



Transport Workers Union of Australia (TWUA)

Submission to the

*Inquiry into the adequacy of aviation and
maritime security measures to combat
serious and organised crime*

By the Joint Parliamentary Committee
on the Australian Crime Commission

November 2009

Introduction

The Transport Workers Union of Australia (TWUA) welcomes the opportunity to provide a submission to *the Joint Parliamentary Committee on the Australian Crime Commission (ACC)* inquiry into organized crime.

The TWU supports actions to combat organized crime in Australia. However this should not be at the expense of the rights of ordinary working families.

The TWU therefore makes the following recommendations (which are discussed in detail in the body of the submission):

Recommendation 1

That the Inquiry reaffirm that the vast majority of people working at ports and airports are honest, law abiding citizens.

Recommendation 2

That the regulation of ports and airports requires a careful balancing of the needs of law enforcement with the need to ensure the rights of workers are respected (like the presumption of innocence and the right to challenge allegations made by the state).

Recommendation 3

That all workers at airports and ports be trained in detection of criminal activities and the proper reporting avenues via a tripartite presentation (employers, unions and government).

Recommendation 4

That the amount of Customs inspections of air cargo and catering materials be increased.

Recommendation 5

That the amount of physical sea cargo inspections be increased.

Recommendation 6

That the Inquiry note that the existing powers of agencies to undertake investigations is extensive and intrusive.

Recommendation 7

If the Inquiry recommends the use of criminal intelligence to determine eligibility for ASIC or MSIC cards proponents must fully address concerns about civil liberties, protection of whistleblowers and the potential for human rights violations.

Recommendation 8

That if the Inquiry recommended changes to the clearance system, these changes must include a full right of appeal to an independent tribunal with all information being available to be challenged by a transport worker who has had an adverse finding made against them.

Recommendation 9

That the use of Visitor Identification Cards (VIC) for more than one month in a year be prohibited.

Recommendation 10

That the Inquiry find that the use of staff on labour hire arrangements or contracted out ground handling undermines aviation security and safety.

Recommendation 11

That the ASIC/MSIC system be extended to defence removals workers and contractors

About the TWU

The TWU has been in existence as a trade union for over 120 years.

Currently we represent 85,000 members throughout Australia in the transport industry.

The union covers men and women working in aviation, oil, waste management, gas, road transport, passenger vehicles and freight logistics.

We are affiliated with Australian Council of Trade Unions (ACTU), the International Transport Federation (ITF), the Australian Trucking Association (ATA) and the Australian Logistics Council (ALC).

The TWU is widely acknowledged to be proactive in establishing industry standards that improve the lives of transport workers, their families and the travelling public.

Aviation security is of critical importance to the TWU as it represents over 15,000 workers at Australian airports. The TWU is the largest trade union in the aviation industry representing workers involved in freight, baggage handling, transport cleaning, logistics and catering. TWU members are the people who maintain, operate and administer Australia's aviation industry on a daily basis. For more than six years we have raised our concerns regarding aviation security with the previous Federal Government.

Maritime Security is of vital importance to the TWU. Trucks enter and leave ports with the nations cargo for trades and export. Many of these drivers are TWU members and they see first hand the problems and performance of Australia's ports.

Issues

Opposition to Organised Crime

The TWU and our members support strong action to combat organized crime at airports and ports. TWU members are at the front line of this fight and often cooperate with authorities to detect criminals operating at airports and ports.

TWU members demand that this inquiry loudly state that the vast majority are law abiding, honest and diligent employees. They resent being tainted with the criminal behaviour brush that some may wish to paint them with.

The ACC's submission to this inquiry essentially makes the case that there is penetration of these environments by organized crime but does not make the case in quantitative terms.

It is important to remember that other sections of society also suffer from organised criminal activities. There have been numerous inquiries in to Local Government and State Government instrumentalities that have found endemic corruption and criminal activity (e.g. *RailCorp* in NSW). There is widespread criminal behavior in the corporate sector (eg. HIH, James Hardie, Australian Wheat Board etc).

