

Expansion and tightening of Aviation Security Identification Card requirements

- 3.1 The new regulatory regime extended the requirement to hold an ASIC in the following ways:

all security controlled airports that have RPT services are now required to comply with the requirements for ASICs. Previously, an ASIC was only required to enter a security restricted area. From 10 March 2005 the new legislation extends this requirement to all people accessing the airside area and landside security zones, and to people checking-in passengers or handling checked baggage.¹

- 3.2 Aviation industry participants were originally scheduled to meet the ASIC requirements by 1 January 2006.² This deadline was subsequently extended until 31 March 2006.³

- 3.3 In addition to the expansion of ASIC requirements under the *Aviation Transport Security Regulations 2005*, on 7 June 2005 the Australian Government announced that it would:

require an immediate review of the backgrounds of all holders of ... ASICs. Every ASIC holder will be reassessed, to

1 DoTaRS, *Submission No. 52*, p. 18.

2 DoTaRS, *Submission No. 52*, p. 19.

3 Shire of Roebourne, *Transcript*, 9 March 2006, p. 11.

make sure they are fit and proper persons to work in airport positions⁴

3.4 In reviewing the backgrounds of current ASIC holders:

the Australian Government decided to remove the grandfathering provisions under the *Aviation Transport Security Regulations 2005* that saw some offences committed prior to 1 December 1998 not considered for the issue of an ASIC.⁵

3.5 On related matters, in its *Report 400* the Committee recommended, in relation to ASICs, that:

- DoTaRS set a performance standard for the return of expired ASICs for each card issuing body, in response to concerns about the high number of expired ASICs that had not been returned; and
- that ASIC holders who have not received security training as part of their normal duties be required to undertake such training.⁶

3.6 The Committee is pleased to note that the proposed *Aviation Transport Security Regulations 2005* include requirements for card issuing bodies to identify mechanisms to retrieve expired ASICs, and that Transport Security Plans must now set out mechanisms to provide general security awareness to operational staff.

3.7 Aviation industry participants raised the four areas of concern regarding the extension of the ASIC system and rechecking of all current holders of the cards:

- delays in the processing time of applications for ASICs;
- use of Visitor Identification Cards as a device for circumventing ASIC requirements;
- issues of fairness to employees who may fail the background checks required to hold an ASIC on the strength of an irrelevant or minor criminal conviction and subsequent industrial disputes that may arise; and
- practicalities and effectiveness of background checking for overseas workers.

4 Deputy Prime Minister, 'Securing and Policing Australia's Major Airports', *Press Release*, 7 June 2005.

5 DoTaRS, *Submission No. 52*, Annexure N, p. 105.

6 JCPAA, *Report 400: Review of Aviation Security in Australia*, June 2004, p. 100.

ASIC application waiting period

3.8 Aviation industry participants claimed periods of unacceptable delay between the lodgement of an ASIC application and the required background checks being brought to completion:

- APAC stated the waiting period was five to six weeks at present and had been as long as eight weeks at one stage.⁷
- the operator of Learmonth Airport, Shire of Exmouth, stated that background checks were completed in around two months;⁸
- Aero-Care stated that for one project some applicants were still waiting for advice 17 weeks after applications had been lodged;⁹ and
- Blue Collar Recruitment stated that the wait could be anywhere up to three months.¹⁰

3.9 An additional source of delay for some small regional airports regarded the physical manufacture of the ASIC by third parties:

- Shire of Derby – West Kimberley stated that it had been waiting for a period of six months for the production of its ASICs at Merimbula Airport;¹¹ and
- Shire of Exmouth stated it had been waiting for up to eight months since applying for ASICs for delivery of the physical cards from Perth International Airport.¹²

3.10 Regional aviation participants and suppliers of part time and casual labour to the aviation industry stated that delays in providing background checks for ASIC holders was particularly detrimental to their operations.

3.11 REX stated that:

One of the issues that we are having at the moment is with our own staff trying to renew expiring ASICs. The delays in

7 APAC, *Transcript*, 24 November 2005, p. 3.

8 Shire of Exmouth, *Transcript*, 7 March 2006, p. 7.

9 Aero-Care, *Transcript*, 27 February 2006, p. 3.

10 Blue Collar Recruitment, *Transcript*, 23 November 2005, p. 101.

11 Shire Derby – West Kimberley, *Transcript*, 8 March 2006, pp. 6-7.

12 Shire of Exmouth, *Transcript*, 7 March 2006, p. 7.

getting that done are quite large because of all the new ASICs being required. We actually had a pilot card run out of date, so we could not use them for a short while because of the time it took to get the ASIC through.¹³

- 3.12 RAAA criticised the period of time taken for conducting background checks in terms of the financial impact of sectors of the aviation industry with tight margins, in particular:

ASIO's vetting performance has been less than impressive and caused substantial business losses while employees and clients wait for clearances.¹⁴

- 3.13 Blue Collar reiterated that the police check took approximately seven days and that the ASIO background check was the cause of most delays.¹⁵

