# QUEENSLAND GOVERNMENT
# AVIATION STEERING COMMITTEE


## Submission on


## JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

## REVIEW OF AVIATION SECURITY IN AUSTRALIA


## September 2003

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# Joint Committee of Public Accounts and Audit

# Review of Aviation Security in Australia

# Terms of Reference

As part of its statutory responsibility to examine reports from the Auditor-General, the Joint Committee of Public Accounts and Adit is expanding its review of *Audit Report No. 26, 2002-2003, Aviation Security in Australia, Department of Transport and Regional Services* to inquire and report on:

a) regulation of aviation security by the Commonwealth Department of Transport and Regional Services;

b) compliance with Commonwealth security requirements by airport operators at major and regional airports;

c) compliance with Commonwealth security requirements by airlines;

d) the impact of overseas security requirements on Australian aviation security;

e) cost imposts of security upgrades, particularly for regional airports;

f) privacy implications of greater security measures; and

g) opportunities to enhance security measures presented by current and emerging technologies.

*The Aviation Transport Security Bill will replace Parts 3 and 3A of the Air Navigation Act 1920 and will redevelop the regulatory framework such that the Bill and supporting regulations are more readily understood, and applied by government and the aviation industry.  Much of the comment in this submission reflects the probable impact that this legislation will have on the Queensland government, in the context of aviation security regulation and policy.*

# Terms of reference a, b and e have been addressed below.

***(a) Regulation of aviation security by the Commonwealth Department of Transport and Regional Services.***

It is accepted that the Commonwealth has sole responsibility for the regulation of aviation security under the *Air Navigation Act 1920,* which is currently being superceded by the *Aviation Transport Security Bill* ("the bill") and accompanying regulations. This includes administration, maintenance and enforcement of minimum standards of aviation security based on its assessment of risk at all levels of airports, but not necessarily the response to particular security breaches, which may be the responsibility of State or local authorities. This should not be confused with the States' and Territories' responsibility for the classification of 'critical infrastructure' within their jurisdictions.

As is the case for safety regulation, responsibility for security regulation must remain clear and unequivocal. There is no doubt that aviation security at regional airports is currently a widely debated political issue, which has the potential to force state governments into pursuing any course of action that will ease that political pressure. Accordingly, there is a risk that State (and local) governments may see little choice but to take on an implied regulatory role because of confusion over Commonwealth/state responsibilities in relation to regional airports and intrastate air services. This then may result in state/local governments implementing unnecessary security measures at regional airports unsupported by proper risk analysis, as the expertise in determining the existing threat level lies with the relevant Commonwealth agencies. If such a reaction was to occur, it would further exacerbate cost pressures on the regional sector.

However, whilst the determination of appropriate levels of security at all levels of airports is a Commonwealth responsibility, it should be undertaken in consultation with state and territory governments. Although the Australian Security Intelligence Organisation (ASIO) are responsible for assessing the relative security risks and associated threat levels at all Australian airports, both the relevant State and Local government must be involved in the consultation process regarding specific airport security issues and particularly cost implications. This is largely because the Commonwealth indirectly determines that changes in equipment and infrastructure requirements are necessary at regional airports, often resulting in increased costs for state and local governments. This responsibility is incumbent on the State in its relationship with Local government, as it has a protocol which requires it to consult with local government on issues impacting on them.

It is important for both state and local government to ensure that all relevant "local" factors are taken into consideration through the categorisation process, some of which should arguably preclude an airport from ever being categorised under the current system e.g. an airport that has shared land use with the Australian Defence Force. Conversely, it is also important for local authorities to remember that the lack of Commonwealth categorisation should not prevent local airports or airlines from implementing appropriate security measures independently, in response to local circumstances.

It is important to acknowledge the efforts of the Commonwealth government to simplify the existing regime of security regulation that exists in Australia. Notwithstanding the presence of statutory provisions in the Air Navigation Act, there are some 40 Additional Security Measures (ASMs) that apply to all categorised airports. It is envisaged that these ASMs will be either enshrined in the new subordinate legislation, or absorbed by an organisation's security program, where appropriate. This will serve to eliminate the confusion that currently exists within the aviation industry regarding the application of relevant security regulations.