Regulators in these sectors have not responded with draconian laws removing the right to presumption of innocence. Rather they have set up investigative bodies like the NSW Independent Commission Against Corruption (ICAC) or tightened duties in the various statutes.

This situation therefore requires a balanced, thoughtful and considered approach to managing the competing needs of law enforcement and the need to protect fundamental human rights like the presumption of innocence and the right to challenge allegations made by the State against an individual.

NB: Please note quantitative evidence from the Australian Crime Commission's (ACC) special intelligence operations into Crime in the Transport Sector and Illegal Maritime Importation and Movement Methodologies has not been released to the TWU.

Recommendation 1

That the Inquiry reaffirm that the vast majority of people working at ports and airports are honest, law abiding citizens

Recommendation 2

That the regulation of ports and airports requires a careful balancing of the needs of law enforcement with the need to ensure the rights of workers are respected (like the presumption of innocence and the right to challenge allegations made by the state).

The TWU believes that front line transport workers could be utilised more effectively through training for workers in how to detect suspicious activity and report it.

Recommendation 3

That all workers at airports and ports be trained in detection of criminal activities and the proper reporting avenues via a tripartite presentation (employers, unions and government).

We believe that the relevant authorities should step up their efforts to combat crime in these environments. The TWU is aware that air cargo and catering materials for planes are rarely inspected by Customs Officers for contraband.

For example a TWU Delegate with 20 years experience informed the TWU that he was aware of only one inspection by Customs of catering materials coming on or off planes at Sydney airport in the last year.

Recommendation 4

That the amount of Customs inspections of air cargo and catering materials be increased.

This fits with the maritime experience where Customs estimates that only 12% (15,835 of 134,544 targeted for examination) of cargo selected for examination is physically inspected for contraband. (Figure derived from table on page 26 of the 2008/9 Australian Customs and Border Protection Service Annual Report).

Recommendation 5

That the amount of physical sea cargo inspections be increased.

Extensive and intrusive powers already exist

The Australian Crime Commission (ACC), the Australian Federal Police (AFP) and the Australian Customs and Border Protection Service (ACBPS) have extensive and far reaching surveillance, inspection, intelligence gathering, investigative and law enforcement powers to combat organized crime.

For example the ACC has “[C]oercive powers ... similar to those of a Royal Commission” and they are able to:

- “summons any witness to appear before an Examiner
- require that witness to give evidence of their knowledge of matters concerning the criminal activities involving themselves and others upon whom an investigation or intelligence operation is focused, and/or
- require the person to provide documents or other things to the Examiner”

(Source ACC web site www.crimecommission.gov.au)

The AFP and ACBPS also have extensive legislative powers. The AFP has powers to:

- covert and overt surveillance of suspects
- arrest and question suspect/s
- undertake controlled operations
- collate intelligence from other police forces and agencies

ACBPS also all of the traditional powers of a customs agency to inspect cargo, question people, undertake surveillance etc in cooperation with other agencies.

Where an individual is identified as being a threat to security or being involved in organized crime all of these powers must be utilized to ensure that they are caught.

Recent arrests at ports and airports demonstrate that agencies are using existing powers to find people engaged in illegal activities.

Recommendation 6

That the Inquiry note that the existing powers of agencies to undertake investigations is extensive and intrusive.

Potential use of police intelligence to vet applicants

The TWU understands that the Inquiry may examine whether police intelligence should be used when issuing ASICs and MSICs. Currently police information is restricted to offences and not criminal intelligence. *NB: ASIO intelligence is already used for national security related issues.*

The use of ASIO intelligence following the 911 terrorist attacks for ASIC cards is being undertaken on public safety grounds and was seen as an exceptional circumstance when introduced. The TWU is

not aware of other governments using criminal intelligence when undertaking background checks for private sector workers that cannot be challenged in an open appeal process.

The laws applying to the use of criminal intelligence must seek to balance the human rights of the workers (the right to privacy, the right to appeal decisions, the right to know the information being used to make decisions about your livelihood) with the need to protect against the employment of terrorists.