- 3.14 Aero-Care stated that the delay between applying for and issuing of an ASIC varies:

from airport to airport. Having said that, for all airports there is still a lag. For a service which we actually pay for it is fairly poor. We pay a reasonable price for a task that does not take that long, if pushed. We have had airports committing to us that the process would take less than a week. That is what we have been told consistently over the last several years by airport authorities and Australian Federal Police...

it would appear that, once it gets to the point where a person processes it, they spend very little time doing the task. [The delay] appears to be the resources allocated for the criminal history check and the ASIO check, according to the claims that we are getting back.¹⁶

- 3.15 Delays in obtaining background checks were compounded for labour hire organisations by a lack of information on when applicants might be cleared:

the client could say, "I require 30 people," and I might have only 20 people cleared ... I still may not be able to get an

13 REX, *Transcript*, 23 November 2005, p. 88.

14 RAAA, *Submission No. 28*, p. 1.

15 Blue Collar recruitment, *Transcript*, 23 November 2005, p. 107.

16 Aero-Care, *Transcript*, 27 February 2006, p. 4.

answer for two weeks, so I cannot even feed back to the client to meet their requirements.¹⁷

3.16 An additional cost for labour hire companies of delays in processing the background checks of ASIC applications is the number of applicants that 'drop off the books'. Blue Collar Recruitment estimated the drop off rate to approximate 50 percent.¹⁸

3.17 In the event that applicants drop out of the procedure, Blue Collar stated:

They will still obtain the clearance, regardless, as that process is already under way...

and we still have to pay for it, regardless.¹⁹

3.18 The time taken to clear background checks for ASIC applicants was considerably longer than the two week waiting period that APAC considered reasonable.²⁰

3.19 DoTaRS set out some of the reasons for delays in background checking ASIC applicants:

There are a couple of challenges in the background-checking environment. Firstly, if you have led an interesting life and ASIO needs to look at you, that can simply take time. It is a question of how much national resource we are prepared to devote to that ... Australian Federal Police have to work closely with state police. Because we do not have, at a state level, live databases that are constantly updated so that you get a real-time picture of a person's criminal history, that can be a little steam driven.²¹

3.20 DoTaRS also indicated the enormity of the task of re-screening current ASIC holders together with roll out of ASICs for new entrant airports and pilots:

17 Blue Collar Recruitment, *Transcript*, 23 November 2005, p. 102.

18 Blue Collar Recruitment, *Transcript*, 23 November 2005, p. 104.

19 Blue Collar Recruitment, *Transcript*, 23 November 2005, p. 105.

20 APAC, *Transcript*, 24 November 2005, p. 3; Blue Collar Recruitment suggested that a period of three weeks would be a commercially reasonable time in which to obtain an ASIC background check. *Transcript*, 23 November 2005, p. 103.

21 DoTaRS, *Transcript*, 5 December 2005, p. 11.

There are currently 80,000 ASICs in circulation. This number will increase to approximately 120,000...²²

3.21 DoTaRS contrasted the extended waiting period for background checks for ASICs in Australia with the Canadian arrangement where:

The Canadian transport department are the background checking agency. Typically, they can issue a background check in around 48 hours...

At its core, the reason they can do that is they have the Royal Canadian Mounted Police ... although they have a constitution with policing that is a bit like ours, most provinces have defaulted to the RCMP being the police force. You are dealing with one police force and a live criminal-checking system that gives you a screen that is updated electronically all the time. We do not have that...

CrimTrac is really good and it is an effort in the Australian system to move to that. Ultimately there would need to be some investment by state governments to move to something a bit more like the Canadian system.²³

Issuing and vetting authorities

3.22 The vulnerabilities identified in the current ASIC program by the Wheeler review included that:

there is no central list maintained of everyone who holds an ASIC [among 188 ASIC issuing bodies].²⁴

3.23 As a result, the Wheeler review recommended that:

the background checking process required to obtain and hold an [ASIC] be ... centralised...²⁵

3.24 SACL stated:

By having a national database and a central vetting service, it will be clear to all government agencies as to who has a background clearance and therefore has potential access to

22 DoTaRS, *Submission No. 52, Annexure N*, p. 105.

23 DoTaRS, *Transcript*, 5 December 2005, p. 23.

24 Rt Hon Sir John Wheeler, *An Independent Review of Airport Security and Policing for the Government of Australia*, 21 September 2005, p. 45.

25 Rt Hon Sir John Wheeler, *An Independent Review of Airport Security and Policing for the Government of Australia*, 21 September 2005, Recommendation 10.

airports. In the event of intelligence or information coming to hand, government will be able to quickly ascertain, without going to a number of issuing authorities, who has access to airports. So we believe it will be an improvement to security and will help intelligence agencies manage threat issues in the aviation environment...²⁶

- 3.25 SACL also referred to efficiencies of a centralised ASIC database for persons working in the aviation industry:

if a worker ... moves between two companies that are both involved in the airport then potentially they will already be pre-cleared when they move to the other company, and there will not have to be a whole reissue process.²⁷

- 3.26 However some aviation industry participants argued that the centralisation of background checking did not go far enough and called for the centralisation of the issuing of ASICs.

