

The Senate

Rural and Regional Affairs and
Transport Legislation Committee

Provisions of the Aviation Transport Security
Bill 2003 and the Aviation Transport Security
(Consequential Amendments and Transitional
Provisions) Bill 2003

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CHAPTER ONE

THE COMMITTEE'S INQUIRY

Conduct of the inquiry

1.1 The Aviation Transport Security Bill 2003 and the Aviation Transport Security (Consequential Amendments and Transitional Provisions) Bill 2003 were introduced into the House of Representatives on 27 March 2003. The Senate referred the bills for inquiry by the Senate Rural and Regional Affairs and Transport Legislation Committee on 26 March, on the recommendation of the Senate Selection of Bills Committee.¹

1.2 The Committee advertised the inquiry in *The Australian* on 9 April, and wrote to many relevant organisations inviting submissions. The Committee received seven submissions (see Appendix 1) and held public hearings on 6 May and 15 August (see Appendix 2). The Committee thanks submitters and witnesses for their contribution. Submissions and *Hansard* transcripts of the Committee's hearings are available on the Parliament's webpage at <http://www.aph.gov.au>

Purpose of the Bills

1.3 The main provisions are in the Aviation Transport Security Bill 2003 (the ATS Bill). The Aviation Transport Security (Consequential Amendments and Transitional Provisions) Bill 2003 contains consequential amendments which were not examined in this inquiry. References below are to the ATS Bill unless otherwise noted.

1.4 The Department of Transport and Regional Services (DOTARS) described the purpose of the bill thus:

The Bill streamlines the existing aviation security provisions of the *Air Navigation Act 1920* into a cohesive package. It aims to improve the structure of the aviation security regulatory framework and provide adequate flexibility in order to reflect the rapidly changing threat environment.

It will align Australia's aviation security framework with the revised International Civil Aviation Organisation (ICAO) standards. As a signatory to the Chicago Convention, Australia has an obligation to comply with the aviation security standards outlined by ICAO under Annex 17.

1 House of Representatives *Hansard*, 27 March 2003, pp.13749-50. Senate *Hansard*, 26 March 2003, p.10221

The Bill also addresses recommendations of the ANAO Report tabled on 16 January 2003. The report, whilst acknowledging that the current regulatory regime is comprehensive, recommended a number of improvements to the framework. The most significant recommendations relate to more focussed auditing, increasing compliance across all players in the aviation industry and a greater range of enforcement tools.

This legislative reform will also implement the outcomes of recent Government policy reviews on Passenger and Checked Bag Screening, and Access and Aviation Security Identification Cards.²

1.5 More detail on the background to the bill is in the Parliamentary Library's Bills Digest for the bill.³

Main provisions of the bills

1.6 In the ATS Bill:

1.7 Part 1 - Preliminary: this includes the objects of the bill, its application, both inside and outside Australia, and definitions. The bill will not apply to state aircraft or military facilities.

1.8 Part 2 - Transport Security Programs: This requires various aviation industry participants to develop and comply with a transport security program, which will regulate the operations of all persons performing a security function on behalf of the program holder. Regulations will provide additional detail on the content and form of transport security programs.

1.9 Part 3 - Airport Areas and Zones: This enables the Secretary to declare an airport or part of an airport to be a security controlled zone. The more sensitive areas of an airport can then be determined and delineated, against which appropriate security measures may be applied. Regulations will identify the requirements that apply to each area or security zone, and the consequences of contravening the requirements.

1.10 Part 4 - Other Security Measures: This establishes fundamental security requirements that go beyond the concept of Area-based security controls in Part 3. A key requirement is that persons are screened and cleared before entering certain areas and/or boarding an aircraft. There are offences relating to carrying weapons or other prohibited items. The Secretary of the Department may give 'special security directions' where there is a need for extra security measures.

2 Submission 4, Department of Transport and Regional Services (DOTARS), p.1. Australian National Audit Office, Audit Report no. 26 of 2002-2003, *Aviation Security in Australia*.

