

Australian National
Audit Office

12 October 2003

Dr John Carter
Sectional Committee Secretary
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA ACT 2600



Dear Dr Carter

On 4 September 2003, the Chair of the Joint Committee of Public Accounts and Audit (JCPAA) asked the Australian National Audit Office (ANAO) to consider the extent to which the new aviation security bill addresses the concerns of the 1998 and 2003 audit recommendations.

The ANAO has now considered the Aviation Transport Security Bill 2003 (the Bill). We have also examined the draft Aviation Transport Security Regulations 2003 (the draft Regulations) dated 21 August 2003, although these are clearly not finalised and may change materially. The attached comments are based on our interpretation of the provisions of the Bill and draft regulations and are only made in the context of our previous audit work and recommendations. The ANAO did not seek legal advice in formulating its comments.

The key areas of concern underpinning the ANAO recommendations from both the 1998 and 2003 audits can be summarised as the need for DOTARS to show greater leadership to the aviation industry by holding properly to account those responsible for security breaches. This involves delving into the root cause of repeat breaches, targeting monitoring to the greatest areas of risk and prudently using the enforcement powers to encourage compliance. Security relies on everyone doing his or her part, and without strong leadership from the regulator it is difficult for a robust security culture to be instilled throughout the aviation industry.

The recommendations were largely structured to assist DOTARS to achieve this by suggesting:

- increased monitoring of the security of international cargo;
- establishment of an auditing approach based on product (outcome) checks supported by an examination of aviation security operators' underlying processes and systems where necessary (systems checks);
- a more strategic approach to the analysis of aviation security 'health' and trends to facilitate the targeting of monitoring as well as to inform the compliance approach;

- introduction of a graded system of enforcement to encourage compliance;
- an increased educative role for DOTARS; and
- the setting of performance measures for industry.

The implementation of these recommendations would cumulatively provide DOTARS with a stronger regulatory role that would help to foster an improved security culture, resulting in improved compliance by the industry with aviation security legislation.

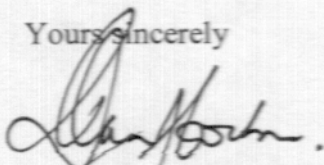
It should be noted the ANAO considers that the existing Aviation Security legislation is sufficient for DOTARS to implement our recommendations appropriately. By way of example, the existing legislation contained penalties that could be applied to security breaches. It is our understanding that one of the reasons for DOTARS' not using these penalties was that the supporting administrative mechanisms had not been developed, rather than any deficiencies in the legislation per se.

The ANAO appreciates that DOTARS has exerted considerable effort into the revised legislation, but the effectiveness of these changes will rely on the clarity and robustness of the supporting procedures and the rigour with which they are applied by the regulator.

The following attachment outlines the ANAO views on the proposed legislation as it relates to the recommendations of the 2003 and 1998 audits.

If you require any further information or wish clarification on any aspects of our response, please contact Mr Mike Lewis, Executive Director, on 6203 7683.

Yours sincerely



Warren J. Cochrane
Group Executive Director
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Overview of the revised legislation

The Aviation Transport Security Bill 2003 (the Bill) appears to cover the substantive matters contained in the old legislation, and outlines the provisions in a better-structured and more organised approach. The Bill clarifies and expands upon the existing provisions. It is evident that DOTARS has designed the legislation to form the basis of a revised approach to aviation security and a number of new definitions are introduced, for example 'security controlled airports' instead of categorised airports, and 'special security directions' as opposed to additional security measures.

DOTARS has introduced a number of measures that could aid in the establishment of a more robust security culture. Importantly, the legislation introduces a new category of interested party – 'aviation industry participant' – that recognises the range of people/organisations that need to be involved in aviation security. The ANAO notes that aviation industry participant includes contractors to airport and aircraft operators, which we found in the 2003 audit to be an important element in the security environment. The Bill further introduces the concepts that participants have an obligation to be aware of the contents of their security programs as well as to be aware of, and comply with or not hinder, the security programs of other operators. The Bill also introduces a graded approach to enforcement, ranging from infringement notices through enforcement orders and injunctions to demerit points and potential cancellation of an operator's security program.

There remain some issues that do not appear to have been included in the Bill or draft Regulations. These are addressed in the discussion under each recommendation below.

Specific comments relating to the 2003 ANAO recommendations

Recommendation 1

The ANAO recommends that, to maintain the integrity of the Regulated Agents Scheme and the security of international air cargo, DOTARS re-examine the resources applied to, and the frequency of, auditing regulated agents' compliance with their International Cargo Security Program.

