

Rural & Regional Affairs and Transport Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Budget Estimates May 2014

Infrastructure and Regional Development

Question no.: 225

Program: n/a

Division/Agency: Office of Transport Security

Topic: Aviation Security Identification Cards

Proof Hansard Page: Written

Senator Xenophon, Nick asked:

1. Is the Office of Transport Security or the Department an Issuing Body for the purposes of Division 6.3 of the Aviation Transport Security Regulations 2005, or is the Australian Customs and Border Protection Service the single government Issuing Body for applicants other than those pilots captured under CASA's restricted authorisation?
2. Are the Aviation Security Identification Card (ASIC) Programs required by regulation 6.06 (of the Aviation Transport Security Regulations 2005) specifically approved by the Department separately from the granting of authorisation as an Issuing Body?
 - a. If so, what is the head of power for that approval?
 - b. Is there a checklist of mandatory items to be included in an ASIC Program?
 - c. If not, how do you ensure that each ASIC program consistently applies the Government's intended policies and procedures?
 - d. If so, is that checklist limited only to those items set out in regulation 6.06 or are there additional items required that reflect other compliance or departmental policy requirements?
3. If there are additional items to those set out in regulation 6.06, where are they published and are they universally applied to all ASIC programs?
4. The Department's website has a page titled Aviation Security Identification Cards (ASICs). In the list of items there is one titled "What if a person's ASIC application is refused?" that states: "If someone's application for an ASIC is refused, they will be informed of the reason for that decision and their legal rights for a reconsideration or appeal. For more information, contact your issuing body. If an applicant believes that their criminal history certificate has offences listed incorrectly, they should contact CrimTrac to arrange a correction to their record."
 - a. Does that advice apply to all Issuing Bodies as a mandatory inclusion in their ASIC Program, despite the exclusive listing set out in regulation 6.06 (of the Aviation Transport Security Regulations 2005)?
 - b. If not, why not?
5. Division 6.4 of the Aviation Transport Security Regulations 2005 requires the Issuing Body to maintain certain records. It does not require any records of refusal to issue an ASIC, yet regulation 6.30 specifically requires certain reports to the Secretary of refusals to issue. Is that a regulatory oversight?
6. Regulation 6.30 (of the Aviation Transport Security Regulations 2005) requires an Issuing Body to provide the Secretary a written report of refusals to issue based on a failure to satisfy either paragraph 6.28(1)(c) or (f), that is Australian citizenship etc. or is banned for ASIC display misbehaviour. However, regulation 6.28 covers a number of other criteria that could form the basis of refusal to issue an ASIC. Does the Department know how many applications for an ASIC have been refused for any reason?
 - a. If not, isn't that information important in terms of how the system is working as well as in terms of possible security intelligence?
 - b. If so, how has the data been compiled?
 - c. If so, can the Department identify the specific reasons for each decision to refuse to issue an ASIC?
7. Part 8 of the Aviation Transport Security Regulations 2005 sets out the decisions that are reviewable by the Administrative Appeals Tribunal (AAT). Regulation 8.03 specifically includes the decisions of Issuing Bodies to refuse to issue an ASIC to somebody, to issue an ASIC subject to a condition or to cancel an ASIC. Division 6.4 of the Aviation Transport Security Regulations 2005 requires the Issuing Body to maintain certain records, but not those related to refusals to issue or the imposition of conditions. How does the Department know about such decisions in order to supervise the system and ensure consistency?

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- a. How does the Department ensure that each applicant is provided with appropriate procedural fairness, including notification of their rights and review limitations under the Administrative Appeals Tribunal Act 1975?
- b. Is there any process for internal review within the Issuing Body and by appeal to the Department before an applicant needs to apply to the AAT for review?
- c. If not, why not?