3 Department of the Parliamentary Library, Bills Digest No. 23 of 2003-2004, *Aviation Transport Security Bill 2003*. Available via <http://www.aph.gov.au/bills/index.htm#billsnet>

1.11 Part 5 - Powers of Officials: This creates four classes of persons who may exercise powers to prevent unlawful interference with aviation.

1.12 Part 6 - Reporting Aviation Security Incidents: This establishes mechanisms, including offences, which aim to ensure adequate information is reported to relevant persons, including industry organisations and the Government, in the event of an aviation security incident.

1.13 Part 7 - Information-gathering: This allows the Secretary to collect and disseminate information prescribed in regulations, provides for controls on the use and disclosure of that information, and protects the providers of information.

1.14 Part 8 - Enforcement: This provides for a number of different enforcement options where contraventions of the bill have occurred or are suspected. It includes a demerit points system.

1.15 Part 9 - Review of decisions: This allows certain decisions made under the bill to be reviewed by the Administrative Appeals Tribunal.

1.16 Part 10 - Miscellaneous: This deals with compensation for damage to property or acquisition of property, relationships with other laws, and includes the power to make regulations.⁴

1.17 More detail on the provisions of the ATS Bill is in the Parliamentary Library's Bills Digest for the bill.⁵

1.18 The ATS (Consequential Amendments and Transitional Provisions) Bill 2003 repeals provisions of the *Air Navigation Act 1920* which will be superseded by the ATS Bill. It amends the *Australian Protective Service Act 1987* to extend the arrest powers of APS officers to the airport environment. It makes minor transitional and consequential amendments.

Comment of Scrutiny of Bills Committee

1.19 The Senate Standing Committee for the Scrutiny of Bills has a brief to consider all bills as to whether they trespass unduly on personal rights and liberties, and related matters. The Committee had the following concerns about the bill:

- The substantive provisions are to commence on proclamation or at 12 months after assent, whichever happens earlier. The Committee prefers a limit of six months, which is generally considered to be enough time to draft any necessary regulations.⁶

4 These paragraphs are summarised from the Explanatory Memorandum to the bill, p.1-3.

5 Department of the Parliamentary Library, Bills Digest No. 23 of 2003-2004, *Aviation Transport Security Bill 2003*. Available via <http://www.aph.gov.au/bills/index.htm#billsnet>

6 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 5 of 2003, 14 May 2003, p.6. The policy on limiting delay in commencement by proclamation arose after concerns were

- Clause 67 empowers the Secretary of the Department to give ‘special security directions.’ Clauses 73 and 74 then create offences of strict liability of failing to comply with such a direction. The Scrutiny of Bills Committee comments: ‘In light of the fact that the bill does not appear to subject the exercise of the Secretary’s powers to any form of Parliamentary oversight, the Committee considers that these provisions may inappropriately delegate the power to create criminal offences to a member of the Australian Public Service.’

Issues raised in submissions

1.20 Most submitters supported the bill in principle, but had various concerns about the details.⁷ The main concerns are what they regarded as insufficient consultation, and concern about the amount of important detail to be included in regulations.

Consultation

1.21 Both the Australian Airports Association (AAA) and the Board of Airline Representatives of Australia (BARA) felt there had not been enough consultation on the details of the bill and the matter planned for the regulations.

Unfortunately in this particular case with the Aviation Transport Security Bill, there was not a great deal of consultation ahead of the delivery of the details of the legislative requirements that were being put to the industry. That caused the airlines and other industry stakeholders a fair amount of annoyance.⁸

1.22 For the AAA at least these concerns seem to have been assuaged somewhat in the months leading up to the Committee’s most recent hearing:

I think there were some issues with consultation, particularly early on. I think a huge amount of work has been done by the department in relation to that matter and there is now a better framework for the ongoing development of particularly the regulations—and, as I said, that is where the detail is.⁹

1.23 The Flight Attendants Association of Australia (FAAA) felt it had had inadequate consultation from DOTARS.¹⁰ DOTARS commented:

expressed in the late 1980s that an increasing number of Acts were being passed but not proclaimed to commence, sometimes for years. Office of Parliamentary Counsel, Drafting Direction 2003, No. 3, par. 15.