- 3.27 Shire of Roebourne stated that centralisation of background checking for ASICs:

would be a halfway step to a central issuing body. We strongly recommend that the Government look at transitioning straight to a central issuing body, as they have done with pilots with CASA issuing all of their ASICs ... if ASICs are the standard for security checking and background checking and there is no control on where they are issued and who issues them, a pretty big hole is left in the system.²⁸

- 3.28 Qantas supported:

A single centralised service for assessing the suitability of ASIC applicants, while leaving Issuing Bodies to attend to the physical issue of cards ... provided it can meet appropriate standards of timeliness and transparency. The alternative, of leaving the assessment responsibility with Issuing Bodies, is also feasible provided all potentially relevant information from Government databases is made available.²⁹

- 3.29 Virgin Blue stated:
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26 SACL, *Transcript*, 23 November 2005, p. 4.

27 SACL, *Transcript*, 23 November 2005, p. 4.; also Nhulunbuy, *Submission No. 22*, pp. 1-2.

28 Shire of Roebourne, *Transcript*, 9 March 2006, pp. 3-4.

29 Qantas, *Submission No. 61*, p. 24.

we believe that ASICs should be issued by a centralised government agency. Currently, we provide ASICs to our staff. We make the determinations in relation to persons who make applications to us in accordance with the guidelines and our programs ... We believe, for consistency, it would be more appropriate that one central body make determinations.³⁰

3.30 REX stated:

support [for] having a single issuing body, with the proviso that they have sufficient staff and resources to turn over.³¹

3.31 Some aviation industry participants expressed concern that delays in the current ASIC program would only be intensified if the Commonwealth became the ASIC issuing authority.

3.32 Thus, Blue Collar Recruitment expressed concern that, based on current experience, a central ASIC issuing authority could not cope with demand.³²

3.33 AAL expressed concern that the function of an ASIC as a background clearance be kept to the fore:

I do not know how [a centralised ASIC issuing authority] would work ... because that is a huge thing to try to bite off. Just getting a police record check takes a long time...

I think there is an argument for reducing the number [of issuing authorities], certainly. But it is a bit unwieldily to try to get one single nationwide issuing body...

over the years the ASIC card has been confused with identifying that you have had a background check and with giving you access control. If you separate the two, there is probably a way forward for looking at having somebody coordinating all the background checking. But, if you are going to use that card then as access control, that needs to be controlled locally or to be localised. So the background checking of people can rest perhaps with a central body. But then, if you are going to tie access control to that card, it has to be localised.³³

30 Virgin Blue, *Transcript*, 24 August 2005, p. 4.

31 REX, *Transcript*, 23 November 2005, p. 88.

32 Blue Collar Recruitment, *Transcript*, 23 November 2005, p. 101.

33 AAL, *Transcript*, 21 September 2005, p. 22.

3.34 However,

we are supporting a single agency for the assessment of the background and a consistency in terms of its application ... What is happening now is that the backgrounds are being provided to the organisations which then make that assessment, and therefore there is a possibility of inconsistency in its application...

The physical issuing of it I do not think is the major concern. If there is a concern, it is about the assessment of it.³⁴

3.35 DoTaRS updated the Committee on the Government's response to the Wheeler recommendation:

We work very closely with the three principal agencies – the Department of Immigration, the Australian Federal Police and ASIO – to try and ensure that the flow of ASICs to industry happens quickly. We are certainly working at policy level around the possibility of a centralised vetting agency, which we believe would significantly improve responsiveness in the system.³⁵

3.36 In the May 2006 budget the Commonwealth Government announced:

The centralisation of the [ASIC] assessment process in [DoTaRS] in the lead up to the centralised vetting agency Auscheck on 1 July 2007 in the Attorney-General's Department.³⁶

Committee comment

3.37 The haste with which the upgraded ASIC requirements were implemented has been responsible for high levels of frustration across the aviation industry and imposed significant hardship upon some smaller industry participants such as aviation labour hire companies.

3.38 The initial under-resourcing of the upgraded ASIC roll out is evident in unreasonably long delays between the lodgement of ASIC applications and the completion of background checks.

34 SACL, *Transcript*, 21 July 2005, pp. 6-9.

35 DoTaRS, *Transcript*, 5 December 2005, p. 11.

36 Minister for Transport and Regional Services, '\$4.7 Million Boost for Security Cards in Aviation and Maritime Industries', *Budget Media Release*, 9 May 2006.