Answer:

1. The Department is not an authorised issuing body. Airservices Australia, the Civil Aviation Safety Authority (CASA) and the Australian Customs and Border Protection Service are the Government entities authorised as ASIC issuing bodies. CASA's authorisation as an ASIC issuing body is not restricted.
2. No. Under Regulation 6.15(2), an application for authorisation as an ASIC issuing body must be accompanied by a statement setting out the applicant's proposed ASIC program.
 - a. The Secretary of the Department of Infrastructure and Regional Development (the Secretary) is empowered to decide an application under Regulation 6.16(2).
 - b. Regulation 6.06 lists the procedures which an ASIC program must set out and which an issuing body must give effect to (6.07).
 - c. n/a
 - d. Mandatory inclusions for an ASIC program are set out at Regulation 6.06. However as an issuing body is exercising statutory power they are subject to administrative law requirements when applying the Regulations.
3. The Department provides ASIC program templates (to be used as a guide), to ASIC issuing body applicants as requested.
4. The advice contained on the Department's website is not included in an ASIC program. It provides information which outlines administrative law principles that overlay any decision made under a statutory program. AusCheck, in the Attorney General's Department, which coordinates background checks and makes the primary determination of eligibility in accordance with the Regulations, are also subject to these administrative law principles when making any decision under legislation.
5. This is not a regulatory oversight. Records retained by an issuing body (under the Regulations) are for security purposes. Information not relevant to security is not required to be retained by the issuing body.
6. The Department is aware of the numbers of applications refused due to an adverse criminal record or adverse security assessments.
 - a. n/a
 - b. AusCheck within the Attorney-General's Department administers the database which holds information on ASIC background checks.
 - c. Information about refusals is provided to the Department on a regular basis and includes the categories (or reasons) for refusals. The Department is also able to access the AusCheck database for investigative and compliance purposes.
7. The Department undertakes audit and compliance activities on issuing bodies to ensure they give effect to their ASIC programs and meet the requirements of the Regulations. However, it is the role of the courts and the AAT to review decisions made by issuing bodies under the legislation.
 - a. ASIC applicants and holders are informed of their review rights in writing by Auscheck, if the outcome of a background check contains unfavourable criminal history advice. The Department also holds information on its website with respect to review options available for decisions made under the legislation.
 - b. Where an applicant is refused a card due to an adverse criminal record, or qualified security assessment, the applicant (or the issuing body) can apply to the Department and seek a review of the decision. If an application to the Department is unsuccessful, the applicant can apply to the AAT for a review of the decision. The applicant can apply direct to the AAT for other refusal decisions. There is no internal review in the issuing body.
 - c. n/a

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Question no.: 226

Program: n/a

Division/Agency: Office of Transport Security

Topic: Hobart Airport – Australian Federal Police

Proof Hansard Page: Written

Senator Sterle, Glenn asked:

1. Was the Department consulted prior to the Government making this decision?
2. Was any consultation done with the Tasmanian Government before making this decision?
3. What was the rationale for making this decision?
4. Has the Department provided any advice to the Government or other Government agency on future security arrangements for Hobart Airport?
5. Could this decision jeopardise Hobart Airport getting international flights?

Answer:

1. The Department was not consulted prior to this decision being made, but continues to be engaged in discussions with AGD about the implementation progress of this measure.
2. This is a question for the Attorney-General's portfolio.
3. This is a question for the Attorney-General's portfolio.
4. The Australian Federal Police (AFP) has been advised that the Department of Infrastructure and Regional Development is currently reviewing regulatory requirements at security controlled airports across Australia. This review includes an assessment of currently 'designated airports' under the Aviation Transport Security Regulations 2005.
5. No, the removal of the AFP presence at Hobart Airport will not impact on its current designation as a Restricted Use International Airport under the *Air Navigation Act 1920*. Applications for international services at Restricted Use International Airports will be considered by relevant regulatory authorities in accordance with established procedures.

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Question no.: 227

Program: n/a

Division/Agency: Office of Transport Security

Topic: Issuing Bodies

Proof Hansard Page: Written

Senator Xenophon, Nick asked:

1. Division 6.3 of the Aviation Transport Security Regulations 2005 (ATSRs) provides for entities described as Issuing Bodies. Issuing bodies may be an aviation industry participant or a Commonwealth agency. It is not entirely clear what legal status an Issuing Body might have, since the entity appears to have its own powers rather than acting as a delegate of the Secretary of the Department of Infrastructure and Regional Development (DIRD). What status is accorded to these entities and what limitations and obligations attach to that status?
2. Does the use of an external agency such as the Issuing Bodies created under the ATSRs allow the DIRD to avoid the Government's commitment to procedural fairness or does the DIRD have a duty to only designate Issuing Bodies that have policies and procedures that meet or exceed the standards of procedural fairness expected of the DIRD?