The draft Regulations maintain the current Regulated Air Cargo Agents scheme (Reg 4.19 – 4.30). However, only major air cargo agents are now required to have an international cargo security program approved by the Secretary of DOTARS. Regulated air cargo agents would be required to comply with the Code of Cargo Security Standards, should the Secretary of DOTARS write and issue such an instrument. The ANAO has not sighted a draft of this instrument.

This recommendation was aimed at DOTARS increasing the resources and frequency of its monitoring of regulated cargo agents. This is an administrative decision for DOTARS and would not be expected to be covered in legislation. We understand DOTARS has recruited additional staff for this purpose.

Recommendation 2

The ANAO recommends, to maximise more timely and effective industry compliance, that DOTARS' monitoring focus not only on the outputs of airport and airline compliance but also, where repeat breaches occur, on the root causes of the breaches.

The ANAO notes that the powers of inspectors are now specified in the Bill instead of the Regulations (s79-80). The powers remain essentially unchanged and still provide a foundation for an audit approach that covers both product and system checks.

Importantly, s16 of the Bill requires airport and aircraft operators to prepare Transport Security Programs that demonstrate their awareness of their aviation security responsibilities and sets out an integrated, responsible and proactive approach, including how they will manage and coordinate other aviation industry participants (including contractors) covered by the Program. This provides a better basis for DOTARS' inspectors to examine the processes underlying operators' security systems as well as operators' interaction with their contractors.

Recommendation 3

The ANAO recommends that, to continually improve the aviation security regime, DOTARS examine management options for:

- (a) properly holding airports and airlines accountable for any security breaches and ensuring that airports and airlines hold to account their contractors who breach the security requirements; and*
- (b) ensuring that employees of airports, airlines and contractors identified as breaching the security requirements are held to account by their employer.*

One of the findings of the 2003 audit was that DOTARS relied on airlines and airport operators to hold their contractors to account for breaches of security. However, contractors and their employees committed many of the repeat breaches observed. The Bill more clearly distinguishes the lines of accountability for aviation security. For example, it explicitly makes contractors responsible for adhering to the security requirements of the Transport Security Program of the aircraft or airport operator to whom they are contracted. As outlined above, the Bill and draft Regulations also require airport and aircraft operators to specify the other aviation industry participants covered by their Transport Security Program, as well as how they intend to manage and coordinate the activities of these participants (s16).

The range of direct enforcement options for contractors in breach appears to be limited to enforcement orders and injunctions (by virtue of s15(3)). In this context, any incentives to comply, rest with the terms and conditions of the contract between the airport/aircraft operator and the contractors. Section 16 should encourage operators to pursue appropriate terms of security performance in contract arrangements but it should be recognised that, in an industry where limited market forces can apply, some airport and aircraft operators may not always be in a position to impose appropriate terms in the contract.

The Bill also introduces the obligation for participants not to hinder or obstruct compliance with the Program of another aviation industry participant (s15). In addition, ultimate responsibility for matters such as airside and landside access control more clearly lie with the airport operators.

In the light of these collective measures the Bill represents an improvement on the existing position.

The ANAO notes that there is no longer a legislative requirement for categorised airport operators to establish an Airport Security Committee, whose function was to assist in the establishment and operation of the Airport Security Program. This Committee seemed to us to be a useful forum for bringing together the key stakeholders to manage the risks facing aviation security at airports.

Recommendation 4

The ANAO recommends that DOTARS take a more strategic and coordinated approach to ensuring compliance that addresses systemic issues and that incorporates:

- (a) an improved educative and persuasive role; and*
- (b) administrative policies and procedures for introducing a pyramid of enforcement to correct non-compliance at the appropriate level in the chain of authority.*

The Bill does not contain any requirement for DOTARS to educate those subject to regulation on their legislative obligations or disseminate better practice principles or practices. Nevertheless, in the context of aviation industry, to maximise compliance, it would be in DOTARS best interests to ensure that the organisations and people who work in the industry are fully aware of their obligations and best contemporary practice.

Part 8 of the Bill introduces a wider range of enforcement options, including infringement notices, enforcement orders, injunctions and demerit points.

The new Bill provides the Secretary of DOTARS with an explicit power to cancel a Transport Security Program for non-compliance, provided the prescribed number of demerit points have been accumulated (s26). The draft Regulations examined did not contain provisions referring to a demerit point system nor did they prescribe the number of demerit points for particular breaches.

Recommendation 5

The ANAO recommends that, to improve the management and resolution of security breaches by industry, DOTARS enhance its management information system to track and acquit security breaches.

