

**JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT  
REVIEW OF AVIATION SECURITY IN AUSTRALIA:**

**SUBMISSION FROM THE DEPARTMENT OF IMMIGRATION AND  
MULTICULTURAL AND INDIGENOUS AFFAIRS**

## Introduction

1. The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) welcomes the opportunity to provide this submission to the Joint Committee of Public Accounts and Audit's Review of Aviation Security in Australia.
2. DIMIA is responsible for administering the *Migration Act 1958*, the object which is to regulate, in the national interest, the travel, entry and stay in Australia of non-citizens. To advance its object, the Act provides for visas permitting non-citizens to enter or remain in Australia and requires persons whether citizens or non-citizens, entering Australia to identify themselves.
3. DIMIA works closely with other Australian government agencies, overseas governments, international organisations, airlines and other agencies to prevent and deter persons who seek to enter Australia in an unauthorised manner or who may be intent on harming members of the Australian community. Through continual improvements in the application of technology and information collected by DIMIA or provided by other agencies, DIMIA works with other agencies to protect Australia's borders by maintaining effective screening of travellers. This occurs at all stages from visa process from application to arrival in Australia and by maintaining records of peoples movements in and out of Australia.

### *Australia's Visa System*

4. Australia's visa system is universal and non-discriminatory, requiring all travellers to Australia to have the authority to enter Australia. All applications for Australian visas must meet certain requirements for an application to be considered lawful and meet the specific criteria attached to the visa being applied for.
5. All non-Australian citizens, except for New Zealanders, must be granted a visa prior to arrival to Australia. All travellers including Australian citizens must upon arrival in Australia present a recognised travel document, usually a passport, to confirm their identity.
6. DIMIA has four methods for issuing and conferring visas or conferring lawful immigration status upon a traveller during their stay in Australia;
  - DIMIA electronically issues 86% of all visas. Electronically issued visas fall into two main categories;
    - 'evisas' which are generally applied for over the internet, processed, granted and stored solely as an electronic record. The 'evisa' program is currently restricted to a limited number of nationalities and four common visa categories – student, working holiday maker, visitor and resident return;
    - the Electronic Travel Authority (ETA) which is an electronically stored authority for travel to Australia available to 33 nationalities (see Attachment A), for short term visits or business entry. It replaces the need for a visa label or stamp in a travellers passport.

- Paper Label visas issued into a travel document which are used for categories of visa not currently covered by the electronic visa program and when a person is ineligible for an evisa;
  - Special Purpose Visas (SPV) designed to provide lawful status to non-citizens who need to transit, travel to, enter and remain in Australia but to whom Australia's standard visa regime and immigration clearance processes are taken not to apply. The kinds of people to whom SPVs apply include airline or non-military ships crew, members of certain military forces, guests of government, and transit passengers from certain countries. Note that this list is not a complete list of persons whom are eligible to apply for a SPVs (see Attachment B); and
  - Special Category Visas (SCVs) which apply only to New Zealand citizens and were a product of the 1973 Trans Tasman Travel Arrangement. SCVs acknowledge the historically close economic and cultural ties between Australian and New Zealand. They allow New Zealand citizens to enter Australia to visit, live and work, without the need to apply for a visa prior to arrival in Australia. The granting of an SCV to a New Zealand citizen is still dependent on the applicant meeting the character requirements defined in the Act.
7. Specific visa arrangements apply to facilitate transit of certain non-Australian citizen travellers who are transiting through Australia to another destination. Citizens of 50 countries, the holders of another 3 defined travel documents and most diplomatic passport holders under certain circumstances are able to transit Australia without obtaining a visa prior to their arrival. For a traveller to be eligible for this provision they must;
- have a confirmed onward flight booking;
  - documentation to enter their next destination;
  - depart Australia within 8 hours of arrival; and
  - they cannot leave the airport transit lounge.
- Even though travellers who use this arrangement to transit Australia are issued with SPVs this facility is usually referred to as Transit Without Visa (TWOV) (see Attachment C).
8. DIMIA has the legislative authority to refuse an application for a visa or cancel a visa held if the person does not pass the character test as defined in s501 of the Act. Examples of when a person will fail the character test include:
- when a person has a substantial criminal record;
  - when a person either has, or has had, an association with an individual, group or organisation suspected of having been, or being, involved in criminal conduct;
  - when there is a significant risk that the person will engage in criminal conduct in Australia, harass, molest, intimidate or stalk another person in Australia, vilify a segment of the Australian community, or incite discord in the Australian community or in a segment of that community;
  - when, having regard to the person's past and present criminal conduct, the person is found not to be of good character;

- when having regard to the person's past and present general conduct, the person is found to be not of good character;
- when in the assessment of the Director-General of the Australian Security Intelligence Organisation (ASIO), a visit by the applicant would place the national security of Australia at risk; and
- when the Minister for Foreign Affairs and Trade certifies that a visit by the applicant would prejudice relations between Australia and a foreign country.

