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Via Email: legcon.sen@aph.gov.au

27 February 2007

Ms Jackie Morris
Committee Secretary
Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Morris

Re: INQUIRY INTO THE AUSCHECK BILL 2006

Thank you for your letter dated 9 February 2007, inviting Qantas to make a written public submission to the above inquiry.

I am pleased to provide the attached submission to the Committee.

Qantas will be happy to assist the Committee and provide any further relevant information.

Qantas would also be pleased to appear before the Committee if appropriate.

Yours sincerely,

(Original signed and sent via Mail)

Geoffrey D Askew
Group General Manager Security

Attachment:

SUBMISSION OF QANTAS AIRWAYS LIMITED
TO THE STANDING COMMITTEE ON LEGAL AND
CONSTITUTIONAL AFFAIRS

February 2007

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EXECUTIVE SUMMARY

The security of commercial aviation is a critical element in Australia's national security infrastructure and policy. An essential part of that infrastructure is an effective background checking regime with respect to Aviation Security Identity Cards (ASICs) for certain people who work in prescribed areas of the Australian Civil Aviation Industry. Collaboration between the Australian Government and the aviation industry is essential to ensure that timely advice is provided to ASIC Issuing Bodies of matters which come to the attention of Government agencies which could have an adverse impact on security.

The current ASIC background checking regime is in Qantas' view fundamentally flawed. Processing times are too long and there is currently no ability to conduct live monitoring of criminal records. These flaws combine to present Australia and the aviation industry with sub-optimal background checking processes and therefore potentially inferior security outcomes.

The introduction of a live criminal history checking process similar to that used by the Australian Security Intelligence Organisation (ASIO) is critical if effective aviation security outcomes are to be achieved and service levels realised. Under the current background checking system, it is possible for an individual to commit and be convicted of a disqualifying offence; to continue to hold an ASIC; and continue to have access to the security restricted area or aircraft at security controlled airports for two years until the Issuing Body is subsequently advised by relevant Australian Government agencies of the existence of a disqualifying offence.

This is an unacceptable situation, placing airport and aircraft operators at risk with associated potential for a significant adverse impact on Australia's national security.

In many of the AusCheck Bill's Second Reading Speeches concerns were expressed as to the detail of the scheme being left to Regulations. Qantas is also concerned about the commercial and operational impact of the final Regulations. We would therefore appreciate the opportunity, as the single largest ASIC Issuing Body, to work closely with Government on the drafting and detail of the AusCheck Regulations. This is especially important as changes will be required to Part 6 of the Aviation Transport Security Regulations 2005 (ATSR) to align and/or remove a number of obligations on Issuing Bodies that will be transferred to AusCheck.

Qantas submits that the Bill should be specifically amended to provide for a live criminal history database; to include criminal intelligence to be part of the decision making process and to form part of the definition of "background check"; to allow for single ongoing consents from ASIC applicants; to permit Issuing Bodies to request and pay for partial background checks; and to place service level obligations on AusCheck. Accordingly, a number of recommendations have been made.

Finally, Qantas estimates that the proposed increase in background checking will cost the Qantas Group an additional \$1 million per annum. This is a significant cost which would need to be offset by a commensurate improvement in the efficiency and effectiveness of the security outcomes which the ASIC background checking regime seeks to deliver but which is not evident from information currently available to the industry.