- 3.39 The Committee acknowledges that delays in clearing background checks for ASICs were due to the expansion and deepening of the ASIC program and magnified by the upgraded Maritime Security Identification Card (MSIC) requirements and the Commonwealth Games in Melbourne.
- 3.40 Nevertheless the delays in processing the background checks for ASIC applicants created difficulties for the aviation industry.
- 3.41 The Committee has publicly supported Recommendation 10 of the Wheeler Review that the background checking process for ASICs be centralised and coordinated with MSICs in the Attorney-General's Department (AGD).
- 3.42 In response to Wheeler's recommendation, the Australian Government announced:
- \$2.9 million for the establishment of a regime to audit the activities of ASIC and MSIC issuing bodies...
- A further \$1.8 million [was] provided to enable [DoTaRS] to undertake the assessment of ASIC and MSIC applicants' criminal history certificates for the period 1 July 2006 to 30 June 2007 when responsibility will move to the newly-created AusCheck in the Attorney-General's Department.³⁷
- 3.43 The Committee takes this opportunity to reiterate Recommendation 4 of its interim *Report 406* that all employees, contractors and subcontractors who are required to work in secure airside areas, whether on an infrequent basis or not, be required to obtain an ASIC before commencing their employment.
- 3.44 The centralisation of background checking and issuing of clearances has the following advantages:
- introduction of uniform conditions under which an ASIC or MSIC applicant is granted or denied the card;
 - efficiencies allowing ASIC transferability for a cardholder moving between employers across the aviation industry;
 - relieving smaller aviation industry participants that do not necessarily have the resources to make determinations on issuing clearances.

37 Minister for Transport and Regional Services, '\$4.7 Million Boost for Security Cards in Aviation and Maritime Industries', *Budget Media Release*, 9 May 2006.

Recommendation 4

- 3.45 **As well as being responsible for the assessment of criminal and security background checks for applicants of Aviation Security Identification Cards (ASICs), that the new Australian Background Checking Service, AusCheck, be charged with responsibility for the issue of these cards, and that appropriate standards for the issue of ASICs be determined in consultation with industry.**
- 3.46 The Committee notes that significant differences in required levels of security across airports for which ASICs are required. For instance, there is a far higher level of security required at a CTFR airport than at an airport with screened jet services but no CTFR function and an airport with turbo prop Regular Public Transport services.

Recommendation 5

- 3.47 **In determining to issue an applicant with an Aviation Security Identification Card, AusCheck should take into account the specific level of risk that exists at the airport for which the application has been made.**

Recommendation 6

- 3.48 **That AusCheck establish detailed and formal mechanisms for monitoring the return of Aviation Security Identification Cards on the expiry or termination of a cardholder's work in aviation related industries and provide an annual report to the Parliament on the number of non returned identity cards.**

Recommendation 7

- 3.49 **That AusCheck be required to monitor and report annually to the Attorney-General on the adequacy of the Australian Security Intelligence Organisation, Australian Federal Police and Department of Immigration and Multicultural Affairs in completing background checks for Aviation Security Identification Card applications.**

Recommendation 8

- 3.50 **Any decision by AusCheck should be subject to appeal through the Administrative Appeals Tribunal.**
- 3.51 It should be noted that the above recommendations refer to ASICs as certifying that a successful applicant has passed designated background clearances. Industry participants should maintain control of determining and granting access to areas of ports necessary for card holders to work.
- 3.52 The Committee believes that AusCheck should be authorised to pass on all information arising from background checks that is currently made available to aviation industry participants to facilitate their determination of appropriate levels of access for the ASIC holder.
- 3.53 The Committee notes that the effectiveness and usefulness of Auscheck depends on state and territory law enforcement bodies providing timely advice of criminal convictions. The Committee is concerned that there remains no live national database of criminal convictions. This means that there is a potential for holders of ASICs to acquire convictions that would, if known, be cause for denying their application but remain holding a valid card.³⁸ This highlights the importance of all law enforcement bodies providing timely information on convictions, in order to maintain the integrity of the Auscheck process.

38 In December 2002 the maximum validity of ASICs was reduced from five years to two years. DoTaRS, *Submission No. 52, Annexure N*, p. 105. The Committee remains concerned that ASIC holders who acquire a criminal conviction may not be detected by background checking systems until they apply for a new ASIC on expiry of the current card.

- 3.54 The Committee encourages the Commonwealth Attorney-General to progress the development of a live national database of criminal convictions with his state and territory colleagues with the aim of providing AusCheck with automatic notification of convictions made against holders of Aviation Security Identification Card.**

Visitor Identification Cards

- 3.55 Visitor Identification Cards (VICs):

may be issued to persons needing to enter the secure area of a security controlled airport ... A person wearing a VIC in a secure area must be supervised by a holder of a valid ASIC. VICs may not be issued for longer than 1 month or if a longer period is permitted by the issuing body's ASIC program, no longer than 3 months...