#### *DIMIAs Travel Authorisation System*

9. Travellers to Australia are subject to checking against DIMIAs Movement Alert List (MAL) which contains information on persons of concern to immigration, law enforcement and security authorities. The MAL also has a sub-section containing a list of know fraudulent, counterfeit and stolen travel documents know as the Document Alert List (DAL). Checks are performed against the MAL at multiple points in the visa application process and during their travel to Australia. Persons are subject to MAL checks;
  - during the visa application process whether that be at an Australian post overseas or through one of DIMIAs electronic visa application systems;
  - when checking-in for a flight to Australia at an airport overseas when travel document are checked against the DAL;
  - potentially by an Australian Airline Liaison Officer (ALO) while boarding an aircraft overseas to travel to Australia;
  - while in flight to Australia through the detailed scrutinising of passenger information transmitted in advance on the flights arrival in Australia through the Advance Passenger Processing (APP) system; and
  - upon arrival in and departure from Australia. Under DIMIAs Memorandum of Understanding with the Australian Customs Service (ACS) all persons who present to enter or depart Australia must be confirmed visually by an ACS officer as the same person whose photograph appears in the presented travel document.
10. To enable certain parts of the travel authorisation process that occur outside Australia as outlined in paragraph 9, DIMIA provides airline staff with access to an electronic visa application and confirmation system called the Electronic Travel Authority System (ETAS). This system allows airline staff as part of the flight check-in process to confirm a person has authority to travel to Australian and provides for the collection and transmission to DIMIA of biographical and travel information in advance of the passengers arrival in Australia.
11. ETAS depending on the traveller may check the validity of a visa, the current status of an Australian or New Zealand passport or perform checks against MAL. All visa and MAL checks performed by ETAS use the most up to date versions of visa, alert, movement and passports information available. On completion of these checks ETAS sends the airline check-in agent a return message advising

whether a person does or doesn't have authority to travel to Australia. Through this checking and authorisation process ETAS significantly reduces the likelihood of airlines transporting passengers that may not have authority to enter Australia or who are potentially a security risk.

12. From 1 January 2003 all airlines were required to forward to DIMIA advance passenger information on all persons travelling to Australia through the APP system. On 1 January 2004 the requirement to supply advance passenger information will be widened to cover all airline crew and transit passengers travelling through Australian airports.
13. To assist airlines to meet Australian immigration requirements, DIMIA maintains an Entry Operations Centre that provides a 24 hour 7 days per week help desk facility that is able to provide airline staff with immigration related advice on individuals intending to travel to Australia.

## **Compliance with Commonwealth Security Requirements by Airlines**

### *Airline Responsibilities and Liabilities*

14. Airlines have specific legal responsibilities when bringing passengers or crew into Australia. Aircraft are required to under the Migration Act 1958, when first landing in Australia from overseas to land at a proclaimed airport. Proclaimed airports are those which have suitable immigration, customs and quarantine controls. This provision ensures that the appropriate agency responsible or their appointed agents inspect all passengers, crew and cargo.
15. The Act makes it the responsibility of an airline to ensure that a passenger is properly authorised to travel to and correctly documented before they board a plane for Australia. Airlines are required to perform several checks prior to a traveller boarding a plane for Australia with an infringement and offences regime in place to ensure this occurs.
16. Any airline or aircraft operator that carries a passenger who does not have authority to enter or transit Australia, or who is not properly documented may have committed an offence under the Act. However in the great majority of circumstances an airline will be served with an infringement notice or fine in lieu of prosecution to the amount of \$5,000AUD for a company or \$3,000AUD for an individual in the case of private aircraft. Airlines are generally very cooperative in this area as evidenced by infringement notices being issued for a very small percentage of arriving passengers (0.02 % of all arriving passengers in 2002/2003).
17. Airlines are also liable for the detention and transportation costs of any person who fails to comply with immigration clearance requirements or who, on complying, is detained as an unlawful non-citizen. These provisions give effect to international conventions, which provide that inadmissible passengers are the responsibility of the operating airline. This liability is not dependant on the airline

being at fault and the fact that a person arrives correctly documented is not relevant to the decision to invoke the liability.

