

**Airservices Australia Submission to Parliamentary Joint Committee on the Australian Crime Commission Inquiry into the *Adequacy of Aviation and Maritime Security Measures to Combat Serious and Organised Crime***

**1. Overview of Aviation Security Identification Card (ASIC) Scheme and Airservices Australia's Role**

**1.1. Background**

- 1.1.1. An ASIC must be displayed in airside, security restricted and secure areas of security controlled airports<sup>1</sup>. Specifically, ASICs are required to be displayed by:
- (a) all people accessing the airside area;
  - (b) all people accessing landside security zones; and
  - (c) all people checking-in passengers or handling checked baggage.
- 1.1.2. There are two types of ASIC – red and grey in colour. A red ASIC is required to access an 'airside security zone' or a landside 'security restricted area'. A grey ASIC is required to access any other part of a 'secure area' (i.e. all landside 'secure areas' that are not 'security restricted areas'). A grey ASIC does not entitle the holder to access a 'security restricted area' or an 'airside security zone'.
- 1.1.3. Both red and grey ASICs can be temporary or permanent ('permanent' ASICs are valid for up to two years). Both red and grey ASICs can be issued for a specific airport only or can be Australia wide.
- 1.1.4. All Airservices Australia personnel who work airside at security controlled airports – including air traffic controllers and aviation rescue and firefighters (ARFF) will generally be required to hold ASICs and adhere to the requirements regarding their use / display. Other Airservices Australia staff will also be required to hold ASICs (e.g. to enable them to access and work from Airservices Australia facilities at airports).
- 1.1.5. ASICs are only issued after background checks have been undertaken, to ensure that people who have been issued with an ASIC have suitable backgrounds for working in sensitive parts of airports.

---

<sup>1</sup> Most Australian airports, defined in the Regulations as those that have regular public transport (RPT) services. Cf: General Aviation (GA) airports, where access does not require an ASIC.

- 1.1.6. The legislation governing the issuing and use of ASICs is the *Aviation Transport Security Regulations 2005* (Regulations), made under the *Aviation Transport Security Act 2004*.
- 1.1.7. The Department of Infrastructure, Regional Development, Transport and Local Government, and the Civil Aviation Safety Authority (CASA), are responsible for the administration of the Regulations.

## **1.2. ASIC Regulatory Developments In Brief**

- 1.2.1. ASIC arrangements have been in place for some time.
- 1.2.2. In 2004, the Joint Committee of Public Accounts and Audit in its *Report 400 – Review of Aviation Security in Australia* recommended (Recommendation 3) that the Department of Infrastructure should set a performance standard for the return of expired ASICs and review issuing bodies' mechanisms for ASIC return.
- 1.2.3. In 2005 the ASIC scheme was very comprehensively reviewed and broadened to apply to wider categories of airport workers in a broader range of airport areas following recommendations made in the Wheeler Review. In accordance with Wheeler Review recommendations, AusCheck was constituted as the entity (within the Attorney General's Department) responsible for undertaking background checking for ASICs, and ASIC and maritime security identification card (MSIC) background checking processes were harmonised.
- 1.2.4. In its November 2005 *Report 406 - Developments in Aviation Security since the Committee's June 2004 Report 400: Review of Aviation Security in Australia – An Interim Report*, the Joint Committee of Public Accounts and Audit Report made a series of recommendations (among others) in relation to tightening the process for issuing Visitor Identification Cards (VIC).
- 1.2.5. In its December 2006 *Report 409 – Developments in Aviation Security Since the Committee's June 2004 Report 400: Review of Aviation Security in Australia*, the Joint Committee on Public Accounts and Audit made various further recommendations in relation to ASICs, including that AusCheck establish detailed and formal mechanisms for monitoring the return of ASICs, that the issuance processes for VICs be tightened and re-iterating in its Report 406 recommendations that photographs be included with VICs.