7 For example, submission 3, AAA, p.1; submission 7, BARA, p.1. Mr S. Byron (AAA), *Hansard*, 15 August 2003, p.3. Mr W. Bennett (BARA), *Hansard*, 15 August 2003, p.16.

8 Mr W. Bennett (BARA), *Hansard*, 15 August 2003, p.16.

9 Mr S. Byron (Australian Airports Association), *Hansard*, 15 August 2003, p.2.

10 Submission 6, Flight Attendants Association of Australia, p.4. Mr G. Maclean (FAAA), *Hansard*, 15 August 2003, p.5,7.

We agree that the flight attendants, the cabin crew, are a substantial stakeholder in the aviation system and make a major contribution to the overall security of the system. What we tried to focus on in the early stages of the consultation was dealing with the aviation operators as defined in the bill, the people who would have explicit legislative responsibility under the system, and working through with them the drafts of the regulations. I think we are now at the point where we can also involve the aviation operators' employees and their representatives and get their comments. But we had to have that first iteration with those who were going to be legally responsible for the delivery.¹¹

Who is an 'aviation industry participant'?

1.24 Under the bill an 'aviation industry participant' is an airport operator, an aircraft operator, a regulated cargo agent, a person who occupies or controls an area of an airport, a person appointed by the Secretary to perform a security function under the Act, or a contractor who provides services to one of the above (clause 9). Some aviation industry participants are required to have transport security programs: an operator of a security controlled airport; an operator of a prescribed air service; and a participant of a type prescribed in the regulations (clause 12).

1.25 The AAA was concerned at the possible breadth of the definition of aviation industry participants:

Anyone who provides any service to an airport or aircraft operator, a regulated cargo agent or a tenant of premises or licensee at an airport is an 'aviation industry participant'. Thus, the accountant who prepared the books of the luggage trolley licensee at an airport is liable to be prescribed and required to prepare a transport security program.¹²

1.26 The FAAA argued that cabin crew, in light of their growing responsibility for inflight security, should be designated aviation industry participants, and the bill should define their responsibilities as it does for people such as security inspectors, screening personnel and law enforcement officers.¹³

1.27 Air Services Australia (ASA) wishes to be accountable directly to the regulatory authorities for security outcomes at its air traffic control and fire fighting facilities. ASA argued that air traffic control and fire fighting service providers should be included in clause 9 as aviation industry participants. It argued that ASA, like airports and airlines, should be able to issue its own Aviation Security Identifications Cards (ASICs).¹⁴

11 Mr M. Dolan (DOTARS), *Hansard*, 15 August 2003, p.25.

12 Submission 5, Australian Airports Association, p.1.

13 Submission 6, Flight Attendants' Association of Australia, p.6,11. Mr G. Maclean, *Hansard*, 15 August 2003, p.6.

14 Submission 2, Air Services Australia, p.2

1.28 DOTARS commented:

We have agreed with Airservices that we will work with them to understand their appropriate role in the system and the extent to which they would have an independent role to play as an aviation operator. The thing we have been trying to tease out with them is that they in fact have a dual role as both a government agency and a service deliverer to the aviation industry, and getting the balance between the two of those has been a bit of a challenge for us.¹⁵

Heightened security in the ‘landside area’

1.29 The present Air Navigation Regulations 1947 control entry of persons to ‘airside controlled areas’ and ‘sterile areas’ as defined.¹⁶ The bill replaces this scheme with a scheme in which security controlled airports are divided into an ‘airside area’, where heightened security is required, and a ‘landside area’, which is the rest. Regulations may control matters such as access, screening, and security checking of persons who have access, in respect of both the airside and the landside areas.

1.30 The AAA and the BARA had concerns about the implications of heightened security in the landside area. The AAA said:

The introduction of landside security controls at Airports must be reassessed. The State/Territory Police have an established and workable jurisdiction over public areas and this should not be confused by the introduction of any other Regulatory regime. Commercial implications must be considered as part of any risk assessment process.¹⁷

1.31 BARA was concerned that ‘the draft new Regulations require airport employees, not previously required to have an ASIC because they worked in parts of the airport accessible to the public, to be issued with an ASIC.’¹⁸ BARA also commented that ‘the new definitions of those areas differ from accepted industry norms that have been in operation for 20 years or more....’