*(b) Compliance with Commonwealth security requirements by airport operators at major and regional airports.*

Recent terrorist attacks globally have elevated national security as a high priority issue for governments worldwide. While the Commonwealth government, through the Department of Transport and Regional Services (DOTARS) has legislative responsibility for security at airports, the Queensland government advocates Commonwealth-State consultation on security matters. This is particularly important in states that have contractual arrangements with airlines to maintain certain fare levels on commercially non-viable routes (see term of reference 'e').

Major airport operators, having a significant revenue base to draw from, will always find it easier to comply with Commonwealth government security requirements than regional airports owned by local authorities. This is notwithstanding the fact that the infrastructure and equipment requirements for category 1 and 2 airports in order to achieve compliance with security regulations will invariably be far more significant than what is required for airports assessed at category 3 and below. It remains to be seen as to whether the smaller regional airports will be able to comply fully with Commonwealth government security requirements. What is certain is that such compliance will only be achieved through the imposition of an adequate charging structure by regional airports, which will most likely be linked to departing flights.

The Queensland Police Service ("QPS") is closely examining the impact that the bill will have on its responsibilities. It appears the regulations supporting this bill will be heavily relied upon for the intent of the legislation to be fulfilled. However, with the draft version of the regulations still being worked upon, it is difficult to accurately assess the full impact of the proposed legislation at this stage.

What is clear so far is that the bill does appear to provide similar powers already available to QPS officers in the Police Powers and Responsibilities Act 2000 (PPRA). Section 89 of the bill provides that the legislation does not by implication, limit the exercise of powers State Police may have under another Act. As such, it is expected that the current arrangements will continue unchanged between the QPS and Commonwealth concerning response to offences committed at aviation facilities.

Although the present draft of the Bill and Regulations are incomplete, it is believed that the proposed legislation will have no adverse impact on the QPS. However, from a general public safety viewpoint, the proposed legislation in itself does not make it clear if regional airports will have security compliance requirements similar to the larger facilities. Some smaller airports are considered an area of concern in the current threat environment and consideration should be given to making them the subject of appropriate mandatory security requirements, even if those requirements are considerably less onerous than that required for larger airports.

*(e) Cost imposts of security upgrades, particularly for regional airports.*

As the state government is responsible for intra-state air services, the issue of cost imposts for regional airports is very significant. As many rural and remote air services throughout Australia have been and are continuing to suffer viability concerns, state governments are faced with the decision as to how and when services should be supported in order to provide reasonable access for outback communities. Part of the rationale behind economic regulation of air services is not only to allow operators to trade free of competition and therefore be more likely to achieve commercial viability, but with the provision of subsidy funding, regulation allows for the state government to control airfare levels in order to achieve more affordable access to essential transport services for these communities. If airport security 'ticket taxes' are significant enough to affect the affordability of air travel to or from certain rural ports, to some extent it negates the effect of what a state government regulated and subsidised air service regime is attempting to achieve.

As Queensland has the most prescriptive regulatory framework in place in respect of rural and remote air services, comparative to the other states, it is necessary to provide some background.

One of the stated objectives of the *Transport Operations (Passenger Transport) Act (QLD) 1994* ("TOPTA") is "to provide a reasonable level of community access to public passenger transport and mobility in support of the government's social justice objectives". To this end, Queensland Transport regulates and/or subsidises certain regular passenger transport (RPT) air services to ensure that identified transport-disadvantaged communities have year-round access to a range of essential business, educational, medical, government and cultural destinations. Regulation is achieved by means of the public tender and subsequent issue of exclusive air service contracts for previously declared routes. A subsidy is paid for certain routes where there is a shortfall between the cost of operating the air service at a standard prescribed by Queensland Transport to meet the reasonable needs of the community and the revenue collected as fares on the respective service.