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Qantas Recommendations

1. Qantas recommends that Section 5 of the Bill be amended to include “criminal intelligence” in the definition of “background check”
2. Qantas recommends that Section 9 of the Bill be amended to include the following additional matters to be covered by the AusCheck scheme:
 - a) provide for a live criminal history database;
 - b) provide for the flagging and discounting of known non aviation related offences of current ASIC holders, thereby classifying them as clean applications on renewal;
 - c) allow for a single ongoing consent from ASIC applicants for the life of an applicant’s ASIC needs whilst employed continuously in the industry.
 - d) provide that a copy of an applicant’s Criminal History Certificate be made available on an individual or ongoing basis to the Issuing Body;
 - e) provide for Regulations to permit Issuing Bodies to request and pay (proportionally) for partial background checks including volume related discount on the proposed fees;
 - f) provide for regulation to place service level obligations on AusCheck with end-to-end delivery requirements:
 - 100% of clean applications (without potential or actual criminal history hits) for Australian Citizens & Permanent Residents processed within 72 hours.
 - 95% of applications with criminal history records, that are not aviation related offences processed within 5 working days.
 - 95% of applications with an aviation related criminal history record processed within 10 working days.
 - 100% of Criminal History Certificates including all offence detail be provided to the Issuing Body within 2 working days of the Criminal History Certificate being received by AusCheck.
 - g) provide for regulation to outline an escalation process for outstanding background checks; and
 - h) provide for the existence of an IT disaster recovery strategy with manual system back-up.

INTRODUCTION

Qantas as an Issuing Body

Qantas is an ASIC Issuing Body under Regulation 6.12 of the Aviation Transport Security Regulations 2005 (the ATSR) and is the largest single issuer of ASICs in Australia. The ATSR provide, *inter alia*, that Qantas 'may' issue an ASIC to an employee only in accordance with its ASIC Program and only if certain conditions are satisfied. The Qantas ASIC Program sets out procedures to be followed for the issue, production, storage and security of ASICs.

Since the current ASIC regime commenced in November 2003, Qantas has requested background checks on approximately 89,000 names. Based on the results of these background checks, the rejection rate is less than 1% of all applications submitted.

Approximately 80% of the background checks result in a clear criminal history. The remaining 20% are applications where ASIO expresses an interest in the applicant or where some form of criminal record is revealed. The offences revealed are generally minor with many relating to drink-driving or other traffic convictions.

With the majority of Qantas ASICs being issued to employees, we are in a strong position to control the return of cards and for this reason our 'unaccounted-for' card numbers have historically been lower than for other Issuing Bodies.

COMMENTARY ON THE AUSCHECK BILL 2006

No 'Live Monitoring'

In Qantas' view, the single largest deficiency in the current ASIC background checking system and in the proposed AusCheck system is the inability for authorities to conduct live monitoring of a person's criminal record. As State/Territory and Commonwealth jurisdictions have individual criminal history databases, inevitably there will always be a time lag when background inquiries need to be made with other jurisdictions. This deficiency is widely recognised including the Department of Transport and Regional Services (DoTaRS). [*Andrew Tongue, Senate Hansard, RRA&T 77; 15 February 2007*]

It is possible under the existing ASIC background checking system for an individual to commit and be convicted of a disqualifying offence; to continue to hold an ASIC; and continue to have access to the security restricted area (including access to an aircraft) at a security controlled airport for up to two years until the Issuing Body is advised by relevant Australian Government agencies of the existence of a disqualifying offence. The Bill does not address this issue.

Given that CrimTrac is moving over time to implement a live on-line arrangement effectively 'joining' disparate criminal record databases across all jurisdictions, Qantas submits that this should be a priority with the proposed Bill, with clear provisions for the implementation of live and continuous background checking of ASIC applicants. This is essential if an effective and efficient system is to be realised.

As an interim solution, we would propose that those ASIC applicants with criminal records that do not disqualify them from holding an ASIC (for example, minor traffic offences) should be identified in the system so that future checks only search for new offences, thereby speeding up the process for both AusCheck, the employer and applicant. In other words, if applicant 'A' has one known traffic offence in a particular jurisdiction and the subsequent check two years later reveals only one offence in that same jurisdiction, no further inquiry with other jurisdictions need take place.

Enduring or Continuous Consent

The Bill should only require ASIC applicants to submit a 'once only' consent form for the life of their continuous employment in the industry and/or the time period for which an ASIC is necessary. This enduring or continuous consent will obviate the need for issuing bodies to obtain written consent from employees as part of subsequent ASIC re-issue cycles (currently every two years). Provided this is linked to conditions of employment, whereby an employee agrees to provide continuous consent, this will return considerable efficiencies for AusCheck and the employer and will value add to improved security outcomes more generally.