The TWU is concerned about the use of secret criminal intelligence for the following reasons:

- Infringement of civil liberties

Every citizen has the right to respond to information that is held about them. Police intelligence can be wrong as it is often based on anonymous tip offs, rumours, associations etc and not on Court tested evidence, as an offence requires. TWU members are concerned that they may lose their livelihood through loss of their security card with out the right to address any issues.

- Potential misuse to restrict whistleblowers

The TWU is concerned that false criminal intelligence could be used against union activists to target them for loss of security cards on the basis of erroneous and anonymous intelligence. At *Attachment C* is a statement from a TWU Official (a whistleblower) who had his ASIC card removed arbitrarily and with out notice. This was at a time when the TWU was investigating safety incidents at Sydney airport.

That the arbitrary removal of an ASIC card can happen under the current system is disturbing, however under a system where secret intelligence can be used to suspend or cancel a security card this situation could worsen.

- Human rights concerns

The airports and ports are a very ethnically diverse workforce. Freedom from discrimination on ethnic, cultural and religious grounds is a human right.

The use of criminal intelligence on associations when determining access may allow for the inappropriate use of ethnic, religious or cultural ties. The handling of the Dr Mohammed Haneef case demonstrated the devastating impact that assumptions about a person's associations can have

based on erroneous connections fueled by ethnic stereotypes.

As the *Clarke Inquiry*¹ found, intelligence agencies quickly determined that Dr Mohammed Haneef was of no threat to the community. The police continued to keep him under arrest even when it was clear he was no threat.

Ultimately it was an independent investigation of the claims by police that allowed for the issues with Dr Haneef to be resolved. However this took an extended period.

A transport worker who lost their livelihood because of an adverse finding in secret could not be expected to mount a lengthy and expensive legal challenge. Therefore any system would have to include the right of appeal to an independent and low cost tribunal with all material being used to make decisions be able to be seen and challenged by the transport worker. The presumption should be in favour of the transport worker with the government required to prove that they are currently a risk.

Recommendation 7

If the Inquiry recommends the use of criminal intelligence to determine eligibility for ASIC or MSIC cards proponents must fully address concerns about civil liberties, protection of whistleblowers and the potential for human rights violations.

Recommendation 8

That if the Inquiry recommended changes to the clearance system, these changes must include a full right of appeal to an independent tribunal with all information being available to be challenged by a transport worker who has had an adverse finding made against them.

Extension of offences to be considered when undertaking an ASIC/MSIC assessment

The TWU is also aware that GHD and government agencies have been advocating the extension of the types of offences that should be considered when assessing a person's suitability for an ASIC or MSIC to a broad range of criminal offences that are not terrorist-related. This is an area that could cause significant disadvantage if

¹ For a good summary of the findings see pages vii-x of Volume 1 of the ***Report of the Inquiry into the Case of Dr Mohamed Haneef*** by the Hon John Clarke QC at www.haneefinquiry.gov.au.

misused. For example dredging up old offences could constitute a double penalty. There needs to be a clear focus that the individual constitutes a significant risk currently. Any other framework will see individuals unfairly losing their employment based on a hypothetical or miniscule risk.

If the Inquiry recommends the use of criminal intelligence, again a full right of appeal to an independent tribunal should be included in any system. All information should be made available to the workers and the presumption must be on the government to prove its recommendation.

Risks from Labour Hire Employees

The Federal Government's own Auditor General's Report into Aviation Security in 2003 found that the use of temporary staff (contractors) at airports compromised the security chain of command.

A large proportion of contractors who work at Australian airports are labour hire employees. These employees work in secure areas of the airport prior to the completion of their background checks. Anecdotally the TWU believes that 25 per cent of labour hire employees currently working at the airport may not be ASIC checked. They are covered through a temporary visitor pass whilst their application is being processed. These employees could have any number of infringements that renders them unsuitable for security clearance, but under the current system the authorities do not know for up to two months at best.

It is not uncommon for Labour hire employees to work under visitor passes for up to six months, thus working without background checks throughout this period. This is not appropriate.

Recommendation 9

That the use of Visitor Identification Cards (VIC) for more than one month in a year be prohibited.

