BARA

BOARD OF AIRLINE
REPRESENTATIVES
OF AUSTRALIA INC

REVIEW OF AVIATION SECURITY IN AUSTRALIA

SUBMISSION TO
THE JOINT PUBLIC ACCOUNTS
AND AUDIT COMMITTEE

JULY 2003

1. Introduction

The Board of Airline Representatives of Australia Inc. (BARA) is the industry association representing the interests of international airlines operating to and from Australia. BARA has been established as an incorporated body for fourteen years. Prior to that BARA operated for many years as an unincorporated body.

BARA aims to establish a recognised means of communication between member airlines and statutory and other organisations whose interests and actions influence or affect member airlines and the aviation industry. Its purpose is to act on issues affecting the aviation industry in Australia and to provide a single concerted voice on policy and other matters when dealing with the Federal and State governments and other aviation industry stakeholders.

BARA's membership currently comprises 40 scheduled airlines, including both the domestic inter-state airlines. BARA members are acutely aware that maintaining a safe, secure and viable commercial aviation industry is essential for the social and economic well being of Australia.

The airlines operating to and from Australia recognise the importance of the aviation security measures mandated by the Australian Government. The ongoing viability of the commercial aviation industry is clearly linked to the performance and quality of aviation security.

Airlines acknowledge the endeavours of the Australian Government to enhance aviation security outcomes since 11 September 2001. They also maintain that the successful delivery of aviation security outcomes is dependent upon cooperation between the government and industry stakeholders. Cooperation is essential to create an environment that ensures the ongoing delivery of worlds best practice aviation security.

2. Principles for Achieving Aviation Security Objectives

BARA believes that the following broad principles apply for the ongoing achievement of aviation security objectives:

(a)   The establishment and maintenance of a strong working relationship between all stakeholders from industry and government is essential in order to ensure a balanced approach to delivering aviation security outcomes while meeting the industry's operational requirements, commercial interests and the requirements and expectations of the travelling public.

        This principle recognises that the operational experience and expertise of industry stakeholders ensures maximum effectiveness of any security measure.

(b)   In both the public and private sectors desired outcomes are achieved more effectively, and the integrity of essential measures preserved, where policy, audit and compliance roles and responsibilities are separated from operational implementation roles and responsibilities.

(c)   Airlines and airport operators in Australia have operated in an environment of advanced security awareness since at least the early 1980s and understand that a coordinated approach by aviation security stakeholders must be applied to the development and implementation of aviation security policy. The very recent history associated with the successful and rapid development and engagement of the post-September 11 additional security measures is testament to the soundness of this philosophy.

3.   Managing Aviation Security

3.1   Policy framework

The development of effective and practical security policies in a complex, global and technology-related industry such as aviation demands that the policy-maker have an extensive understanding of the industry, including broad experience in wider global and transportation issues. BARA maintains that responsibility for aviation security policy development and management should, accordingly, rest with the government authority that meets that fundamental requirement. The Department of Transport and Regional Services (DOTARS) is the only agency of government in possession of that knowledge and experience.

Coordination and oversight of the delivery of aviation security objectives and outcomes requires a partnership between government and industry. At the policy level, DOTARS has established a High Level Group on Aviation Security, comprising senior Government and industry stakeholders. At the operational level, DOTARS Chairs an Aviation Security Industry Consultative Committee made up of industry and Government aviation security managers.

Airlines acknowledge that dual responsibilities exist for aviation security operational functions. An appropriate division of aviation security responsibilities between industry and government stakeholders is:

(a)   industry stakeholders should be responsible for who and what enters an airfield and boards an aircraft, and
(b)   government stakeholders should be responsible for border protection, police services and any counter terrorism functions.

Dual responsibilities should also exist in relation to the access control infrastructure within which aviation security operates whereby:

(a)   industry stakeholders should be responsible for managing the access control infrastructure and systems, and

(b)   government stakeholders should be responsible for setting the standards and for assembling the intelligence and information required to enable industry assessment of the suitability of persons for access to the airfield and aircraft.

In keeping with Government policy as demonstrated in other key areas of National Security, the costs associated with each area of responsibility should rest with the responsible stakeholder(s).

3.2   Implementation

The day to day performance of aviation security stakeholders at each airport must be managed effectively. BARA maintains that the existing Airport Security Committees should be constituted to ensure they have responsibility for:

(a)   ensuring effective coordination and delivery of aviation security,
(b)   promoting a partnership approach between the government and industry stakeholders with regard to aviation security,
(c)   providing feedback, via DOTARS, to the Aviation Security Industry Consultative Committee on factors affecting the delivery of aviation security outcomes,
(d)   measurement of the effectiveness of aviation security policies and procedures through a program that monitors and reports on compliance, and
(e)   establishment and monitoring of an airport specific aviation security and facilitation protocol between the border agencies and industry.