#### *DIMIAs contribution to International Agreements Negotiated by DOTARS*

18. Many of the international standards and practices that govern, amongst many other things, immigration control and passports are agreed to within the International Civil Aviation Organisation (ICAO).
19. Australian is a party to ICAO which has adopted, under its Convention on International Civil Aviation (the Chicago Convention), a set of 'Standards and Recommended Practices on Facilitation', designated as Annex 9 to the Convention. In Annex 9 the Convention defines internationally accepted standards and practices for the entry and departure of persons.
20. DOTARS is the prime agency managing the Australian governments' responsibilities under the ICAO Convention. DIMIA through DOTARS provides input into the Convention on issues that are the responsibility of DIMIA in Australia.
21. DIMIA through DOTARS also provides input on Immigration related matters during the negotiation of international air services agreements with other countries.

#### **Opportunities to Enhance Security Measures Presented by Current and Emerging Technologies**

##### *Advance Passenger Processing System*

22. From 5 January 2003, all international passenger aircraft flying into Australia were obliged to provide advance reports on passengers to DIMIA using the Advance Passenger Processing system (APP).
23. APP is one of the most advanced border control and security systems in the world. It performs two primary functions with benefits for border security:
  - it allows an airline to electronically verify a passenger's authority to travel to and enter Australia prior to the passenger boarding a flight; and
  - if a passenger is cleared for travel by the APP system, it will signal the pending arrival of that person on a particular international flight.
24. Importantly, APP allows DIMIA to issue passenger-boarding directives to airlines (eg. "NOT OK TO BOARD") that may prevent the boarding of passengers who do not have permission to travel to Australia.

25. In addition to airline passengers, DIMIA expects that the APP system will be expanded to airline crew, and passengers and crew on international cruise ships, from 1 January 2004.
26. The legislative obligation to provide passenger and crew reporting to DIMIA applies even if the information concerned is personal information (as defined in the *Privacy Act 1988*).

#### *Person and Document Alert List Systems*

27. The Movement Alert List (MAL), administered by the DIMIA, is a computer database that stores details about people and travel documents of immigration concern to Australia. MAL is a key tool used by DIMIA to apply the legislation governing the entry to and presence in Australia of non-citizens, particularly those who may be of character concern.
28. As at 1 July 2003, there were more than 235,000 people entries on MAL. People may be listed on MAL in the following circumstances:
  - when they have serious criminal records;
  - those whose presence in Australia may constitute a risk to the Australian community;
  - people who have been barred by migration legislation from entering Australia for a number of reasons, including health concerns, debts owed to the Commonwealth or other adverse immigration records; and
  - in consultation with and at the request of other law enforcement and security agencies.
29. Additionally, more than 1.6 million known documents of concern - for example lost, stolen or fraudulently altered passports - are recorded on the Document Alert List (DAL) which functions in conjunction with MAL.
30. MAL is automatically checked:
  - by DIMIA officers who process visa applications at overseas posts and regional offices throughout Australia. If a "match" is recorded, it must then be determined if the person should be granted a visa;
  - as the visa grants are loaded into departmental databases. This re-checking ensures no matches were missed by the person granting the visa;
  - by Customs officers at Australian airports and seaports when passengers arrive in Australia. If a "match" is recorded, the passenger is referred to an Immigration Officer for further questioning; and
  - when applications for visas are made on behalf of travellers by travel agents/airlines using ETAS or by persons applying for visas through DIMIAs evisa system.

*Biometrics*

31. DIMIA has a key role in establishing the identity of people who enter Australia and has been working with the Australian Customs Service in their trial of the "SmartGate" face recognition system using Qantas aircrew. DIMIA also supports the research being conducted by Department of Foreign Affairs and Trade into placing a biometric identifier into the new series of Australian passports.
32. DIMIA proposes to explore the feasibility of incorporating a biometric identifier into current immigration processes to verify and authenticate identity at all stages of the immigration process. If proven reliable, the use of biometric technology has the potential to enhance the department's capacity to prevent identity fraud in its programs and strengthen border security.

*Promotion of API systems within Asia-Pacific Economic Co-operation (APEC)*

33. Australia has taken a leading role over recent years in promoting the implementation of Advance Passenger Information (API) systems within the APEC forum.
34. Australia received funding from APEC for the development and implementation of a project to conduct feasibility/design studies of the capacity of existing border systems in a number of APEC economies for integration within the APP environment. The first study was completed in Thailand in September 2002. Study visits have been completed in respect of Indonesia, the Philippines, and Korea and reports are currently being prepared.
35. DIMIA has been working in conjunction with other countries border control agencies to develop an agreed set of standards and principles to be adhered to by countries who are working to develop API systems. These principles seek to ensure that countries develop API systems that are, among other things, interactive, automated, user-friendly and which take account of the needs of stakeholders (including airlines). The standards also include technological standards which seek, among other things, to ensure that new systems are able to interface with existing systems, provide on-line and real-time communication between government and airlines and have the capacity to accommodate biometric information and images.
36. These standards are being promoted in a range of international fora, including APEC and within the International Air Transport Association (IATA) and the IATA Control Authorities Working Group, the World Customs Organisation, and ICAO. The standards are also being promoted amongst a range of international airlines. The development of standardised API systems is important in a future strategy for exchanging information between economies in areas, such as passport data and alerts lists.