... As a result of that, there is considerable potential for confusion, at least in the short term, amongst airport employees and airline employees about where they should be and what security requirements are in place in particular areas.¹⁹

15 Mr M. Dolan (DOTARS), *Hansard*, 15 August 2003, p.26.

16 Air Navigation Regulations 1947, reg. 56ff. *Air Navigation Act 1920*, s.20ff.

17 Submission 3, AAA, p.2.

18 Submission 7, BARA, p.1.

19 Mr W. Bennett (BARA), *Hansard*, 15 August 2003, p.16.

1.32 Air Services Australia appeared to welcome extension of ASIC rules to some landside facilities.²⁰

New security assessments for ASICs

1.33 At present, under the Air Navigation Regulations 1947, authorised parties (mainly airport operators) may issue Aviation Security Identification Cards (ASICs) to persons who need to enter a security restricted area of an airport as part of their employment. Vetting applicants includes a criminal record check.²¹

1.34 Under the bill, the regulations in relation to airside areas and zones and landside areas and zones may provide for security checking (including background checking) of persons who are to have access. This authorises the ASIC scheme. The Government intends, in the regulations, that this will include a security assessment of applicants by ASIO.²² This will include assessing applicants' propensity for politically motivated violence. ASIO will provide its assessment to the Australian Federal Police (since ASIO can advise only Commonwealth agencies), and the AFP will advise the ASIC-issuing body. If the security assessment is adverse the ASIC-issuing body will not be able to give the applicant an ASIC.²³

1.35 The FAAA accepted the concept of moving to a wider test, but had concerns about the lack of transparency of the process and the difficulty of appeal against an adverse security assessment:

This is a far wider test. Currently the ASIC cards are issued as the basis of a criminal record check, as the committee will no doubt be aware. The records that the check is based on are available to all citizens. The accuracy and quality of those records can be obtained. If expungement or other changes to those records have taken place—a person is found not guilty of a crime—you can check to make sure that is reflected and their records are of sufficient quality. This is a record check that is far wider in its test, and this bill's having no direct mechanism for people to check the quality of the records and then subsequently challenge a refusal would be a lack of transparency that may cost a person their job We would like to know the criteria that ASIO would use to make the assessment of a propensity to violence. We would like some mechanism so that the individual concerned

20 Mr M. Howard (Air Services Australia), *Hansard*, 15 August 2003, p.18.

21 Air Navigation Regulations 1947, reg. 90.

22 DOTARS, additional information 19 September 2003: draft Aviation Transport Security Regulations 2003: reg. 3.16

23 ATS Bill 2003, cl.35-38. Explanatory memorandum, p.15,39. Mr M. Dolan (DOTARS), *Hansard*, 15 August 2003, p.29. ASIO's function of providing security assessments to Commonwealth agencies is defined in the *Australian Security Intelligence Organisation Act 1979*, s.35ff. A security assessment includes assessing the propensity to 'politically motivated violence' because of the definition of 'security', which includes 'protecting [Australia] from ... politically motivated violence' - s.4.

may have some ability to address or rebut any mistakes that are made in that process.²⁴

1.36 The FAAA argued that ‘there must be an ability to seek a review of both the information upon which an ASIC card refusal is based, and the validity of the subsequent refusal decision. These protections must be incorporated within the bill.’²⁵

1.37 The Liquor Hospitality and Miscellaneous Workers Union had similar concerns:

These standards [concerning risk to national security] are notoriously vague and subjective and place employees in peril of losing their jobs based upon vague and uncertain criteria and evidence which is highly unlikely to ever see the light of day.

