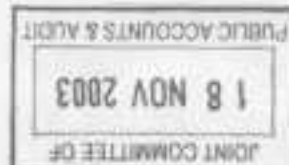




Australian Government
Department of Transport and Regional Services



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Dr John Carter
 Secretary
 Joint Committee on Public Accounts and Audit
 Parliament House
 CANBERRA ACT 2601

Subject: **JCPAA Aviation Security Inquiry**

Dear Dr Carter

I am writing to provide the Committee with detail on the current status of the Aviation Transport Security Bill 2003 (the Bill) and the associated Aviation Transport Security Regulations (the Regulations). These were canvassed in paragraphs 19 and 20 of the Department of Transport and Regional Service's submission to the Committee of 27 August 2003.

The Aviation Transport Security Bill is now scheduled for debate in the House of Representatives in the week of 1 December 2003. While the Bill provides a robust framework for aviation security in Australia, the government is proposing to make a number of amendments to address emerging issues.

Two of the potential amendments would introduce new powers into the Bill. The first, the *control directions* amendment, would introduce a power to control the movements of an aircraft on the ground (*compliance control directions*), or an aircraft in flight following an aviation security incident (*incident control directions*). The proposed *incident control directions* are an extraordinary power, and would only be used in response to specific, credible threat intelligence. While Airservices Australia already has the power to direct aircraft under their legislation, there is a lack of clarity over how this power can be exercised in the occurrence of a security incident. The *compliance control directions* would do no more than reflect existing powers under the *Air Navigation Regulations 1947*.

The second substantive change, an amendment to the *powers of officials*, would empower an airport screening officer to request a person subject to screening to undergo a limited frisk search. It is proposed that a penalty of 50 penalty units apply to a screening officer who requires a person to undergo a frisk search, or conducts a frisk search without a person's consent, or conducts a frisk search to an extent greater than necessary. The introduction of limited frisk powers for screening officers will serve to codify existing common law powers, and provides greater transparency for screening officers and the travelling public.

A series of minor amendments are also being considered. These amendments include clarification of some definitions in light of stakeholder feedback, including clarification that the term *unlawful interference with aviation* does not include industrial dissent, and simplification of the information gathering provisions of the Bill, aligning them with similar provisions in the Maritime Transport Security Bill

I note your Committee's recent concerns about the demerit points system. The Bill provides that regulations may be made to support such a system. The demerit point system was introduced in response to Australian National Audit Office (ANAO) recommendations. A demerit point system defers the imposition of serious punitive measures. A clear warning system is set up so that industry and the regulator have an ongoing 'health-check' on the delivery of security outcomes, prior to resorting to punitive enforcement measures.

While the regulations required to support a demerit points scheme have yet to be drafted, the authority for a demerit points scheme remains in the Bill. This legislation package initiates significant reform to Australia's aviation security arrangements, and the focus over the next 12 months will be getting everything in place. It was not felt that it was useful to seek to apply a demerit points system while industry participants are still working through complex implementation issues. It is envisaged that a period of 12 months will allow any such implementation difficulties to be resolved.

Finalisation of the Bill itself is a departmental priority together with the preparation of the Regulations to be made under the new Bill. The Senate Rural and Regional Affairs and Transport Committee report on the draft Regulations is set to be handed down on the 27th November, and this should guide the finalisation of the package. The draft received by your Committee is preliminary in nature, and since the time it was drafted, a number of important policy changes have been made in relation to the weapons and prohibited items lists, the Aviation Security Identity Cards (ASICs) component, and the requirements for carriage of Persons in Custody (PIC).

In terms of the weapons and prohibited items lists, the Regulations take an outcomes based approach, describing rather than trying to exhaustively list them. This approach allows us to prohibit a broader range of items from carriage in the aircraft cabin, and in certain security sensitive areas at an airport, and goes to the heart of why such items are prohibited. Industry consultation has prompted a further review of the types of weapons and prohibited items identified under the Regulations. Under a revised draft, it is proposed that items such as compact disks, matches and lighters be removed from the listed examples, and exemptions given for the carriage of safety razors, perfume and alcohol.

In terms of ASICs, a number of additional changes are required to facilitate the correct implementation of Government access control decisions of December 2002. While the existing *Air Navigation Regulations 1947* have already been amended to commence the national ASIC reissue, additional changes to the draft Regulations will ensure that changes to the ASIC system can be reflected under the revised areas and zones requirements. Moreover, under the Regulations, the ASIC scheme will be expanded to apply to a greater number of persons with access to critical facilities at Australia's security controlled airports.

A meeting between representatives of the Department and senior members of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) has been scheduled for 19 November 2003. It is anticipated that this meeting will enable us to finalise our position on the PIC regulations, ensuring a balance between the airline operators' right to refuse carriage of any person at their absolute discretion, and DIMIA's migration responsibilities.

A revised draft of the Regulations, incorporating these changes, will be forwarded on to the committee as soon as it is received from the Office of Legislative Drafting. If you have any further queries relating to the proposed Government Amendment, or any aspect of the legislative reform process, please contact me on (02) 6274 6040. The Department welcomes the opportunity to provide input into this important process.

Yours sincerely,



Fiona Lynch
Director
Policy and Legislation Reform
14 November 2003