The high turn over of labour hire staff means that most are untrained in even the most basic security awareness training. Combined with the temporary nature of their employment, they are particularly vulnerable and more susceptible to be pressured out of reporting security matters.

Such vulnerability was evident in the handling of the United Airlines 840 flight "BOB" incident in July 2004. When a "BOB" message was found on the plane passengers were evacuated from the plane and emergency services were called. However prior to any security

personnel entering the plane, baggage handlers were first sent in to clear it. The baggage handlers were contractor staff. They were untrained in any security emergency response procedures and later told union members that they feared for their jobs if they did not follow the orders to clear the plane. Qantas employee of 17 years George Oei said "I spoke to the guys after the incident. They said that management told them that they didn't have to clear the plane, but if they didn't their contracts would not be renewed."

A similar incident occurred on August 21 2006. Six Labour hire baggage handlers were sent into a Pacific Blue plane suspected of containing a bomb. It was a situation, which the bomb squad considered too dangerous to send sniffer dogs into. Instead six untrained and vulnerable baggage handlers went into the plane and cleared it. They later told union members that they feared they would be sacked by management if they refused the task.

It is extremely concerning that aviation companies continue to push to increase the number of labour hire positions at the airport. It is a position motivated by profit rather than sound security practices.

Recommendation 10

That the Inquiry find that the use of staff on labour hire arrangements or contracted out ground handling undermines aviation security and safety.

Further comments on potential crime and security issues in transport

The terms of reference allow this inquiry to refer to trends in criminal activities. The TWU would like to make some comments on the potential for criminality and terrorism in the transport sector (through the removals industry) causing security issues for our defence personnel.

Terrorist organizations are targeting our ADF personnel. The recent arrest of four people for allegedly planning an attack on Holsworthy Army Base and, according to Victorian Police Commissioner Simon Overland, "...suspicious activities around other bases..."² demonstrates that ADF personnel are being targeted and the need for vigilance.

Unfortunately Defence security is often inadequate. The Holsworthy base is also the same base that has unarmed security guards

² Quoted in the *Sydney Morning Herald* on 4 August 2009 in an article entitled "*Holsworthy: home to anti-terrorist unit*"

employed by a private contractor providing a woeful level of protection to ADF personnel.

This situation is also reflected in the way defence moves ADF personnel around Australia. Currently under defence procurement arrangements untrained casual staff are used to move ADF personnel. A recent TWU survey found 85.2% of removalists said that a previous employer used a large amount of casual employees and 26.9% said that 'cash in hand' was paid and industry intelligence says that these are often backpackers.

The TWU is also concerned that these staff have access to sensitive information in the personal effects of ADF personnel. One ADF member's wife - whose husband is a soldier in the Australian Army and has served in five overseas deployments, most recently to Afghanistan - told the TWU that untrained removals staff opened sealed boxes and repacked them.

Sensitive information about a soldier can be held at home. Training manuals needed for study by personnel in down time might be packed away safely, then opened by a removalist. Confidential letters, personal bank statements, credit card information etc that can be used to create a service profile of ADF personnel are often packed in boxes.

The TWU has also been informed that defence personnel move their training and equipment manuals, that are ordinarily stored on base, to their homes to be transported to their new base as part of the home relocation.

This material travels unescorted to its destination meaning there is ample time for it to be inspected, intelligence gathered and then repacked. In addition a potential terrorist can find out where ADF personnel and their families live. This is of serious concern when we know that terrorists are targeting ADF personnel.

A TWU survey of ADF personnel also found that many had experienced theft whilst moving. One ADF member told the TWU that "...[B] boxes went missing/stolen by the removalists and because they were so dodgy they manage(d) *sic* to hide that boxes were missing so we got nothing for it."

The TWU therefore believes the ASIC/MSIC system should be extended to removals staff to ensure that only trained and security cleared staff have close access to ADF personnel, their families and potentially sensitive information when they move.