### **1.3. Role of Airservices Australia**

- 1.3.1. Airservices Australia is the government-owned corporation and service provider responsible for providing safe and environmentally sound air traffic control management and related airside services to the aviation industry.
- 1.3.2. Airservices Australia's vision is to be an efficient provider of air traffic management and aviation rescue and fire fighting services, with an international reputation for excellence in safety, innovation and environmental performance. Airservices Australia's main challenges in seeking to meet this vision are to continue to meet its regulatory and legislated obligations and to improve the quality and cost-effectiveness of its core services.
- 1.3.3. From this perspective, Airservices Australia is concerned that any amendments proposed to the ASIC scheme support aircraft and passenger safety to the greatest extent possible, and (as a secondary consideration) support Airservices Australia's effective delivery of air traffic control and aviation rescue and fire fighting services to the aviation industry.

## **2. Response to Inquiry Terms of Reference (ASIC aspects only)**

### **2.1. The process of issuing ASICs**

- 2.1.1. Airservices Australia is an issuing body for ASICs (meaning that it is authorised under the Regulations to issue ASICs). As an issuing body it has two principal obligations in relation to ASICs:
  - (a) to issue ASICs in accordance with the Regulations<sup>2</sup>; and
  - (b) to cancel ASICs where the Regulations require this, and in certain circumstances report this to the Secretary of the Department of Infrastructure.<sup>3</sup>
- 2.1.2. ASICs may only be issued if an applicant successfully clears background checks. The required background checks include:
  - (a) an identity check (conducted by Airservices Australia as the issuing body);
  - (b) a (limited) security assessment by ASIO (the security assessment relates to politically motivated violence);

---

<sup>2</sup> Principally Part 6, Division 6.5.

<sup>3</sup> See Regulation 6.43 in relation to cancellation and Regulation 6.44 in relation to notification.

- (c) a criminal records check by the Australian Federal Police; and
- (d) (where required) a lawful citizen check by the Department of Immigration and Citizenship.

2.1.3. The overall background checking process is coordinated by the AusCheck section of the Attorney-General's Department.

**Aviation security relevant offences**

2.1.4. ASICs may only be issued to persons who do not have an 'adverse criminal record': Regulation 6.28. A person has an adverse criminal record if s/he:

- (a) has been convicted of an offence against Part 2 of the *Crimes (Aviation) Act 1991* or Part 5.3 of the Criminal Code (i.e. terrorism related offence) and sentenced to imprisonment; or
- (b) has been convicted of an 'aviation security relevant offence' and sentenced to imprisonment.

2.1.5. The criminal history check conducted by the AFP as part of the background checking process is designed to discover if the person has an adverse criminal record.

2.1.6. Airservices Australia could support a review of the screening processes for obtaining an ASIC, including of the offences included within the definition of 'aviation security relevant offences'.

2.1.7. 'Aviation security relevant offences' include offences involving:

- (a) dishonesty (e.g. fraud, theft etc);
- (b) violence or a threat of violence;
- (c) intentional damage to property or a threat of damage to property;
- (d) drugs or explosives - including production, possession, supply, import or export;
- (e) offences against the Government (e.g. treason);
- (f) terrorism; and
- (g) breach of Part 2 of the *Crimes (Aviation) Act 1991* (Cth).

- 2.1.8. Airservices Australia notes that the current definition of 'aviation security relevant offences' may not be sufficient to ensure that all offences which could pose a future risk to aviation security are discovered at the screening stage (noting that screening is undertaken every 2 years when an ASIC is required to renewed).
- 2.1.9. Specifically, the current definition of 'aviation security relevant offences' does not include:
- (a) the above offences where no sentence of imprisonment was imposed (suspended sentences are however captured);
  - (b) offences involving firearms and other weapons; and
  - (c) offences contrary to the new 'serious criminal organisation' (i.e. anti-bikie) legislation introduced in some states.
- 2.1.10. It is possible, therefore, that persons with a criminal history that could provide an early indication of involvement in organised or serious crime are eligible to be issued with and are being issued an ASIC and a review of the current screening processes for obtaining an ASIC, including of the offences included within the definition of 'aviation security relevant offences', may be required.
- 2.1.11. The potential need to broaden the range of criminal offences that will lead to an adverse criminal record for ASIC and MSIC purposes has been previously raised in Parliament.<sup>4</sup>

## **2.2. The effectiveness of the Aviation Security Identification Card (ASIC) schemes in combating serious and organised crime**

- 2.2.1. Airport operators are the ultimate arbiters of access to airside, security controlled and secure areas at airports, and impose their own requirements on such access in accordance with their statutory obligations (i.e. under the Regulations), including requirements for additional security identification / access cards (e.g. swipe cards to enter areas of the airport).
- 2.2.2. An ASIC does not itself entitle a person to access airside, secure or security controlled areas at airports. Rather, access to airside, secure or security controlled areas is granted by airport operators. The ASIC simply indicates that the holder has been background checked and is of suitable character to be in an airside, security controlled or secure area, where authorised by the airport operator.