1.38 The LHMU argued that the new ASIC provisions should be implemented only after significant consultation with the interest groups concerned.²⁶

1.39 DOTARS advised:

...when an adverse or qualified [security] assessment has been made, an individual will receive a copy of their assessment. This outlines the grounds on which the assessment was made. The individual has 28 days from receipt of the assessment to lodge for an appeal. The Security Appeals Division of the Administrative Appeals Tribunal hears appeals on adverse and qualified ASIO security assessments. The Tribunal hears evidence from ASIO, the Commonwealth agency concerned, and the applicant. The Tribunal provides copies of its findings to the applicant, the Director-General of ASIO, the Attorney-General, and the Commonwealth agency concerned.²⁷

1.40 Procedures for appeal against an adverse security assessment are in the *Administrative Appeals Tribunal Act 1975*. Procedures differ from those in other AAT appeals. ASIO does not have to give the applicant reasons for decision under the AAT Act (s.28(1AAA)). However, under the ASIO Act the agency which requested the assessment does have to give the applicant a copy of an adverse assessment, including all the information which ASIO relied on in making the assessment.²⁸ At the AAT hearing the applicant may be excluded from hearing certain evidence if the Minister administering the ASIO Act certifies that disclosure of the evidence would prejudice national security (s.39A(9)). The Tribunal may withhold from the applicant any

24 Mr G. Maclean (Flight Attendants’ Association of Australia), *Hansard*, 15 August 2003, p.7,9.

25 Submission 6, FAAA, p.9.

26 Submission 1, LHMU, p.3

27 DOTARS, additional information 13 June 2003.

28 *Australian Security Intelligence Organisation Act 1979*, s.38. The Attorney-General may authorise withholding an adverse assessment, or refraining from notifying the person concerned about an adverse assessment, if it is essential to national security.

findings that relate to a matter that has not already been disclosed to the applicant (s.43AAA(5)).

1.41 DOTARS commented:

We can certainly work with ASIO to spell out a bit more clearly for the committee what the appeal process is. I would mention in this context, just by way of example, that we have been through this process before. At the time of the Sydney Olympics anyone operating at Sydney airport went through a similar sort of background check. I think of the order of 40,000 people were reviewed. The system threw up about a dozen, of whom only one actually ended up being given the sort of no that goes with this system. That is just to put some sense of scale on what we are dealing with here.²⁹

1.42 The Committee accepts the Government's policy to introduce security checking of ASIC applicants. The concerns about transparency and fairness go to general questions: firstly, how good ASIO's assessments are; and secondly, whether the AAT procedures for appealing adverse assessments strike a reasonable balance between the needs of security and fairness to the individual. The Committee has no evidence from which to comment on these general questions. In logic, there is no reason to have a different appeal process in relation to ASICs from that applying to security assessments for any other purpose.

Definition of 'unlawful interference with aviation'

1.43 The Flight Attendants' Association of Australia had a concern that the definition of 'unlawful interference with aviation' (clause 10) might in some circumstances include otherwise legal industrial action by aviation workers. The point of most concern is clause 10(h), which provides that *unlawful interference with aviation* includes 'committing an act at an airport, or causing any interference or damage, that puts the safe operation of the airport, or the safety of any person at the airport, at risk.' The Association suggested that industrial action undertaken pursuant to the *Workplace Relations Act 1996* should be excluded from the definition of unlawful interference with aviation.³⁰

1.44 The Government's position is that the meaning of clause 10(h) will be further specified in regulations without any reference to industrial action, and if industrial action does put at risk an airport's safe operation, as defined, it should to be unlawful:

Mr Dolan—They [the draft regulations] do not specifically forbid any form of industrial action. They get to outcomes and security outcomes We are saying: for security purposes, here is a defined set of activities we say are not permitted and need to be regulated against, and it does not matter whether it was taken for an industrial purpose or for another purpose; they are not permitted....

29 Mr M. Dolan (DOTARS), *Hansard*, 15 August 2003, p.29

30 Submission 6, Flight Attendants' Association of Australia, p.9-10

Senator O'BRIEN—'Interference' [in clause 10(h)] is not defined. Must interference be an act or can it be an omission? Can 'interference' mean withdrawing from performing certain duties? If the screening people had a stop-work meeting, that would breach 10(h)?