## **Airline Liaison Officers**

37. DIMIA maintains a network of sixteen (16) Airline Liaison Officers (ALOs) strategically located at eleven (11) key hub international airports with direct flights to Australia and/or last ports of embarkation for inadmissible passengers to Australia: Bangkok, Singapore, Kuala Lumpur, Hong Kong SAR, Denpasar, Dubai, Nadi, Seoul, Taipei, Manila and Jakarta.
38. ALOs are specialist document examiners. They work closely with airlines, immigration and airport staff to detect and prevent the travel to Australia of inadequately documented passengers. ALOs, however, are not decision makers and undertake an advisory role regarding the authenticity of passengers' travel documents.
39. The main activities performed by ALOs are to:
  - provide on the spot advice for airline staff about suspect passport and/or visa documents;
  - provide detailed reports on inadmissible passengers;
  - train airline staff on Australia's visa and entry systems, including examination of passports and visas;
  - maintain a visible presence at airports as a deterrent to organisers of unauthorised air arrivals and other inadmissible passengers; and
  - facilitate the travel of genuine passengers.
40. Following the Bali tragedy in October 2002, the Federal Government provided funding to enable the expansion of the ALO network to strengthen Australia's border security and counter terrorism capacity by increasing the scrutiny of Australia bound passengers.
41. In November/December 2002, an additional six (6) ALO positions were established including new positions in Manila, Nadi, Seoul and Taipei. The number of ALOs rose from two to three at Bangkok and Kuala Lumpur to increase existing ALO coverage of Australia bound flights. An ALO position commenced at the Soekarno Hatta airport in Jakarta in July 2003.
42. The presence of ALOs at last ports of embarkation for travel to Australia deters the activities of people smugglers and persons of concern.
43. ALOs also cover certain flights that are not directly Australia bound. This strategy was implemented to allow the interception by ALOs, of passengers with unacceptable travel documents, who may seek to travel to Australia by more circuitous travel routes.

## **Regulation of Aviation Security by the Commonwealth Department of Transport and Regional Services**

### *Commonwealth Department of Transport and Regional Services draft Aviation Security Regulations*

44. DIMIA was provided with an exposure draft of the Aviation Transport Security Regulations recently circulated by the Department of Transport and Regional Services (DOTARS).
45. DIMIA and DOTARS have formed a joint working group to discuss and work through the details of the draft regulations. DIMIA is concerned that the definition of persons in custody has been widened unintentionally and would capture many overstayers and other persons who pose no safety or security risks but are simply departing the country. This reflects the fact that under the Migration Act people who are unlawful are held in administrative detention or have monitored departures to resolve their immigration status. DIMIA has a good record of providing airlines with detailed information on passengers of concern and ensuring that these persons are appropriately vetted and escorted, should the need arise. DIMIA ensures escorts are provided for all long-term detention cases, criminal deportees and those persons requiring medical treatment en route. Most escorts are provided to ensure that persons in their custody do not attempt to avoid departure or to abscond at transit points, rather than because they pose a safety risk in flight.

### **Response to a Letter sent to the JCPAA Review of Aviation Security in Australia by Mr John Hinde**

46. In Mr Hinde's submission to the Committee he raises two concerns:
  - two persons apparently with forged passports managed to board a flight in Auckland and pass through transit passport control in Sydney without the forgeries being detected; and
  - there may be a deficiency in the in-transit passport control area at Sydney airport that allows forged passports to go undetected.
47. The Department is aware of the case Mr Hinde has brought to notice. The details of the case are classified and public discussion would be unhelpful to immigration and passport controls. However, two points can be made. Firstly, it is likely that it involved the swapping of boarding passes. Secondly, it is very unlikely that false documents were involved in either Auckland or Australia. Should the Committee require further information, a confidential briefing could be provided.

## Attachment A

### Passport holders eligible to apply for an Electronic Travel Authority (ETA)

The following countries are able to access Australia's Electronic Travel Authority (ETA) issuing system. An ETA is issued by computer between DIMIA and travel agents, airlines and specialist service providers.