VIC holders are required to be under the control of an ASIC holder from the time the VIC is granted to the time it is handed back.³⁹

- 3.56 Qantas outlined that in its operations:

Visitor Passes may not be used on an ongoing basis for staff or contractors with a continuing role in a restricted area. Visitor Passes may not be issued to the same person for more than ten consecutive days without the approval of Group Security, and an individual may not be issued with Visitor Passes for more than 30 days in any year.⁴⁰

- 3.57 ALAEA expressed concern at:

contract companies [that] appear under the umbrella of "ground handling services", which includes services such as baggage handling and "meet, greet and depart" services ... employ casual contract labour ... [which] is frequently employed by more than one employer because of low hours of work and low wages. Due to the nature of contracting, job security does not become a positive motivator for loyalty to

39 DoTaRS, *Submission No. 52, Annexure N*, pp. 107-8.

40 Qantas, *Submission No. 61*, p. 23.

the company nor an understanding of or respect for the culture of safety vital to the airline industry.⁴¹

3.58 Aero-Care stated:

Where the work is of a permanent nature, we have a predominantly permanent base of employment in the order of 90 percent. In locations where we have a small volume of work which does not fulfil a full-time role, there is a high percentage of casuals, often in the order of 50 percent. Overall, the employment is predominantly of a permanent nature at something in the order of 75 percent...

The average length of employment at this point is approximately two years.⁴²

3.59 Aero-Care attributed the use of VICs to delays in processing ASIC applications:

One of the first processes that we have when we employ a person is that we require them to complete an ASIC application. That is submitted prior to their commencement of employment. Having said that, we are unable to wait the period of time for those applications to be processed through the various checks before we commence their employment ... For instance, we recently took on a contract with Singapore Airlines. We were given just under 60 days notice to start that contract.

It commenced on 1 November and today [27 February] we are still waiting for some of those peoples' ASIC applications to be returned. It is true that these people are working with visitors cards, temporary passes, but they are required to be strictly supervised in all aspects of the work that they do ... an ASIC holder escorts them wherever they perform work on the airport. That is the case for all of our operations.⁴³

3.60 In relation to the Singapore Airlines contract:

When we started the Singapore Airlines contract I believe only a handful of ASICs came through. We employed approximately 70 people at that stage. By the time the

41 ALAEA, *Submission No. 77*, p. 16.

42 Aero-Care, *Transcript*, 27 February 2006, p. 2.

43 Aero-Care, *Transcript*, 27 February 2006, p. 3.

contract started, there were only a couple of ASICs that had been processed by the system.⁴⁴

- 3.61 Blue Collar Recruitment stated that there were about 890 staff at various airports of which approximately 600 were casual and the rest permanent part time. All part timer staff had ASICs and the rate of casuals with ASICs was:

Probably about 50 percent. The rest are at the catering depots, which do not go anywhere near the airport.⁴⁵

- 3.62 Blue Collar stated that all staff requiring ASICs were cleared prior to commencing work in restricted areas.⁴⁶

- 3.63 SACL stated that it issued 1,200 visitor passes per month⁴⁷ and strongly rejected a media report that 20 percent of security screeners at Sydney International Airport were avoiding ASIC requirements through the use of day passes.⁴⁸

- 3.64 SACL stated:

We have a program for the issuing of ASICs that is approved by the Department, and it allows for day passes and for what we call extended visitor passes. Our program allows for a period of up to three months. A lot of new employees obtain an extended visitor card to work, under supervision, until such time as their clearance comes through and we can issue them with a permanent pass. There is a lot of short-term work, whether it be fixing a photocopier or doing short deliveries airside that require the provision of short-term visitor passes as well as extended visitor passes.⁴⁹

- 3.65 Virgin Blue stated that it would support the elimination of VICs:

As long as the Government, through the Australian Federal Police, ASIO, Immigration and the Department of Transport, can turn around those checks in 24 hours, we would be more than willing to assist in that...

44 Aero-Care, Transcript, 27 February 2006, p. 9.

45 Blue Collar Recruitment, *Transcript*, 23 November 2005, p. 100.

46 Blue Collar Recruitment, *Transcript*, 23 November 2005, p. 101.

47 SACL, *Transcript*, 23 November 2005, p. 21.

48 SACL, *Transcript*, 21 July 2005, p. 7. 'Security Sidestepped by Airport Day Passes', *Australian*, 2 June 2005, p. 5.

49 SACL, *Transcript*, 23 November 2005, pp. 5-6.

It is very hard to get people who have the [ASIC] approval from day one. I know that is not just Virgin Blue; it is everyone throughout the industry. It would be preferable, and we have advised them it would be preferable, if they could do their pre-checks prior to the person commencing employment but, due to supply and demand, on occasions that is not possible.⁵⁰

3.66 DoTaRS stated that it:

is working with external agencies involved in the background checking for ASICs (AFP, ASIO and DIMIA) to determine if background checking processes can be expedited with a view to applying it to VICs. Preliminary advice indicates that significant system development would need to take place within the external agencies and also in state jurisdictions...⁵¹

Committee comment

3.67 The Committee notes that supervision is required of VIC holders in secure areas by holders of ASICs.

3.68 Notwithstanding this, the Committee considers it necessary to restrict the number of VICs to those required for temporary purposes. Furthermore, the Committee reiterates Recommendation 3 of *Report 406* requiring all VICs to carry photographic identification of the cardholder.