Criminal Intelligence

The proposed Bill is silent on the benefits of including criminal intelligence as part of the decision making framework with respect to the background checking process. Acknowledging the importance of principles such as the presumption of innocence, inclusion of the existence of criminal intelligence as part of the assessment of whether an applicant is eligible to hold an ASIC will significantly add to the integrity of the checking process.

Qantas submits that inclusion of criminal intelligence should form part of the definition of "background check" (section 5).

Criminal History Certificates

There has been some uncertainty as to whether AusCheck intend to provide a copy of the Criminal History Certificate to the Issuing Body. Given that consent to do so is explicitly provided for in the consent form submitted by the applicant (and payment is made for the Criminal History Certificate), it is not unreasonable to expect that Qantas as the Issuing Body should receive a copy of the Criminal History Certificate.

Accordingly, Qantas is of the view that the Bill should make provision for a copy of the Criminal History Certificate to be made available to the Issuing Body.

Service Levels

On 15 February 2007, DoTaRS gave evidence before the Senate Rural and Regional Affairs and Transport Committee that turn around times for applicants with no criminal record could be achieved in approximately 14 days, while if an application needs to be forwarded onto another jurisdiction for 'further inquiries', the time frame could be as much as eight weeks. *[Cheryl Johnson, Senate Hansard, RRA&T 76; 15 February 2007]*

Qantas acknowledges that, given the limitations of the current jurisdiction based criminal record databases and the lack of connectivity between them, there is little Australian Government agencies can do to shorten the processing times for ASIC applications that are forwarded to other jurisdictions for further inquiries. In the past two years, however, processing times by Australian Government agencies for applications with no criminal history have been far from satisfactory with processing times often being in excess of 14 days.

AusCheck has committed to a five working day turnaround for applicants that are Australian Citizens and who do not have potential or actual criminal history. Qantas welcomes this prospect, although we regard processing times of three working days for applicants with no criminal history as not unreasonable.

However, the Bill is silent on a commitment to service level agreements with Issuing Bodies, including this category of applications. There is also no apparent escalation process to follow up any outstanding background checks. The absence of these provisions does little to allay our concerns in relation to increased risk of unacceptable delays in processing times and their consequential negative impact on the industry.

Accordingly, Qantas submits that the Bill should provide for regulations to be made to hold AusCheck accountable to specific processing times and service levels.

Document Verification Service (DVS)

The 'Rights to Work in Australia' check (also known as the 'working rights test') and the Document Verification Service (DVS) are not provided for under either the existing background checking regime or as a requirement under the ATSR. The DVS has been introduced as a result of Government concerns on identity fraud, however, it will not become available until late 2008.

It is anticipated that additional Qantas labour resources will be required to gather and process information for the DVS and 'working rights test'. AusCheck will require this information to be gathered and processed from 1 July 2007 to allow for DVS to be applied retrospectively once implemented in late 2008.

Qantas is concerned about the implications for future (as yet undefined) additional resource implications with respect to these requirements. While there is undeniably significant benefit to Australian border control and law enforcement agencies with respect to identity and document verification through application of the 'working rights test' and DVS, the benefit to Qantas and the industry is less apparent.

In Qantas' view the industry should be compensated in some way for performing this function on behalf of the Government.

Lack of Service Flexibility

Under the proposed AusCheck regime, all background checks will be performed with each application, except the politically motivated violence check, which will be performed only once. Issuing Bodies cannot receive volume related discounts on proposed fees.

The ability to do this would be beneficial for Issuing Bodies in the context of future requirements with respect to DVS and the 'working rights test' as well as the standard ASIC background checking requirements.

Redundancy of Systems

The proposed AusCheck background checking process is based on automated IT systems. Notwithstanding that AusCheck has invested in a 'fail over' capability in the event of system IT related problems, there is however, no disaster recovery capability to provide redundancy in the event of a catastrophic event or system failure.