The regional Queensland airport of Mount Isa is an example of an airport that is crucial to the operation of the Queensland government's rural and remote regulated air service network. It receives a minimum of 10 regulated services per week, most of which are also subsidised by the state government in order to keep fares at a level that is reasonable for the community. As Mt Isa is a category 4 airport currently (and under the proposed new classification system will be a 'security controlled' airport), it is required to have trace capability (explosive detection device) at the screening point by September 2003, and 'checked bag screening' (CBS) in place by 31 December 2004. As this security equipment is very expensive, it cannot be funded through a small airport's usual cash flows. Therefore, it becomes incumbent upon the airport to levy new or increased charges on airlines in order to fund such equipment purchases and operating expenses. Similarly, small regional airlines cannot absorb such costs and have no alternative but to pass the charge on to their passengers. This type of charge is currently in force at Mt Isa airport, in preparation for the cost of Commonwealth imposed security requirements.

All state governments are cognisant of the viability concerns for many local government owned airports, resulting from their considerable financial responsibility for airport infrastructure. For this reason, some state governments have funded a program that facilitates the issuing of matching grants to owners of rural and regional airports, upon meeting certain criteria.  The Queensland government has in place a Rural and Remote Airport Development Program (RRADP), which is designed to fund the upgrading of airstrips and other airport infrastructure.  (Also available to Local Authorities is the Local Governing Bodies' Capital Works Subsidy Scheme - this is a grant program of up to 10% subsidy funding for any eligible capital works including aerodromes.)

The RRADP provides funding of up to 50% of the total cost of a project. There are two funding categories: 'Basic Access' - aimed at ensuring a rural and remote community has access to essential emergency services (typical projects include lengthening a runway, fencing, lighting and new airstrip construction); and 'Regional Development' - funding support to a project broader in scope and of benefit to a wider region rather than a local community.  A Regional Development submission may seek funding assistance to upgrade an airport to facilitate larger RPT aircraft, or to cater for business operations such as charter services or tourism.

However, given the tight budgetary environment in which the scheme operates, an assessment panel convenes to strictly assess applications against the evaluation criteria and to recommend which submissions qualify for funding. The sheer volume of applications each year necessarily results in diminished chances of success for any 'Regional Development' application. This is compounded by the fact that the current budget for the RRADP of $1M per annum is clearly insufficient, considering that more than $10M in funding is being sought in applications lodged in the 2003/04 financial year.   The future costs associated with aviation security for airports should at least prompt discussion on the possibility for multi-level government funding program. Notwithstanding this, many of the airports that require funding do not currently require security related expenditure, as most local authorities eligible for the scheme are responsible for uncategorised airports that are not subject to Commonwealth imposed security requirements.

The State of Queensland is the most affected by the security requirements prescribed in the bill, as it currently has ten airports categorised 1 to 4. They are:

Brisbane (1);
Cairns (2);
Coolangatta (2);
Townsville (3);
Hamilton Island (3);
Mt Isa (4);
Rockhampton (4);
Mackay (4);
Proserpine (Whitsunday Coast) (4); and
Maroochydore (4).

Category 3 and 4 domestic airports are required by September 2003 to move to Trace Capability Screening. The machine used is capable of reading/detecting small explosives in baggage and the cost to purchase such a machine may be $50,000 - $100,000. This does not include yearly operating costs or the cost of installation etc. By December 31 2004, Category 1 to 4 domestic airports will need to have introduced/be introducing CBS. This is an in-line x-raying system and could cost from $480,000 to $1.5 million. This does not include installation costs or costs associated with the on-going operation of the system. It remains to be seen how all of the affected airports will be able to absorb such costs, and how much of that cost is passed on to the travelling public.

Under the current system for the categorising of airports, Horn Island is not categorised. However, the Queensland government strongly advocates that the Commonwealth under the new airport identification process undertake a risk assessment of Horn Island airport. The risk at Horn Island, which receives a minimum of 14 return regulated services per week from Cairns, may be higher than some other categorised airports within Queensland. Local circumstances or factors contributing to that assessment include the isolated location of Horn Island, the level of passenger movements through the airport and the exposed nature of the airport which by virtue of its proximity hosts charter flights from Papua New Guinea and the surrounding South Pacific region. Yet once again, the issue then arises as to how a small airport such as Horn Island and its owner the Torres Shire Council could fund what is required for category 4 airports. It is in these instances where all levels of government need to assess security priorities against budgetary constraints, and work towards an agreed security outcome that does not adversely affect an economically unsettled regional aviation industry.