3.69 Extended waiting periods for the processing of ASIC applications has meant the VICs have become an integral part of the system rather than a device to accommodate exceptional circumstances.

3.70 Successfully overcoming the delays between application for and issuing of ASICs that are unworkable for industry will reduce demand for VICs and allow more stringent limitations to be imposed on their use.

50 Virgin Blue, *Transcript*, 24 August 2006, p. 31.

51 DoTaRS, *Submission No. 52*, Annexure N, p. 108.

Recommendation 9

- 3.71 **Taking into account the expected reduction in waiting periods for the issue of Aviation Security Identification Cards, the Committee reiterates Recommendations 3 and 4 of its *Report 406* that the Department of Transport and Regional Services:**
- **require Visitor Identification Cards to carry photographic identification of the cardholder; and**
 - **tighten the conditions under which Visitor Identification Cards are issued to ensure they are provided for genuinely temporary purposes.**

Fit and proper persons and industrial fairness

3.72 Some labour organisations expressed concern that the requirement to re-screen personnel requiring ASICs may result in termination of employment for acts that were not relevant to the current security threat of the applicant.

3.73 ALAEA referred to a case:

where offences and convictions from the past are considered relevant [to obtaining an ASIC] – in some cases up to 15-20 years previously. The individual concerned on past security screening still holds an ASIC and has exemplary employment and community history but on current proposals in regard to tightening of ASIC screening would suffer a grave injustice should his ASIC be revoked on the basis of having a “criminal” record.⁵²

3.74 The Transport Workers Union of New South Wales (TWU) referred to concerns raised by members at Sydney International Airport:

In light of what the Federal Government is saying that it would like to reissue the cards, they do ask, “If I had a pub

52 ALAEA, *Submission No. 74*, p. 9.

room brawl 20 years ago, is that going to count against me? It was dealt with at the time, and I had no conviction." We are not clear, so we cannot answer that, and we would like to get some further information.⁵³

3.75 Qantas outlined the types of consideration taken account of when assessing whether or not to issue an ASIC:

- The nature of offences recorded, with particular reference to drug use (particularly hard drugs), violence or dishonesty;
- The number and frequency of offences recorded;
- The currency of the offences i.e. number of years since the last offence was committed;
- The age of the offender at the time of the offence;
- Whether the applicant admitted to the convictions in his/her application form; and
- The nature of the duties in the job for which the applicant is being considered.⁵⁴

3.76 Qantas welcomed the extension of the background checks and stated:

The criminal element of the check should involve an assessment process that is not dependent solely on recorded convictions.⁵⁵

3.77 SACL argued that disallowance of an ASIC using the upgraded results of background checks was a positive development:

one of the areas of some contention was the spent convictions issue. Under the Regulations as they previously stood, a spent conviction would mean potentially that somebody with a serious criminal offence which had occurred 20 years ago or whatever was required under the Regulation to be discounted. The revised Regulations allow us to take that into account now.⁵⁶

3.78 Some aviation industry participants expressed concern that the new screening requirements could result in unfair dismissal claims against employers.

53 TWU, *Transcript*, 21 July 2005, p. 78.

54 Qantas, *Submission No. 61*, p. 23.

55 Qantas, *Transcript*, 23 November 2005, p. 30.

56 SACL, *Transcript*, 21 July, p. 5.

- 3.79 Board of Airline Representatives of Australia (BARA) raised the possibility of unfair dismissal claims arising from failed background checks required of ASIC holders:

In the event that the new background checks result in an employee, previously in possession of an ASIC, being denied an ASIC and, therefore, continued employment, aviation sector employers will not be prepared to meet any expenses resulting from possible unfair dismissal claims.⁵⁷

- 3.80 Shire of Roebourne expressed concern at the potential for costly industrial action for small regional aviation operations in the event that a current employee was not granted an ASIC under the upgraded requirements.⁵⁸

- 3.81 DoTaRS acknowledged that:

the [ASIC] regime is difficult for smaller airports to implement, particularly in relation to the requirement to assess adverse results of the AFP criminal record check against complicated list of offences.⁵⁹

- 3.82 The operator of Adelaide International and Parafield Airports, Adelaide Airport Limited (AAL), stated that the requirement that all ASIC holders be re-screened discovered only:

a small percentage of people who do have a criminal history. There was nothing in those criminal histories that caused us any concern. They were reported to the Department of Transport for their information only.⁶⁰

- 3.83 SACL stated that of the approximately 9,500 ASICs issued, a few hundred were identified as being of interest and about four were not re-issued following adverse findings from background checks.⁶¹ The reasons given for not re-issuing ASICs were 'a longer history of criminal activity or relevant criminal activity.'⁶²
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57 BARA, *Submission No. 57*, p. 4.

58 Shire of Roebourne, *Submission No. 31*, p. 2.

59 DoTaRS, *Submission No. 52*, Annexure N, p. 107.

60 AAL, *Transcript*, 21 September 2005, p. 5. AAL subsequently stated that over the last two years five applicants had not been recommended for the reissuing of an ASIC: 'For acts that were considered to be a threat to aviation or for a repetitive criminal history, we have rejected them and asked for supporting documentation.' AAL, *Transcript*, 21 September 2005, p. 16.