3.3   Audit

A robust audit program is essential for the on-going security health of the industry. To have credibility the audit process must be independent. BARA maintains that DOTARS has the necessary industry experience to audit industry security programs. This arrangement also preserves the nexus between policy and audit/compliance functions. An independent government agency should, however, have responsibility for auditing government agencies, departmental security programs and procedures. It is logical, therefore, for the Australian National Audit Office to have responsibility for oversight of the effectiveness of the security audit functions.

4.   Compliance with aviation security requirements

The highest priority attaches to aviation security in Australia. There has been a long history of cooperation between airlines, airport operators and Government to ensure that Australia has one of the best aviation security systems in the world. However, whilst world's best practice aviation security systems are in place, it is not possible to guarantee 100% security. An acceptable level of risk must be acknowledged.

Over time the bar has been progressively raised to meet security requirements necessary in a changing socio-political environment. Aviation security processes and outcomes have been the subject of ongoing review and adjustment over many years. As would be expected, the events of 11 September prompted another far-reaching

review. Immediate additional security measures were imposed as necessary, but importantly, longer-term security measures remain the focus of ongoing attention.

The successful delivery of aviation security in Australia is characterised by the use of up-to-date technology, an appropriately trained workforce and clearly defined responsibilities and lines of communication for the parties involved. It is a coordinated and cooperative effort. Each airport has an active security committee to coordinate the security function.

Aviation security outcomes are determined by DOTARS in consultation with airline representatives and airport operators. As part of this process, Australia's security intelligence agencies play an important role in providing threat assessments as background for ongoing security measures and for short-term responses to particular security concerns. DOTARS conducts ongoing audits of airline and airport performance against the regulated outcomes sought.

The counter terrorist first response function is performed by the Australian Protective Service, an agency of the Australian Federal Police. APS officers patrol the airside of airports and the terminal precincts. It is their role to respond to and contain security threats or terrorist acts and alert State and Commonwealth government anti-terrorist forces. APS officers receive specialist training for the job.

Security and criminal checks are conducted for all persons working at airports. All contractors entering the airport are subjected to these security measures. All passengers and guests and their hand baggage entering the sterile area of airport terminals are screened. The passenger screening function is the responsibility of the organisation that manages the terminal used by the passengers. The function is generally performed under contract by private security organisations. Again, the employees involved receive specialist and accredited training for the job. They are also well paid by international standards.

At the present time a prescribed proportion of baggage checked-in to the hold of an aircraft is also screened. From 1 January 2005 all baggage checked into an aircraft's hold will be screened. Checked baggage screening is performed by airport operators with screening facilities incorporated into airport baggage handling systems. Airlines also have in place baggage reconciliation systems to ensure that only bags matched to passengers are loaded onto aircraft. A new Triple A baggage reconciliation system being developed cooperatively by airlines will add an extra level of certainty to the baggage reconciliation process.

Australia adopts a layered approach to aviation security. At no stage is aviation security dependent solely on one measure or program. Unlawful interference to aviation is checked at multiple levels to ensure the greatest capacity to detect and obstruct a potential threat. As a result, Australia has achieved world class aviation security outcomes over many years.

5.   New Aviation Security Legislation

The new Aviation Transport Security Bill (2003) (the Bill) is currently before the Parliament. Associated Aviation Transport Security Regulations are presently being drafted. DOTARS is facilitating a consultative process with industry stakeholders to review the contents of the new Regulations.

The development of the new legislation and regulations provides an opportunity for the Government to set standards and provide leadership. The industry must ensure that the Government does not pursue a policy framework that promotes inconsistencies and that it does not abdicate the leadership role. BARA maintains that the model of airlines and airport operators developing security programs in isolation for ASICs, passenger screening, checked bag screening and the like is not necessarily a suitable one for ensuring the implementation of a successful aviation security environment.

In this regard, there are a number of important issues that need to be addressed in relation to the consultative process and the Regulations themselves.

5.1   Consultative process

DOTARS officers have been engaging airline and airport representatives in a series of meetings to inform them of the provisions of the new aviation security regulations. Unfortunately, the process of consultation to date has been less than satisfactory. BARA is concerned that, without bona fide consultations, security outcomes emerging from the new regulations could be jeopardised.

There are a number of issues regarding the consultation process:

1. Papers pertinent to outlining the details of the new regulations have been circulated at too short notice to facilitate meaningful discussion of their contents. BARA is concerned that the consultative process should not be progressed with such unseemly haste as to preclude the assurance of good aviation security objectives.

2. Papers presented to the consultative meetings have not set out the new draft regulations. Rather, they often are discussion papers or drafting instructions or draft regulations that have been prepared without the benefit of DOTARS drafting instructions. The industry needs to see drafts of the actual regulations in order to review their provisions and allow the opportunity to comment on their content and intent.