Answer:

1. Issuing bodies are authorised by the Secretary of the Department of Infrastructure and Regional Development (the Secretary) under the Aviation Transport Security Regulations 2005 (the Regulations). Authorisation as an issuing body allows the entity to implement the ASIC scheme as set out in the Regulations. Once authorised, the Commonwealth approves their ASIC program. They are required under legislation to give effect to their ASIC program. They also have specific obligations under the Regulations beyond the ASIC program relating to various matters. For example:
 - a. maintaining a register of ASICs (Regulation 6.23);
 - b. confirming the operational need and identity of applicants (6.28);
 - c. applying for background checks on behalf of applicants (Regulation 6.27AA); and
 - d. producing cards in the specified format (Regulation 6.33).
2. No. ASIC decisions made under the Regulations, either by the Secretary of the Department or an issuing body are reviewable by the AAT.

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Question no.: 228

Program: n/a

Division/Agency: Office of Transport Security

Topic: Passenger Screening

Proof Hansard Page: Written

Senator Sterle, Glenn asked:

1. Can you confirm that your Division is responsible for aviation passenger screening regulation?
2. Is it the case that recent regulatory changes have implemented a nationally consistent regulatory system for passenger screening at airports?
3. Can you outline the regulatory obligation of private airport operators around passenger screening? Do they provide enforcement? Or are these matters handled by Commonwealth employees?
4. What is the regulatory expectation of private operators of airports in terms of passenger screening?
5. Are private operators of airports entitled to question passenger screening decisions or processes?
6. Who employs the staff who screen passengers at airports? The Commonwealth, States, airport operators or subcontractors? Or does it vary from airport to airport?
7. Do the regulations include required standards for training for the staff performing passenger screening?
8. Do the regulations require licensing of staff performing passenger screening?
9. How do the regulations ensure a sustainably high standard by those performing passenger screening?
10. Is it intended that unlicensed staff could perform passenger screening?
11. What safeguards exist to ensure that this could not occur?

Answer:

1. Yes.
2. Yes.
3. Under aviation security legislation, a security controlled airport is responsible for ensuring that an appropriate 'screening authority' is appointed for passenger screening. The screening authority may be the airport itself, or the airport may appoint another entity, such as an airline to undertake this responsibility. If a security controlled airport is not the screening authority, they must specify the screening authority that carries out passenger screening on its behalf in their transport security program. Regulatory obligations of screening authorities are set out in Division 4.1 of the Aviation Transport Security Regulations 2005. The Department conducts regular compliance activities to ensure regulatory obligations are met.
4. The aviation security legislation requires screening authorities to screen all passengers and their carry-on baggage for prohibited items and weapons before boarding a flight operating as a screened air service.
5. Yes.
6. At most airports, screening authorities enter into commercial arrangements with security screening service providers to undertake passenger screening. Some airport operators conduct passenger screening themselves. The Australian Government and State Governments do not employ screeners.
7. Yes.
8. Screening officers are required to hold a Certificate II in Security Operations or any other qualification which the Secretary of the Department of Infrastructure and Regional Development deems equivalent. Licensing may be an operational requirement of the employer or screening authority who may also need a security guard function undertaken.
9. The Aviation Transport Security Regulations 2005 require screening officers to be competent in the methods, equipment and techniques used for passenger screening, including dealing with weapons and prohibited items that are detected and surrendered. The competence of passenger screeners is ensured by regular audits and inspections conducted by screening authorities and the Department's Aviation Security Inspectors.
10. Screening officers must hold a Certificate II in Security Operations or another qualification which the Secretary deems equivalent.

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11. Training and qualification requirements under the Aviation Transport Security Regulations 2005 ensure screener competency. State security guard licences are not required.