61 SACL, *Transcript*, 21 July 2005, pp. 3-4.

62 SACL, *Transcript*, 21 July 2005, p. 4.

3.84 Furthermore,

With the four that we have rejected in the past couple of months, we have probably gone beyond the current regulation in that assessment, but we think it was necessary.⁶³

3.85 Virgin Blue stated:

We currently have ... four personnel within our organisation of whom we have done a review and who could be considered potentially inappropriate. With respect to that, we will put that determination to the Secretary of the Department of Transport or their delegate in relation to the criminal history of those personnel.⁶⁴

3.86 Qantas stated that it:

has requested background checks on approximately 43,000 names since November 2003. Renewals for existing employees comprised about 23,000 of the checks, and the remaining 20,000 were for applicants for Qantas employment and contractors. Of the incumbents, eight failed to meet the minimum standard for an ASIC but were 'grandfathered' under the provisions of Regulation 6.28 (three cases) or were the subject of approval granted by the Secretary of DOTARS under the provisions of Regulation 6.29 (five cases). Of the 20,000 checks for applicants for employment and contractors, 41 (or 0.21 percent) were rejected on the basis of unsatisfactory backgrounds.

Criminal history checks for applicants for employment and contractors typically yield about 7 percent with some form of disclosable record. The most common offences are driving and/or alcohol-related. Many offences are minor and commonly relate to adolescent or young adult behaviour.⁶⁵

3.87 ALAEA suggested that in the event that an ASIC is not granted or revoked:

There should be a process ... whereby an Australian citizen ... can have recourse to an appeal tribunal or court of

63 SACL, *Transcript*, 21 July 2005, p. 11.

64 Virgin Blue, *Transcript*, 24 August 2005, p. 20.

65 Qantas, *Submission No. 61*, p. 22.

competent jurisdiction to have their particular circumstances taken into account.⁶⁶

Committee comment

- 3.88 The Committee supports the recent extension of criminal background checks to include consideration of circumstances beyond recorded convictions such as spent convictions.
- 3.89 Concerns raised by industry participants in relation to the increased scope of the fit and proper person test are addressed in the Committee's recommendation to centralise the clearance for issuing of ASICs.
- 3.90 As the authority responsible for issuing the clearance, an agency of the Commonwealth Government would also clearly be responsible for the decision not to grant a clearance for the issue of an ASIC, thus removing the burden from employer or contractor organisations. Furthermore, the Committee has recommended that determinations be subject to the Administrative Appeals Tribunal.

Background checking of international personnel

- 3.91 A further difficulty confronting the clearing of personnel involved in the aviation industry in Australia was presented by some participants.
- 3.92 Qantas referred to difficulties in obtaining:
background checking for its overseas-hired staff. In these cases the Australian ASIC check may be meaningless because it only searches Australian law enforcement records. The difficulty in obtaining police checks in some countries, and the value of the resulting data, are factors which must be considered in this process.⁶⁷
- 3.93 Qantas stated that currently:
We have sought the assistance of private contractors to undertake a background inquiry for us, for a fee...

66 ALAEA, *Submission No. 77*, p. 9.

67 Qantas, *Submission No. 61*, p. 23.

It depends on the country. Some countries will provide them with a police certificate for a fee, so we can seek a police check. But a more in-depth check than that is far more difficult, so we are employing a private organisation to try and do a background check on those staff for us. It is with great difficulty that we are doing that at the moment.⁶⁸

3.94 ALAEA concurred stating:

The mobility of [Aircraft Maintenance Engineers and Licensed Aircraft Maintenance Engineers whose country of origin is not Australian] presents additional problems associated with an appropriate security check for ASIC approval.⁶⁹

Committee comment

3.95 The Committee accepts the difficulties and uncertainties in obtaining background checks for staff of aviation industry participants hired overseas and, indeed, any person including Australian citizens who have spent periods of time in countries where criminal checks may not deliver a degree of confidence equitable with those conducted on persons who have resided in Australia.

3.96 The Committee urges the Attorney-General's Department to consider, concerns about the limited confidence in background checks for aviation industry personnel who have spent periods of time in jurisdictions where background checking processes may be considered unreliable with a view to putting in place arrangements and requirements that address these concerns.

Regional aviation industry participants

3.97 The extension and upgrading of the ASIC program caused particular concern for some smaller regional aviation industry participants because of the establishment and maintenance costs for operation with relatively marginal financial resources.

68 Qantas, *Transcript*, 23 November 2005, p. 42.

69 ALAEA, *Submission No. 77*, p. 9.

Cost imposts

- 3.98 Shire of Roebourne estimated the on-going costs of running ASIC programs:

The cost ... is approximately \$200 per person to produce and supply an ASIC. Estimates are that up to 100 cards will be required in the initial distribution together with the renewals for existing staff...