3. The consultation process requires airlines to attempt to assess individual regulations or groups of regulations in isolation, thereby significantly diminishing the capacity of airlines to investigate them for internal inconsistencies and contradictions in their provisions.

The consultative process to date has identified a number of the proposed regulatory provisions that are of particular concern to airlines. These include the regulations related to:

(a)   the carriage of persons in custody,

(b)   airport access controls, particularly the proposed reclassification of the sterile area to airside, and

(c)   the proposed demerit points system.

The consultation arrangements for the new aviation security regulations must allow sufficient time for airlines to consider the package of regulations as a whole in draft form. The final form of the new regulations must take account of the legitimate concerns of airlines about the effectiveness of the proposed provisions to deliver real security outcomes.

5.2   Carriage of persons in custody

Outside of a terrorist event, the uplift of persons in custody (PIC) represents the greatest risk to airlines in their daily operations. The requirement that airlines be properly informed by relevant authorities of the proposed uplift of PIC cannot be overstated. However, the general rule is that Government agencies give scant regard to airline interests and often fail to give adequate notice or details of PIC.

The new aviation security regulations being developed by DOTARS must provide legislative protection for airlines in this matter.

The most commonly uplifted PIC are those falling under the jurisdiction of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). BARA expects the new regulations to clearly define all of the persons dealt with by DIMIA. These include:

(a) criminal deportees,
(b) removees,
(c) supervised departures,
(d) monitored departures, and
(e) turn-around passengers.

Of most concern to airlines is the routine failure of DIMIA to give advance notification of "supervised and/or monitored departures". These PIC may have been detained in custody by DIMIA, escorted to the Customs outwards control point and then released to board the aircraft alone. In some cases these "supervised or monitored departures" have family members residing legally in Australia and such passengers are, therefore, leaving under duress. Passengers falling into this category may raise security concerns for the airline and the airline must be notified of their proposed uplift.

It is critical that airlines be informed of all categories of departure when the passenger has been detained in custody prior to departure. This will permit the airline to make an informed assessment regarding the passenger and the potential of the passenger to jeopardise the safety of the flight. Such information is also required to allow the airline to advise up line airports as necessary, to meet overseas regulatory requirements, to notify codeshare partners of on-carriage and to brief crew prior to departure.

The new aviation security regulations must impose on Government agencies the obligation to provide airlines with adequate advance notice of PIC to ensure that appropriate and informed risk assessments may be performed by the airline prior to uplift. Government agencies must be required to advise the airline of the category of PIC - criminal deportee, removee, supervised departure, monitored departure or turn around - at least 24 hours prior to departure.

Further to this requirement, the new aviation security regulations must also require Government agencies to advise the airline of the specific charge(s) against the PIC or the offence(s) committed by the PIC or the reason for the PIC being in custody. The new aviation security regulations also must require Government agencies to provide other reasonable information to airlines. Such information may include whether:

(a) the PIC objects to travelling,
(b) the PIC is wanted by any authority at the destination or transit ports,
(c) the PIC is leaving behind family members,
(d) the PIC requires medication,
(e) the PIC has been involved in an attempt to escape from detention/custody,
(f) the PIC has been involved with any riots or violence while in detention/custody,
(g) the PIC has a history of self harm,
(h) an attempt by a third person to release the PIC is likely
(i) an attempt an attempt by a third person to harm the PIC is likely,
(j) the PIC has a history of physical abuse or violence,
(k) the PIC has ever engaged in sexually related criminal activity,
(l) the PIC is addicted to an illegal substance or has a history of substance abuse,
(m) it may be necessary to restrain the PIC in flight.

The above list is not exhaustive but it demonstrates the range of pertinent information regarding PIC.

Other important matters regarding PIC need to be addressed by the security regulations. For example, where an escort is required the escort must be the same gender as the PIC.

The Government, via the aviation security regulations, expects airlines to deliver a high standard of aviation security. Airlines expect the regulations to impose the same standards of security consciousness on Government agencies. The provision by Government agencies to airlines of sufficient and timely information about PIC must be mandated by the regulations.

5.3   Airport areas and zones

Proposed changes under the Regulations to the designation of areas and zones at airports have implications for the applicable aviation security arrangements. In designating areas and zones at airports, DOTARS has proposed adoption of ICAO terminology.

However, it also appears that DOTARS proposes to change two of the most commonly accepted terms - "sterile area" and "airside" - for no apparent reason, other than for change itself. BARA believes that the DOTARS amended designation will

result in no additional security benefit and will lead to significant and unnecessary training and cultural change implications for the industry.