# FUTURE CONSIDERATIONS

## (i)      Cost Implications

It is clear that the issue of aviation security and of transport security in general, has the potential to impose significant costs on the movement of both passengers and freight, and it is unsatisfactory to say that each individual airport will have to pay for the extra security measures being required by the Commonwealth government.

It is also unsatisfactory to suggest that a passenger departing from certain regional ports will be burdened with a significantly higher security levy than a passenger that regularly departs from a different airport as security charges are currently location specific.  This is not just an airport/airline/air passenger issue, as it has broader community implications. This is evident when examining the devastation of the terrorist attacks in the USA on September 11 2001, highlighting that there was no correlation between the majority of those who lost their lives, and the aviation industry per se.  For this reason, the "user pays" notion may be an inappropriate funding model to apply.  The Commonwealth government may give consideration to assessing these types of security upgrades as being in the interests of the public at large, and hence may consider levying the public at large and not merely airline passengers.  If not a broad-based tax, the Commonwealth government should consider the capping of aviation security charges that an airport levies on an airline/passenger in a similar way to its capping of air navigation charges for regional airports, so that passengers travelling to these smaller airports are not significantly financially disadvantaged.

For any of these options to be implemented, the Commonwealth would have to take on the more detailed role of financier or provider of security equipment and infrastructure, not merely the role of the regulator.  Although the Commonwealth would not consider this arrangement to be its preferred option, it is important to note that problems can arise when a commercial body such as an airport is required to implement requirements affecting an area as sensitive as security.  Unfortunately, this arrangement can lend itself to the practice of "padding" of airport related charges through a legitimate cause.  Discrepancies between airports in respect of aviation security related charges cannot always be explained away by making comparisons of the airport's size and/or revenue base.  Yet under current arrangements it will be difficult to fully investigate and/or address this issue, as the airports in question are all privately owned businesses, and, as monopoly service providers in their town or city, will only ever face competition from discretionary travellers using alternate modes.  What is certain is that the freedom of airports to arbitrarily charge airlines and consequently passengers for airport security must be addressed, as any further increases to the ticket price will only serve to damage consumer confidence in the aviation industry to the point where the debate about the standard of aviation security may become moot.

One of the discussed options for security related funding amongst industry and government alike has been the allocation of some of the monies collected through the Ansett workers entitlements levy. Although it is still uncertain as to how much excess has been collected (if any), it would be considered an act of good faith to the aviation industry to apply that funding to an aviation industry related expense. Many of the existing aviation businesses were adversely affected to varying degrees as a result of the Ansett collapse, yet no levy was imposed by the Commonwealth to ensure they were not financially disadvantaged. Therefore, it would be reasonable to assume that a decision to apportion some of the excess revenue collected to assisting regional airports and airlines with security related expenses through a type of grants program, would be welcomed by the aviation industry as a whole, and certainly by the Queensland government.

**(ii)    Passenger Profiling**

Although it is necessary to prescribe an appropriate legislative framework in response to Australia's need for heightened aviation security awareness, it is important to acknowledge the importance of the 'human' element in dealing with security issues. That is, whilst it is incumbent upon the regulator to enforce the use of technology in the fight against terrorism, there is also an obligation on the regulator to ensure that all those who may come into contact with an 'at risk' passenger are adequately trained to assess when a threat is imminent. This is a particularly relevant issue when considering that all of the attackers in the September 11 hijacks were screened, yet still managed to board, and ultimately take control of the aircraft. The training of non-security aviation staff to profile all passengers or customers that they come into contact with must be encouraged and even facilitated by the regulator. This training would extend to check-in staff, pilots, and ultimately cabin crew as the last line of defence. It can be argued that this is the most effective way of addressing some of the inherent problems associated with current aviation security techniques.

**(iii)   Best Practice Guide**

The intention of the Commonwealth to release a best practice guide in the near future for those airports not captured within the current or proposed legislation is laudable. This is because those airports can still benefit from implementing limited 'best practice' security measures even if they aren't presently a security controlled airport. This also allows some level of contact with the regulator for those airports, without the often unaffordable cost implications that accompany security regulation.