The more significant cost ... is ongoing adherence ... In order to maintain the integrity of the system we will require an additional staff member to co-ordinate the ASIC issuing process and the operation of visitor cards ... The cost of this service 24 hours, 7 days per week is estimated at \$60,000 per annum.⁷⁰

- 3.99 Albury City, with 187,000 annual passenger movements to the year ending June 2005 forecast:

The implementation of ASIC cards ... is likely to require a further increase in staffing levels to firstly administer the process and secondly to ensure staff are available on site 24 hours per day to deal with visitors. It is considered that this would result in an increase in airfares of between \$1 and \$2 per ticket.⁷¹

- 3.100 Shire of Roebourne expressed concern at the possibility of an additional cost impost in providing volunteer fire fighters and emergency crew who may require airside access with ASICs:

Another issue ... relates to ASICs for volunteer ambulance drivers who meet the [Royal Flying Doctor Service] RFDS aircraft. In theory, they should have an ASIC card to go airside or they need to be under the control of the pilot. That works fine, unless the pilot is still in the air and the ambulance has already driven out on to the apron. What is the reality of a security threat of a patient in an ambulance with two volunteer ambulance drivers? There is none. There is no security issue with that. They are not background checked. Unless they are there when there is a RPT jet on the ground, it is not really an issue but it creates a problem. We

70 Shire of Roebourne, *Submission No. 31*, pp. 1-2.

71 Albury City, *Submission No. 62*, p. 4.

have 40 volunteers in our ambulance service and any one of those 40 can drive an ambulance on any given night.⁷²

3.101 DoTaRS stated:

rescue or fire service officers responding to an emergency ... can pass through a screening point without being screened.⁷³

ASICs, pilot's licenses and general aviation

3.102 Early in the reopened inquiry, general aviation industry participants raised concerns that the extension of ASIC requirements to all airside areas of security regulated airports would mean that they would be subject to two security checks – one for their pilot's licence and one for tarmac access.⁷⁴

3.103 Professor Jason Middleton of the Aviation School of University of New South Wales stated:

It turns out that to obtain one of the new CASA photo licences, which will be required by 1 January next year, a security check is required. Exactly the nature of that I do not know, but certainly it is a police check and an ASIO check, or I am advised that that is the case. That allows a person to fly an aircraft throughout Australian air space, to land, to taxi at any airport in Australia, but it does not necessarily enable them to walk on the ground at all. In fact, there is no facility for that photo licence to allow someone to step out of the aircraft and walk on the ground. Instead, an ASIC is required. That means that the way the regulations now sit, two forms of ID are required for most or for all general aviation pilots. In a general aviation context, there are 180 airports now identified as being security controlled, that is it is not just Sydney, Melbourne and Brisbane and so on. Most of the regional airports where regular passenger transport services operate are also airports where flight training and general aviation operates. Therefore, our students are all going to need an ASIC card to go in and out of Port Macquarie, Wagga, Dubbo

72 Shire of Roebourne, *Transcript*, 9 March 2006, p. 16.

73 DoTaRS, *Submission No. 52*, p. 26

74 Mr S. Hitchen, *Submission No. 14*, p. 1; Mr C. McGrath, *Submission No. 15*, p. 1; Mr A. Hill, *Submission No. 36*, p. 1; Prof J Middleton, *Submission No. 38*, p. 1; Mr M. Jones, *Submission No. 55*, p. 1.

and Canberra and so on – all places they would expect to go as part of their cross-country training.⁷⁵

3.104 Professor Middleton summed up:

The fact that you can fly around in an aeroplane but not be able to walk around on the ground for security purposes seems rather odd, at least in the general aviation sector.⁷⁶

3.105 Albury City stated:

The issuing of ASIC cards for the RPT apron area only and for ground handling staff rather than all persons in the GA areas is more manageable and appropriate for regional operations.⁷⁷

3.106 DoTaRS stated that:

All pilots received a mail-out, including a message from the Minister, in October indicating that now pilots can apply for both their flight crew licence and ASIC at the same time – one form, one application fee.⁷⁸

Committee comment

3.107 In relation to concerns that emergency volunteers may be required to obtain ASICs the Committee is reassured that such personnel do not require screening in emergency situations and further observes that Aviation Transport Security Regulation 3.18(b) states:

Nothing in this Division requires or authorises an aviation industry participant to prevent any of the following having access to any part of the airside area or airside security zone of the airport:

...

(b) ambulance, rescue or fire service officers who are responding to an emergency.

3.108 The Committee supports making ASICs more accessible to general aviation pilots through authorising CASA to issue ASICs and the

75 Prof J Middleton, *Transcript*, 21 July 2005, pp. 56-7.

76 Prof J Middleton, *Transcript*, 21 July 2005, pp. 58.

77 Albury City, *Submission No. 62*, p. 3; also Mr B. Hannan, *Submission No 2*, p. 1

78 DoTaRS, *Transcript*, 5 December 2004, p. 12.

incorporation on application forms for the general pilot's licence of
ASIC application