



Australian Government
Attorney-General's Department

Deputy Secretary
National Security and Criminal Justice

10/15955

8 November 2010

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Secretary

Aviation Crimes and Policing Legislation Amendment Bill 2010

I am writing in response to your email of 8 October 2010 which invited the Attorney-General's Department (AGD) to make a submission to the Parliamentary Inquiry on this Bill.

The Bill amends the *Crimes (Aviation) Act 1991*, the *Commonwealth Places (Application of Laws) Act 1970* (COPAL Act) and the *Australian Federal Police Act 1979* (AFP Act). Its purpose is to strengthen the existing legislative framework surrounding Australia's international and domestic aviation security regime by ensuring that aviation-related crimes carry appropriately severe penalties and by making sure that an appropriate range of offences are applicable. The Bill also contains amendments which support the move from the current Unified Policing Model to an 'All-In' policing and security model at Australia's eleven Counter Terrorism First Response airports.

I note that a number of submissions have now been received by the Committee. While the majority support the amendments being proposed by the Bill, I am aware that some submissions have raised concerns. I would like to take the opportunity to provide some additional information to the Committee which I hope will clarify some of the issues raised.

Proposed new offences

The Bill proposes to insert three new offences into the Act. One of the proposed offences is a new general offence of assaulting, threatening with violence or intimidating the crew member of an aircraft. The offence will carry a maximum penalty of 10 years imprisonment.

This offence extends the scope of an existing offence in the Act directed against assaulting, threatening with violence or otherwise intimidating an aircraft crew member. The significant difference is that where the existing offence requires proof the conduct impeded a crew member's ability to perform their function or duty, the proposed offence does not. The proposed offence

recognises that even where it does not impede the crew member's ability to perform his or her duties, assaulting, threatening with violence or intimidating an aircraft crew member is a serious offence. The different requirements of the offences are reflected in the penalties – the existing offence is punishable by 14 years imprisonment, which would be increased to 20 years under the Bill. The proposed offence, which does not require interference with the crew member's ability to perform his or her duties, would be punishable by 10 years imprisonment.

The inclusion of this offence was particularly welcomed by the aviation sector during consultations on the proposed amendments, as this type of conduct is the one that is most likely to affect their members.

I note the concerns raised by the NSW Council for Civil Liberties that a passenger who may be frustrated or annoyed and behaves in an aggressive manner could be convicted for this offence. Aggressive behaviour directed against aircraft crew members, particularly in instances where the behaviour is intimidating or escalates into an assault, may well be captured by this offence. However, this kind of behaviour would only be subject to this offence if in fact it did intimidate an aircraft crew member. General annoyance and frustration could be expressed about a problem in a range of ways without it necessarily being intimidating and falling within the provision.

Intimidation in some cases could be highly disruptive, a threat to safety and warrant a higher penalty given that an aircraft is a confined space, often includes children and aged passengers and the crew has other duties which are also relevant to safety. These circumstances mean that the consequences of the commission of the offence are particularly dangerous or damaging.

A maximum penalty of 10 years imprisonment for the offence is appropriate as it is directed at deterring and punishing a worst case offence including the case of a repeat offence. The court retains a discretion to impose a penalty appropriate in the circumstances of a particular case.

Whether an incident is investigated by the Australian Federal Police (AFP), and in turn prosecuted by the Commonwealth Director of Public Prosecutions (CDPP) will depend on the nature of the act. If an incident is trivial, the AFP is able to exercise the discretion not to pursue the matter. Further, the CDPP will consider whether the public interest requires a prosecution to be pursued, which includes consideration of the seriousness or triviality of the alleged offence. If the matter is prosecuted and the person convicted, the court is able to take into account a wide range of circumstances in determining the appropriate sentence. This would include the seriousness of the conduct and the circumstances surrounding the offence. Even if the maximum penalty for an offence is a term of imprisonment, a court can impose no penalty, a fine only or a suspended sentence.

Transition to an 'All-In' policing and security model

I note the submission from the NSW Department of Premier and Cabinet which raises two issues around the transition to the 'All-In' model at Sydney Airport, namely the scope of future arrangements and on-going consultation. Australia currently has eleven designated major airports. Under the 'All-In' model the AFP will be responsible for airport policing and security at these airports.

The existing policing model for the designated airports is the Unified Policing Model (UPM) where policing is the joint responsibility of the AFP and State and Territory police officers. The UPM is supported by a range of cooperative arrangements between the AFP and State and Territory police

regarding the investigation of serious offences and critical incidents. These include inter-agency Joint Airport Investigation Teams (JAITs) and Joint Airport Intelligence Groups (JAIGs).

The bi-lateral arrangements, generally in the form of a Memorandum of Understanding and Letters of Exchange, set out the division of operational responsibilities in relation to the investigation and response of major crimes and critical incidents. As part of the implementation of the 'All-In' model, it is expected that these formal arrangements will be reviewed and renegotiated to ensure that the responsibility for future responses and investigations remain effective. Cooperative arrangements established through the JAITs and JAIGs will be retained.

This process of review and renegotiation would apply to the Memorandum of Understanding and Letter of Exchange between the AFP and NSW Police Force. It is expected that the AFP and State and Territory police will continue to work closely together to maintain public safety and efficiently use available resources in response to serious crimes. In the case of serious state offences and critical incidents, it is anticipated that the current arrangements in operation would continue to apply.

The NSW Department of Premier and Cabinet also raises the issue of further consultation with key stakeholders as the transition to 'All-In' occurs. Effective transition to the 'All-In' model is heavily reliant on the relationships that are already in place between the AFP and State and Territory police. The 'All-In' model will be implemented in close consultation with the States and Territories over the next two to four years. As the transition progresses, all jurisdictions will be consulted in relation to timing and transitional arrangements.

The Minister for Home Affairs has also agreed that discussion on the progress of 'All-In' should be made a standing agenda item for the Ministerial Council for Police and Emergency Management – Police.

AGD contact

Thank you for the opportunity to make a submission to the inquiry on this Bill. If you would like to discuss any aspect of this submission further, or require any additional information, please contact Tamsyn Harvey, Assistant Secretary, AusCheck, on

Yours sincerely

Geoff McDonald PSM
A/g Deputy Secretary