thresholds will have a positive impact on employment opportunities for a number of ASIC and MSIC applicants with low-level criminal convictions. It eliminates the lower-level criminal offences that do not indicate high levels of risk to national security or serious and organised crime, but are more frequently seen on criminal histories, such as dishonesty or theft-related offences.

The new eligibility criteria will be contained in regulations in order to provide the government with the ability to respond to emerging threats in an agile and timely manner. Transparency and extensive engagement with industry on procedural and legislative changes is an enduring component of the ASIC/MSIC schemes and will continue following the proposed reforms.

Discretionary assessment

As part of the reforms, the discretionary assessment process will move from the Department of Infrastructure and Regional Development to AGD. This is appropriate given this assessment will focus on matters of criminality not only unlawful interference. The regulations will not amend the current process regarding how applicants are able to access this assessment. Appeal and review rights will remain.