Recommendation 11

That the ASIC/MSIC system be extended to defence removals workers and contractors

Conclusion

The TWU is grateful for the chance to make a submission to this inquiry. We stand ready to support the Committee in its deliberations to improve the detection and investigation of criminal activities, and security issues at airports and ports. However we do not support violating the human rights of TWU members.

Appendix A: Inquiry Terms of Reference

Pursuant to the committee's duties set out in paragraph 55(1)(d) of the *Australian Crime Commission Act 2002*,

(a) to examine trends and changes in criminal activities, practices and methods and report to both Houses of the Parliament any change which the Committee thinks desirable to the functions, structure, powers and procedures of the ACC;

(b) the committee will examine the effectiveness of current administrative and law enforcement arrangements to protect Australia's borders from serious and organised criminal activity. In particular the committee will examine:

(c) the methods used by serious and organised criminal groups to infiltrate Australia's airports and ports, and the extent of infiltration;

(d) the range of criminal activity currently occurring at Australia's airports and ports, including but not limited to:

- the importation of illicit drugs, firearms, and
- prohibited items
- tariff avoidance
- people trafficking and people smuggling
- money laundering
- air cargo and maritime cargo theft

(e) the effectiveness of the Aviation Security Identification Card (ASIC) and Maritime Security Identification Card (MSIC) schemes; including the process of issuing ASICs and MSICs, the monitoring of cards issued and the storage of, and sharing of, ASIC and MSIC information between appropriate law enforcement agencies;

(f) the current administrative and law enforcement arrangements and information and intelligence sharing measures to manage the risk of serious and organised criminal activity at Australia's airports and ports; and

(g) the findings of the Australian Crime Commission's special intelligence operations into *Crime in the Transport Sector* and *Illegal Maritime Importation and Movement Methodologies*.

Appendix B: Aviation Security Incidents in the last 7 years

The following are examples of serious security breaches and security process breakdowns that have occurred at Kingsford Smith Airport, Sydney.

January 2002

Unfettered Access to Secure Area

Three Illegal immigrants were found wandering around a plane on the international tarmac. They were confronted by TWU catering staff before any security were even aware of the breach.

December 2002

Bomb Making Device Discovered in Secure Area

A bomb making device was discovered on the domestic ramp. The response from a TWU member forced security to act, and only then were planes evacuated. The company failed for two weeks to provide any training or debriefs. In response TWU members forced the company into the initial HOT training (is it Hidden, is it Obvious, and is it Typical of objects moving through the area).

19&20 March 2003

Breach of Safety Procedures Involving Unknown Chemicals

Unidentified chemical vials were left unattended in a public area for 14 hours. The fire brigade emergency response unit responded and called for Qantas to cut off public access to surrounding bays until the substances were properly removed and identified. An argument followed between Qantas Management and Qantas Security whereby Qantas Management ordered Qantas Security to ensure that the bays were not closed to the public and that business could continue as per normal. Despite the efforts of emergency services the area remained open to the public.

December 2003

Explosives Found on Package

Freight at Australian Air Express tested positive to explosives. A forklift operator was instructed to move the package to a safer place by the company prior to the bomb squad arriving. When the bomb squad arrived they were outraged that the package had been touched prior to their arrival.

July 2004

Unfettered Access to Secure Area

A Single male got to the point of boarding a Qantas flight to The United States with no passport and no ticket.

July 2004

Untrained Staff Investigating Suspected Bomb

On flight 840 United Airlines a "BOB" message was found in the plane. Passengers were evacuated from the plane and emergency services were present. Prior to any security personnel entering the plane, Labour hire baggage handlers were first sent in to clear the plane.

12 July 2005

Unfettered Access to Secure Area

A member of the public gained access to the tarmac by walking through an unarmed security door at the international terminal and sat on a piece of machinery on the tarmac until being located.

14 July 2005

Unfettered Access to Secure Area

An individual gained access to the International tarmac through perimeter fence, wearing a backpack. The person walked 300 metres and came within a few metres of airplanes before being challenged by a TWU ramp worker. Security only apprehended the individual after the TWU ramp worker alerts them to the breach.