Given that a disaster recovery system is not proposed, it appears to us to be an oversight that, as we understand it, no manual processing capability either exists or is proposed in the event of the IT systems and associated platforms being unavailable for extended periods of time.

Qantas submits that the Bill should provide for regulations to be made to require AusCheck to maintain redundancy of the IT systems underpinning the background checking process, including a provision for manual processing of applications in the event the primary system fails and prior to the activation of any disaster recovery system.

Cost Implications

The Australian Government has advised industry that the cost of a new ASIC application will increase from \$49 to \$84, while the cost of a renewal application will increase from \$36 to \$74. These increases will cost the Qantas Group approximately \$1 million per annum.

The additional costs represent:

- A unit cost allocated of \$54 to recover fixed costs, predominantly the depreciation of AusCheck's new IT System;
- less cost saving of \$3 per politically motivated violence check performed by ASIO; and
- less cost saving of \$16 per criminal history check performed by the AFP or CrimTrac.

The cost recovery model adopted allocates direct and indirect costs based on estimated volumes. Whilst this is a reasonable accounting methodology, it results in the aviation industry funding a greater portion of AusCheck's infrastructure costs than the maritime industry. This potential inequity needs to be addressed on the basis that the volume of checking required to facilitate applications for the maritime industry will be far greater than for the aviation industry. No volume discounts for the aviation industry appear to be available under the proposed cost recovery model.

The Bill provides for information collected (including information already available from the existing ASIC background checking regime) to be available to Australian Government agencies. Although the AFP and ASIO have broad powers to collect and use information, Clause 14 of the Bill provides clarification that the information held in the AusCheck database can be used for the purposes of security and criminal intelligence [*AusCheck Bill 2006 Explanatory Memorandum p8, para23*].

It is clear that these agencies will not be charged for the information they request from the AusCheck database and therefore do not contribute to the cost recovery scheme. Qantas contends that this is an unreasonable burden on the aviation (and maritime) industry and is inconsistent with the Government's stated principles that industry is responsible for funding its protective security measures, while it is responsible for funding measures pertaining to national security.

Accordingly, Qantas submits that the Bill should provide for regulations to include Australian Government agencies in cost sharing arrangements, particularly cost recovery for depreciation of AusCheck's IT infrastructure.

Hidden IT Investment Costs

Unless AusCheck agree to amend their current IT systems to allow Qantas ID Services to process information directly on the AusCheck website, Qantas ID Services will need to spend approximately \$90,000 on amending the clearance database and the AFP schedule currently used as part of the existing ASIC background checking process.

Future Cost increases

The cost recovery statement allows for background checking costs to increase in 2008/09 for any additional AFP and Department of Immigration and Citizenship (DIAC) charges that may arise. Additional costs which may be incurred by the industry in relation to DVS, however, at this stage are difficult to quantify.

Conclusion

Aviation security in Australia has attained a high standard according to any global comparison. The Australian Government's new regulatory framework, introduced on 10 March 2005, provides a sound basis for Government and the aviation industry to implement additional measures to strengthen existing security arrangements.

Qantas agrees in principle with the direction intended through implementation of the proposed AusCheck regime enunciated in the Bill. We see this as a tangible example of an opportunity to improve the efficiency and effectiveness of a significant element of Australia's aviation (and maritime) security arrangements.

Qantas supports a number of the objectives contained within the Bill, namely a central database and record of all ASIC holders; automated security assessments improving consistency and reliability in processing of applications; an opportunity for improved turnaround times for applicants (although proposed service levels do not reflect this); and regular reviews of the cost recovery model with industry involvement.

To further strengthen the proposed AusCheck regime, Qantas contends that the measures outlined in this submission, if accepted and implemented, would significantly add to the effectiveness and efficiency of the proposed scheme.

Qantas welcomes the opportunity to contribute further to ensuring that implementation of the AusCheck regime is beneficial for the aviation industry.