---

<sup>4</sup> 'AusCheck Amendment Bill 2009' second reading speeches, House of Representatives, *HANSARD*, 18 March 2009.

- 2.2.3. Accordingly, amendments to the ASIC scheme (if any are found to be required) need to be considered in the context of existing procedures and requirements imposed by airport operators on access to airside, secure and security controlled areas.
- 2.2.4. Misuse of an ASIC to gain access to a secure area within an airport is contrary to the Regulations<sup>5</sup>, and is currently punishable under the Regulations by 5 Penalty Units (\$550). The misuse (and other breaches of the law) are also contrary to the Airservices Australia code of conduct and are punishable by dismissal.<sup>6</sup> Obviously, criminal sanctions may also apply in certain cases involving criminal conduct.
- 2.2.5. Airservices Australia has no evidence to suggest that changes to the ASIC eligibility criteria, processes or legislation would prevent such misuse or, where criminal activity is suspected, that the ASIC screening process would detect / prevent the misuse of access.
- 2.2.6. It is likely that other security measures and processes are of equal or greater importance in screening out or subsequently identifying persons who may be involved in serious and organised crime, including:

---

<sup>5</sup> Regulation 3.11 states:

**3.11** *Entry to secure area to be for lawful purposes only*  
*The holder of an ASIC or VIC must not enter, or stay in, a secure area other than for a lawful purpose.*  
*Penalty: 5 penalty units.*

<sup>6</sup> The Airservices Australia Code of Conduct provides:

**6.0** *COMPLIANCE WITH THE LAW*  
**6.1** *Airservices Australia employees must comply with laws and regulations relating to their business conduct. This includes understanding the laws and regulations relevant to their work and complying with the legal requirements of the country in which they are working.*  
**6.2** *Some laws affect everyone, such as those concerning equal employment opportunity and occupational health and safety. Other laws primarily affect employees in particular roles, such as those concerning product liability, trade practices and protection of the environment.*  
**6.3** *The laws that govern our activities may be complex, but ignorance of the law does not excuse Airservices Australia or its employees from their obligation to comply. Employees should seek advice from the Office of Legal Counsel if they are unclear about laws or regulations relating to their work.*

**3.0** *APPLICATION*  
**3.1** *This Code of Conduct applies to all Airservices Australia employees including individuals engaged on a fee for service or contract for service basis, irrespective of work location. Adherence to this Code of Conduct is a condition of employment with Airservices Australia, and a breach of these standards of Conduct may result in disciplinary action, including, but not limited to, termination of your employment.*

- (a) existing security measures imposed by aircraft operators in accordance with their transport security programs made under the Regulations (such as spot checks at airside entry points);
- (b) the recruitment process (for example, Airservices Australia undertakes pre-engagement security clearances, background checks and drug and alcohol tests for all its personnel);
- (c) ongoing staff monitoring (including under Airservices Australia's drug and alcohol management policy);
- (d) incident reporting and investigation; and
- (e) law enforcement activities.

2.2.7. Airservices Australia also notes that a further safeguard against ASICs being misused in relation to organised or serious crime is provided by the obligation on an issuing body to cancel an ASIC including where:

- (a) it is advised that a security assessment of the ASIC holder is adverse;
- (b) the ASIC holder has been convicted of an offence against Part 2 of the *Crimes (Aviation) Act 1991* (Cth);
- (c) the ASIC holder has been convicted of an 'aviation security relevant offence' for which s/he was sentenced to a term of imprisonment; or
- (d) the ASIC holder breaches the Regulations (including by not displaying their ASIC as required).