Andorra  
Austria  
Belgium  
Brunei  
Canada  
Denmark  
Finland  
France  
Germany  
Greece  
Hong Kong  
Iceland  
Ireland  
Italy  
Japan  
Liechtenstein  
Luxembourg Malaysia  
Malta  
Monaco  
The Netherlands  
Norway  
Portugal  
Republic of San Marino  
Singapore  
South Korea  
Spain  
Sweden  
Switzerland  
Taiwan\*  
United Kingdom - British Citizen or United Kingdom - British National (Overseas)\*\*  
United States of America  
Vatican City

\* Holders of Taiwan passports can only be processed for an ETA if resident in and applying in Taiwan.

\*\* Holders of UK passports which indicate their nationality to be British National (Overseas) can only be processed for an ETA if resident in and applying in Hong Kong.

## **Attachment B**

### **Persons eligible for a Special Purpose Visa (SPV)**

Various categories of people are eligible for SPVs. Eligibility is largely dependent on the type of employment (eg aircrew) or the purpose of the visit (eg guest of government). Under s 33 (2) of the *Migration Act 1958* a person is taken to have been granted an SPV if they are persons with a “prescribed status”.

To have a prescribed status the persons or class of persons must be listed in *Migration Regulation 2.40*. They include:

- members of the Royal family or party;
- military personnel who enter Australia under various defence agreements. They include Status of Forces Agreement (SOFA) members, Commonwealth forces members, Asia-Pacific forces and foreign naval forces members arriving at a seaport. All person arriving under this arrangement require military identity documents and movement orders;
- passengers of certain countries who do not apply for a visa to transit Australia
- air crew;
- sea crew (and their spouses if the non-military ship is not being imported);
- guests of government;
- persons visiting Macquarie Island; and
- Indonesian traditional fishermen.

## Attachment C

### Transit Without Visa Arrangements (TWOV)

The *ICAO Convention on Civil Aviation* provides that contracting states make provision for direct transit arrangements. As a signatory to the Convention, Australia's migration legislation provides for nationals of certain countries to transit Australia without formally applying for a visa. The only requirements are that they hold a confirmed onward booking to a third country within 8 hours of their arrival in Australia and hold the necessary documentation to enter the country of his or her destination.

This is not a visa free arrangement. Transit without visa (TWOV) passengers are taken to have been granted special purpose visas for their period of transit. Special purpose visas differ from the normal visa subclasses in that a visa is not granted and evidenced on DIMIA systems. Therefore, at time of check-in, the APP system cannot check for a valid visa. Currently, this means that no advance information is received on TWOV passengers.

Enhancements to the system (to come into effect on 1 January 2004) will ensure that the system captures APP information on all passengers travelling to Australia, including those who are eligible to transit Australia without a visa. This advance notification is in the form of bio data and flight details on every passenger. These details can be run through alert and profiling systems.

A review of the transit without visa arrangements is currently underway with a scheduled completion date of 1 December 2003. The review is examining the degree to which the current legislation, policy and procedures meet the requirements of border integrity in a heightened security environment.

Nationalities and certain passport holders eligible to transit Australia without applying for a visa prior to arrival (in effect from 14 Aug 2000).

Citizens of the following countries:

Andorra	Nauru
Argentina	Netherlands
Austria	New Zealand
Belgium	Norway
Brunei	Papua New Guinea
Canada	Philippines
Denmark	Portugal
Federated States of Micronesia	Republic of South Africa
Finland	Republic of Marshall Islands
France	Singapore
Germany	Solomon Islands
Greece	South Korea
Iceland	Spain
Indonesia	Sweden
Ireland	Switzerland

Italy	Thailand
Japan	Tonga
Kiribati	Tuvalu
Liechtenstein	United Kingdom (including its colonies)
Luxembourg	United States of America
Malaysia	Vanuatu
Malta	Vatican
Monaco	Western Samoa
	Zimbabwe

Other persons eligible to transit without visa:

1. Residents of Hong Kong holding Hong Kong Special Administrative Region (HKSAR) passports or British National Overseas (BNO) passports;
2. Residents of Taiwan holding a passport issued by the authorities of Taiwan (other than passports purported to be official or diplomatic passports);
3. Diplomatic passport holders, **excluding** holders of Arab non-national passports and diplomatic passports from the following countries: Afghanistan, Algeria, Angola, Bahrain, Bosnia and Herzegovina, Comoros, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Madagascar, Mauritania, Morocco, Oman, Pakistan, Qatar, the Republic of Yemen, the Russian Federation, Saudi Arabia, Sierra Leone, Somalia, Syria, Tunisia and the United Arab Emirates.