Under the DOTARS approach, the "airside" will now incorporate the existing "sterile area" in domestic terminals. This proposal ignores the actual workings of domestic terminals. Some of the problems arising from the existing sterile area being reclassified as airside include:

(a)   it could be an offence for all meeters and greeters and retail concession staff to enter the existing domestic terminal sterile area (to be reclassified as airside),

(b)   it would be necessary to issue ASICs to all employees (airline, airport and retail concessions) working in the existing domestic terminal sterile area, and

(c)   the requirement in (b) above is inconsistent with meeters and greeters not being required to have ASICs, assuming they were allowed to continue to enter the existing domestic terminal sterile area.

5.4   Demerit points system

BARA does not believe that the proposed demerit point system related to infringement of security regulations will enhance aviation security. The demerit point system appears to be aimed at satisfying ANAO procedures and is not designed to improve aviation security outcomes. The range of penalty measures proposed in the Bill, other than demerit points, are sufficient to provide DOTARS with the flexibility to achieve any required security outcome. The other penalty measures available include infringement notices, enforcement notices and injunctions.

Despite apparently being proposed simply to satisfy ANAO interests, the demerit point system does not provide any benefit in terms of measuring or auditing security breaches. DOTARS has the capacity, through the provisions of the Bill, to measure breaches via enforcement notices, infringement notices and injunctions.

In addition to not improving security outcomes and providing no additional benefit in terms of measuring or auditing security breaches, the demerit point system represents a denial of natural justice. This serious shortcoming of the proposed system arises because demerit points for breaches of security regulations will accrue against the holder of the security program under which it is deemed that the breach has occurred. The individual who has occasioned the breach receives an infringement notice and, possibly, incurs a fine, but the holder of the relevant security program faces the prospect of ultimate cancellation of the security program.

The requirement under the aviation security regulations for persons in security restricted areas to carry and display an ASIC provides a good example of the seriousness of this matter. ASICs are issued by authorised issuing bodies - effectively, the major airport operators, the major domestic airlines and DOTARS. In the case of airport operators, for example, they issue ASICs to their own employees who are required, as part of their employment, to enter security restricted areas on the airport. However, airport operators also must issue ASICs to employees of other businesses located on the airport or accessing the airport precinct where those employees are required, as part of their employment, to enter security restricted areas.

It is entirely unreasonable to expect airport operators to be responsible for the actions of other employers in policing their employees in relation to ASIC requirements. Yet if the employees of those other employers repeatedly breach the ASIC requirements, under the demerit points system, it is the airport operator which incurs the demerit points against its security program. No penalty will attach to the actual employer of the infringing employee.

The proposed demerit point system will not enhance aviation security outcomes. The penalty and incentive arrangements proposed under the scheme are completely misplaced. The penalties for breaches of a security program ultimately apply to a third party, so there is no incentive for individuals to adhere to the requirements of the security program. It is BARA's view that the proposed system will be bureaucratic, will divert resources away from the primary objective of securing aviation facilities, aircraft and passengers and could possibly result in ongoing court actions.

6.   Aviation Transport Security Programs

Section 12 of the Bill identifies industry participants who are required to develop a Transport Security Program. In the matter of Aviation Transport Security Programs, the Bill and the DOTARS proposed Guidelines for Industry Participants are deficient in a number of respects. These include:

(a)   There is no specification for compliance with ICAO Annex 17 (7th edition) standards 3.1.1, 3.1.4 or 3.1.6.

(b)   There is no commitment by DOTARS to review, update and publish a revised Australian National Civil Aviation Security Program to conform with updated aviation security requirements prior to industry participants commencing their program revisions. This procedural detail would ensure that industry participant programs are consistent with and conform to the National Program.

(c)   The proposed Program framework fails to provide for any arbitration if two or more parties disagree on inclusion of specific requirements or responsibilities within a program.

(d)   The list of industry participants required to develop a Transport Security Program is not exhaustive. BARA maintains that all industry participants should be required to submit a Transport Security Program to DOTARS for approval. Some organisations and their employees who access an airport are required to comply with certain security obligations, yet they do not develop a Transport Security Program for approval. Rather, those organisations and their employees are captured by other Programs. This situation is unsatisfactory, as the holder of the approved Program has no means, other than via contractual agreements, to "ensure" that other organisations comply with relevant security obligations.

7.   Conclusion

It is not possible to guarantee absolute aviation security. As with other transport modes, a certain level of risk attaches to aviation. The aim of aviation security programs is to maintain that level of risk well within acceptable community standards.

Australia has been successful in this regard. Aviation security standards in this country are extremely high. This outcome has been achieved as a result of:

(a)   a long history of cooperation between the Government, police/security agencies, airlines and airport operators;

(b)   the adoption of a layered approach to aviation security measures and programs so that overall security outcomes are not necessarily compromised in the event of a single breach of any one security measure;

(c)   the application of limited resources in accordance with informed risk management techniques so that overall security outcomes are maximised; and

(d)   the recognition that effective training programs underpin all aviation security objectives.