This matter would normally be expected to be covered by administrative processes and not through legislation.

Nevertheless, the ANAO notes that Part 6 expands and clarifies the requirements for reporting aviation security incidents. Part 7 gives the Secretary of DOTARS the (new) power to require security compliance information, such as Threat Image Projection System (TIPS) data from screeners.

As a consequence of Parts 6 and 7, DOTARS will require an improved capacity to manage aviation security data. We understand DOTARS has already scoped a revised management information system and expects to implement this from 1 July 2004.

Recommendation 6

The ANAO recommends that DOTARS establish, as a matter of priority, specific, practical, achievable and measurable performance requirements for aviation security based on the Airport Security Programs, Airline Security Programs and Regulated Agents' International Cargo Security Program to allow it to:

- (a) monitor and gauge industry performance, including security awareness and commitment, over time;*
- (b) effectively target 'weak spots'; and*
- (c) provide greater assurance to Parliament that effective security arrangements are in place over the entire chain of authority.*

There are no direct references to performance measures in either the revised Bill or draft Regulations, but these would not necessarily be expected to be included in legislation.

The ANAO notes that under Part 4 Division 4, once the revised regulations come into effect, screeners will have to use the Threat Image Projection System (TIPS). This would facilitate the setting of performance measures for screeners by DOTARS.

Specific comments relating to the 1998 ANAO recommendations

Recommendation 1

The ANAO recommends that DoTRD adopt a risk-management aviation security strategy based on a systematic, data-driven approach to identifying, assessing, ranking and treating risks. This should include:

- (a) developing in consultation with the aviation industry, a formal policy relating to aviation-security risk management in which strategies are clearly outlined and roles and responsibilities defined succinctly;*
- (b) use of relevant available sources of intelligence such as threat assessments, recent actual experience in Australia and overseas, Australian Protective Service (APS) reports, police and industry intelligence and airport, airline and regulated agent audit findings;*
- (c) being the primary source of aviation-security advice and maintaining a comprehensive database of security incidents to permit, for example, trend analysis of threat levels and criminal activity; and*
- (d) developing and promulgating industry specific guidelines for risk management.*

The Bill takes into account the assessment and management of risk by making it explicit that Transport Security Programs have to take into account relevant features of the participant's operations in developing activities and strategies for managing aviation security (s16(1)(d)).

Parts 6 and Part 7 of the Bill provide for increased reporting obligations with respect to aviation security threats and incidences. It also increases the Secretary of DOTARS' powers to seek information from aviation industry participants.

Recommendation 2

The ANAO recommends that DoTRD, in planning for its aviation-security function:

- (a) clarify its overall objectives in relation to this function;*
- (b) complement its short-term planning with longer-term strategic planning that takes account of risk and other assessments such as changes in the aviation environment and organisational strengths and weaknesses;*
- (c) revise its overall planning process to ensure that matters such as resources and relative priorities are directly addressed;*
- (d) ensure that all plans concerning aviation security are properly integrated to minimise overlap and duplication; and*
- (e) incorporate performance information for monitoring, measuring, assessing and reviewing program achievement.*

There is a statement in the Bill about the role of DOTARS, which is an improvement on the earlier legislation. Recommendation parts (b) and (c) are operational matters and would not be expected to be addressed through legislation. With respect to (d), the ANAO notes that the Bill introduces the requirement for airport and aircraft operators to 'manage and coordinate' the security arrangements of the aviation industry participants covered by their program (s15). The comments under Recommendation 6 of the 2003 audit are relevant to (e).

Recommendation 3

The ANAO recommends that, in order to work towards a common level of aviation security by international airports and airlines in the region, DoTRD consider entering into formal pro-active alliances with the aviation-industry regulators of neighbouring countries in the Asia-Pacific region, under the aegis of existing bilateral agreements.

This is not an issue that is addressed in the draft legislation.

Recommendation 4

The ANAO recommends that DoTRD incorporate into its airport-auditing process:

- (a) an assessment of inspections carried out and action taken between audits to resolve security issues, as part of audit planning, so that high-risk airports may be appropriately targeted;*
- (b) strategies to ensure that documentary evidence of observations made in the course of inspections and audits is retained for planning purposes or any possible non-compliance prosecutions;*
- (c) prioritising compliance issues identified during the audit as part of the reporting process; and*
- (d) specific time frames for airport and/or terminal operators to initiate or complete action to rectify deficiencies identified by the audits.*

There is no reference to these matters in the Bill or draft Regulations. However, these are operational matters that could be specified in administrative procedures and guidelines rather than legislation.