7 April 2006

Convicted Drug Dealer Found To Be Working in Secure Area

A Qantas employee with access to all areas of the airport for more than two years was found to be a convicted heroin dealer in Western Australia. The employee was mistakenly issued an ASIC pass due to inadequate background security checks by Australian Customs.

1 June 2006

Breach of Safety Procedures Involving Dangerous Disease

NSW Health Department confirm a Qantas employee from the airline's cabin cleaning area had contracted Legionnaires Disease, but no other staff had been notified.

17 August 2006

Breach in Secure Barrier

It was found that a flimsy piece of wood wedged in a sliding door was the only barrier to the tarmac where passenger jets are loaded. When the Union raised the alarm there was a complete failure to take responsibility for this security breach by any party. It is still not yet known how this situation arose.

21 August 2006

Untrained Staff Investigating Suspected Bomb

Six baggage handlers were sent into a Pacific Blue plane which was suspected of containing a bomb. They feared they would be sacked by management if they refused the task.

While passengers were evacuated and expert bomb teams moved out of the blast radius and the untrained men boarded the plane to line all the baggage up on the tarmac for inspection by sniffer dogs.

29 January 2007

Breach of Secure Area

The TWU called on the Federal Government and the Minister for Transport to urgently investigate security at Sydney Airport after a man breached a security screening and could not be found.

18 June 2007

Liberal Senator Carries Knife on Flight

In an effort to raise awareness of the poor security measures in place at Australian airports a Liberal Party Senator carried a knife through security at Canberra Airport. As expected the metal detectors failed to pick up on the prohibited object.

3 July 2007

Prohibited Weapons Carried on Flight

An Australian Serviceman flew on a Qantas flight from Perth to Sydney airport with prohibited weapons in this luggage. It was only when he arrived at Sydney and attempted to board a Jet Star flight to Coolangatta that the weapons were discovered. These included a replica revolver, malice and knuckleduster.

July-September 2009

Failure to screen baggage transferring from domestic to international flights

A major airline, its outsourced ramp services contractor and an airport corporation failed to routinely screen baggage being transferred from domestic to international flights.

Attachment C - Statement by Mr. Glen Nightingale

I am a Transport Workers Union (TWU) official and have been for 11 years.

I was the official responsible for Sydney Airport, covering some 4,000 TWU members, for around 7 years till about the start of 2006.

My duties covered baggage and freight handlers, refuellers, airside buses, catering trucks, pilots and cabin cleaners to name a few. To assist my extensive coverage I applied for and received an Aviation Security Identification Card (ASIC) issued by SACL. This allowed me to discuss and interview workers especially airside in Secure areas – this was an essential part of my duties.

Approximately five years ago I and the TWU members with delegates were running ongoing campaigns for identified safety risks at Sydney Domestic and International Airport endeavoring to improve safety and security for all workers and the general travelling public.

It was around this time that I received correspondence from SACL immediately cancelling my ASIC for apparently breaching the security rules. This letter was without any notice, investigation or right of reply. No details of any alleged breaches by me were given to me at the time.

Some months later it was raised with me by a SACL Manager that I was taking photos airside at a particular day and time, which is against the rules. I did not do this and told the authorities so. No evidence was produced by the authorities to back their claims. I was not told who had made this complaint against me and it may well have been anonymous. I was not able to challenge or see any evidence against me. In fact my diary showed that I was in a meeting with the Qantas Airports Manager, re security concerns at the time of alleged breach.

I took nine months and much lobbying to have my ASIC reinstated and my name cleared.

The safety issues that the TWU were campaigning for included the casualisation of labour hire at the airport including security guards working on visitor cards for extended periods without Federal or State Police checks. The TWU was also campaigning about the lack of procedures for screening bags for explosive devices or volatile materials potentially contained inside luggage or airfreight. There was no clear process in place and when baggage handlers were expected to remove suspect bags from planes (United Airlines “BOB” fiasco) or when a passenger/s does a ‘no show’ on a departing flight.

I believe and maintain many of these issues remain unresolved to this day, though I no longer have direct involvement at Sydney Airport.

November 2009