### **2.3. The monitoring of cards issued**

2.3.1. Airservices Australia notes that monitoring compliance with the ASIC scheme (including monitoring of issued cards) is both an obligation for the ASIC issuing body and for the Department of Infrastructure.

2.3.2. As discussed at paragraph 2.2.7 above, Airservices Australia as an issuing body has the responsibility to cancel ASICs in certain circumstances.

2.3.3. Additionally, ASIC holders are required to return cancelled and expired cards within 1 month: Regulation 6.45. The Joint Committee on Public Accounts and Audit has previously expressed concern about the high percentage of non-returned

cards and recommended review of ASIC issuing bodies' mechanisms for ensuring the return of ASICs.<sup>7</sup>

- 2.3.4. Airservices Australia is not aware of any issues with ASIC card return, but notes that card return (and Airservices Australia's procedures for managing it) may be an area of interest for the Inquiry.

#### **Frequency of ASIC renewal**

- 2.3.5. Airservices Australia notes that ASICs are currently valid for 2 years. Airservices Australia could consider whether it would support a review of the ASIC validity period, including whether its role would be supported or hindered by a shorter validity period.

### **2.4. The storage of, and sharing of, ASIC and MSIC information between appropriate law enforcement agencies**

- 2.4.1. Airservices Australia is not itself a law enforcement agency, and is not, therefore, able to comment on this aspect of the Inquiry.

## **3. References**

### **3.1. Legislation**

- 3.1.1. *Aviation Transport Security Regulations 2005* (Cth) (Regulations).

### **3.2. Reviews / Reports**

- 3.2.1. Joint Committee of Public Accounts and Audit, *Report 400 – Review of Aviation Security in Australia*, June.
- 3.2.2. The Rt Hon Sir John Wheeler DL, *An Independent Review of Airport Security and Policing for the Government of Australia*, September 2005 (Wheeler Review).
- 3.2.3. Joint Committee of Public Accounts and Audit, *Report 409 – Developments in Aviation Security Since the Committee's June 2004 Report 400: Review of Aviation Security in Australia*, December 2006.

---

<sup>7</sup> Joint Committee of Public Accounts and Audit, *Report 400 – Review of Aviation Security in Australia*, June 2004 (JPAA Report 400), 98-101; see Recommendation 6 in Joint Committee of Public Accounts and Audit, *Report 409 – Developments in Aviation Security Since the Committee's June 2004 Report 400: Review of Aviation Security in Australia*, December 2006; and Department of Infrastructure, Transport, Regional Development and Local Government, *Executive Minute on Joint Committee of Public Accounts and Audit Report 409 Developments in Aviation Security Since the Committee's June 2004 Report 400: Review of Aviation Security in Australia*, 11 July 2008, 4-7.



### **3.3. Airservices Australia Publications**

- 3.3.1. Code of Conduct.
- 3.3.2. C-GUIDE0268 - Conditions of Use and Issue of an Aviation Security Identification Card.
- 3.3.3. C-GUIDE0147 - A Guide for Completing Identification Card and ASIC Documentation.
- 3.3.4. Aviation Security Identification Cards (ASIC) – Advice to Staff.
- 3.3.5. C-PROC0141 Issue 2 - Aviation Security Identification Card (ASIC) Program.

### **3.4. Departmental Publications**

- 3.4.1. Department of Infrastructure, Transport, Regional Development and Local Government, *Executive Minute on Joint Committee of Public Accounts and Audit Report 409 Developments in Aviation Security Since the Committee's June 2004 Report 400: Review of Aviation Security in Australia*, 11 July 2008.
- 3.4.2. Department of Infrastructure, Transport, Regional Development and Local Government, *Aviation Security Identification Cards*, accessed 12 October 2009 at <http://www.infrastructure.gov.au>, path: Home > Transport > Transport Security > Aviation Security > Legislation > Overview > 4. Aviation Security Identification Cards.
- 3.4.3. Department of Infrastructure, Transport, Regional Development and Local Government, *Fact Sheet 13: Aviation Security Identification Cards (ASICs)*, accessed 12 October 2009 at <http://www.infrastructure.gov.au>, path: Home > Transport > Transport Security > Aviation Security > Aviation Security Fact Sheets > Fact Sheet 13: Aviation Security Identification Cards (ASICs).