Recommendation 5

The ANAO recommends that DoTRD adopt a systems- and risk-based approach to support the process of both approving airline-security programs and monitoring airline operators' compliance with those programs.

The comments under Recommendation 2 from the 2003 audit report are applicable here.

Recommendation 6

The ANAO recommends that, given the resource levels available, DoTRD prioritise the selection of regulated agents for auditing using a risk-based approach.

The comments under Recommendation 1 from the 2003 audit report are applicable here.

Recommendation 7

The ANAO recommends that DoTRD develop and implement a strategy for evaluating the results of individual audits in order to:

- (a) assess compliance at the regional and national levels by airports, airlines and regulated agents;*
- (b) prioritise resources, target high risk areas or functions and feed back to future planning; and*
- (c) assess the economy, efficiency and effectiveness of Australia's aviation security regime.*

There is no reference to these matters in the Bill or draft Regulations. However, (a) and (b) are more internal operational matters for DOTARS.

Recommendation 8

The ANAO recommends that DoTRD:

- (a) implement a training and development program to ensure that staff undertaking audits have formal training in security inspection and assessment techniques, negotiation and interpersonal skills;*
- (b) develop operational guidelines outlining the policies, procedures and standards to be adopted by all aviation security staff; and*
- (c) develop and implement strategies for continually reviewing and updating these guidelines.*

There is no reference to these matters in the Bill or draft Regulations. However, (b) and (c) are more internal operational matters for DOTARS and it can be argued that (a) could fit into either category.

Recommendation 9

The ANAO recommends that DoTRD:

- (a) explore the opportunities available to broaden its intelligence-data collection to include criminal intelligence and institute formal long-term relationships with the Australian Bureau of Criminal Intelligence and the state and/or territory police services; and*
- (b) if requested, facilitate more frequent briefings or, where more appropriate, subject-specific briefings for industry intelligence analysts.*

These are operational issues that would not normally be addressed in legislation. However, the ANAO notes that the Bill contains provisions that give the Secretary of DOTARS broad powers to acquire security compliance information from aviation industry participants.

Recommendation 10

The ANAO recommends that DoTRD develop and implement a three-year planning cycle for its training and exercise program.

There is no reference to the frequency of training exercises in the Bill or draft regulations but once again this matter is more of an internal operational issue.

Recommendation 11

The ANAO recommends that DoTRD improve the effectiveness of the exercise component of its National Training and Exercise Program and thereby increase the overall effectiveness of its incident-management strategy by:

- (a) examining the costs and benefits of increasing the frequency of training exercises and activating the Aviation Security Response Centre biannually; and*
- (b) developing and implementing a systematic follow-up process to address issues identified as requiring attention during training exercises.*

There is no reference to these matters in the Bill or draft regulations. However, they are more operational matters for DOTARS and would not normally be included in legislation.

Recommendation 12

The ANAO recommends that DoTRD:

- (a) develop and implement a performance-monitoring strategy for its training and exercise program that includes feedback from industry participants and input by other sections of the Aviation Security Branch; and*
- (b) implement the Quigley Review recommendations that relate to the progressive evaluation of the various elements of the training and exercise program.*

There is no reference to these matters in the Bill or draft regulations. However, they are more operational matters for DOTARS and would not normally be included in legislation.

Recommendation 13

The ANAO recommends that, as primary responsibility for training airport and airline staff in security and response measures rests with the aviation industry, DoTRD review the nature of its role in delivering security-awareness training to the aviation industry.

The comments under recommendation 4(a) from the 2003 audit are applicable here.

Recommendation 14

The ANAO recommends that DoTRD:

- (a) ensure that relevant airport contingency plans and operating procedures are developed, assessed and reviewed to ensure they are adequate and remain current; and*
- (b) assess, as part of the airline security program approval process, whether procedures for responding to in-flight bomb threats are contained in company operating-procedures and whether the contingency plans of the aircraft operator or its handling agent to evacuate passengers from an aircraft are adequate.*

The Bill provides for either the Secretary of DOTARS or the operator to review the Transport Security Program (s21-23) for various reasons, and that Programs must be reviewed every 5 years (s24).

The Bill also requires Transport Security Programs to set out how the participant will respond to aviation security incidents (s16(2)(d)). In addition, the draft Regulations provide that the operator of a jet aircraft must have on board a checklist for searching for bombs as well as *guidance for dealing with the situation if one is found* (Reg 4.43). Regulation 4.44 provides for training programs to ensure all crew are aware of the procedures.