Mr Dolan—No, what would breach 10(h) would be the operator letting people through the system unscreened. The obligation is on them to ensure that appropriate processes are in place to screen passengers.³¹

1.45 The Committee **comments**: if an act does put the safe operation of an airport at risk, there can be no question that it should be prohibited, regardless of its purpose. Concerns about clause 10(h) may arise from a fear that the Government might try to use regulations under 10(h) improperly to combat industrial action. The Committee notes the Government's assurance that acts within the meaning of clause 10(h) will be further defined in regulations without any reference to whether their purpose is industrial action.

Enforcement: demerit points system

1.46 The bill authorises a demerit points system whereby an aviation industry participant which accrues a prescribed number of points may have the approval of their transport security program cancelled (clause 125). Details will be in regulations.

1.47 In relation to this, and the penalty provisions generally, the Government explained:

The proposed offence provisions provide for different penalties for various classes of persons and incorporate a graded penalty system based on responsibility and accountability. This approach recognises the different levels of responsibility of varying aviation security participants in delivering aviation security outcomes. In accordance with the new penalty regime, there will be a reduction in the penalty for individual screening officers who contravene the legislation. The new penalty provisions seek to penalise breaches at an organisational, rather than individual, level.³²

1.48 The Board of Airline Representatives of Australia (BARA) had a concern that under the demerit points system, 'penalties for breaches of security requirements are imposed on the organisation responsible for the security program, rather than the organisation or individual responsible for the security breach'.³³ Mr Bennett of BARA said:

The biggest worry in this area is probably, again, the ASIC management system. As I said, that is highly problematic. People who are rather recalcitrant in their responsibilities, so far as ASICs are concerned, can

31 Mr M. Dolan (DOTARS), *Hansard*, 15 August 2003, p.32-3.

32 Submission 4, DOTARS, p.1.

33 Submission 7, BARA, p.1.

cause all sorts of problems for the ASIC issuing authority. It is not really, if you look at it from a reasonable perspective, the responsibility of, say, Sydney Airport Corporation Limited to police the use of ASICs by contractors or other employees who work for other organisations at the airport.³⁴

1.49 BARA argued that responsibility for delivering security outcomes should rest with the individual. For example:

Mr Bennett—The airline is responsible for delivering the outcomes under its security program, and the flight attendants, in their part of that, are responsible for certain actions. If those security outcomes are not delivered, then it is quite appropriate that the airline, as the holder of the security program, should be penalised. But there should also be some incentive to ensure that the actions of the individual are in accordance with the security program that the airline has in place.

Senator ALLISON—So you are saying there should be demerit points all around?

Mr Bennett—Yes, that is right....³⁵

1.50 DOTARS responded:

I think somewhere along the line we may have not made sufficiently clear the intent of the demerit points system. We have the capacity in our current legislation and in the proposed new system to deal with individuals and their breaches of the system. If an individual fails appropriately to display their ASIC or does inappropriate things with it, to take that example, we can deal with them as individuals. We also wanted to have a system whereby aviation operators would take seriously their ongoing responsibilities under the legislation and, if necessary, as we have indicated, their boards would take these sorts of responsibilities seriously. The demerit points system was seen as a useful way of having explicit warnings about ongoing concerns that we would have about the operations of a system; otherwise, we have a system where you can deal with individuals for breaches of the system but the only major recourse is to bring the system to a grinding halt, to say, 'Your plan is no longer authorised because we do not think you are operating it properly,' and we effectively take an airline or an airport out of business. We were after a graduated system that gave the operators a clear sense that we were getting progressively more concerned.

That was the intent of the design. We are getting consistent feedback that particularly for activities that are not as easily controlled by the operators, such as the behaviour of individuals with the wearing of ASICs, this potentially causes some concerns. We are taking those into account in

34 Mr W. Bennett (BARA), *Hansard*, 15 August 2003, p.16. Similarly p.18.

35 Mr W. Bennett (BARA), *Hansard*, 15 August 2003, p.18,23.

drafting the regulations that go to how the demerit points system would operate.³⁶

Cost of new security measures

1.51 The Government intends that upgraded baggage screening arrangements allowed for in Part 4 of the bill should be in place by the end of 2004. It has estimated the cost as \$180 million over two years.³⁷ In evidence the Australian Airports Association was concerned about the cost:

Mr Byron—It is hundreds of millions of dollars. I am aware that Sydney airport is in the order of \$100 million. It might even be \$130 million ... But it is not just the equipment. The reality is you have to build new bits of terminals to be able to put this system in the baggage area. Of course, terminals are pretty tight for space between checking in baggage and the planes. So there are some challenges in how you do that.³⁸

1.52 Mr Byron suggested that some of the Ansett levy money could be used to help airports defray the capitals costs involved. The Government's position is that 'investment in security systems is part of the ongoing business of the aviation industry and should be paid for by the industry.'³⁹

Commercial pressures on security

1.53 The Liquor Hospitality and Miscellaneous Workers Union argued that commercial pressures may detrimentally affect security outcomes:

Private ownership of airports, and competitive pressures on airlines means that "value for money" rather than "value of security" can drive the contract selection process

For example, the high levels of casual employees and high turnover of staff is a major barrier to improved security arrangements at airports. At a number of airports our experienced Security Officer members are concerned that they have to continually monitor performance of poorly trained casual personnel...

In our view, low wages and poor job security contributes to high turnover of staff and results in the loss of skills within the workforce. It also inhibits the achievement of good security outcomes....

36 Mr M. Dolan (DOTARS), *Hansard*, 15 August 2003, p.37.

37 Hon. J. Anderson (Minister for Transport & Regional Services), *Background Paper: New Aviation Security Measures*, media release 11 December 2002. DOTARS, additional information, 19 September 2003.

38 Mr S. Byron (Australian Airports Association), *Hansard*, 15 August 2003, p.3

39 Mr M. Dolan (DOTARS), *Hansard*, 15 August 2003, p.27.

There is great variation in training and workforce standards between airports and an urgent need for national regulation in this area. In some cases training is hopelessly inadequate, and there are huge fluctuations between companies about the quality and quantity of training. There needs to be a national system of accreditation....⁴⁰

1.54 DOTARS commented that the Government intends to specify standards of accreditation of screening officers in the regulations.⁴¹ Draft regulations require a screening officer to hold at least a Certificate II in Security Operations (Guarding), as appropriate for the duties of a screening officer, in accordance with the National Security Competency Standard for Airport Security Guards published by Property Services Training Australia in October 2002.⁴²

1.55 The Flight Attendants' Association of Australia had similar concerns about commercial pressures on security:

... we highlight the need for a clear audit function by the Department to address the impacts flowing from excessive commercial pressure upon air transport operators.

For example, in current Qantas operations cabin crew are required to conduct a pre boarding aircraft security check. However, due to the requirements of the Precision Timing Schedule and the commercial pressure to achieve on-time departures this check must be conducted with the aircraft doors open and personnel such as cleaners and caterers entering and leaving the aircraft. Obviously this would have a negative impact upon the integrity of the security check as an area declared as 'cleared' has persons entering and leaving it (with items).

Secondly, the cleaning and catering staff are not fully screened when they enter or leave the restricted area...

The view of the FAAA is that the security check should be conducted by the cabin crew after all service/support staff leave the aircraft ... However, the operator will not allow the cabin crew to wait until doors are closed as this would have a commercial impact on operations and may result in a delayed departure.⁴³

1.56 DOTARS commented:

Mr Dolan—... we have the capacity to ensure that the driver of the [catering] truck is an authorised person and we have the capacity to review where the truck is loaded, to know that appropriate security systems are

40 Submission 1, LHMU, p.5-6

41 Ms F. Lynch (DOTARS), *Hansard*, 15 August 2003, p.13.

42 DOTARS, additional information 19 September 2003: draft Aviation Transport Security Regulations 2003: reg. 5.04.

43 Submission 6, FAAA, p.10-11.

operating where the truck is loaded. We are aware of the exposure potentially through that sort of access, and we have a system to deal with it.

Ms Lynch—The new screening and clearing regulations will clearly state that vehicles entering the airside will be checked for validity that they are whom they should be if they are entering airside. We are significantly working on some of those issues.⁴⁴

44 Mr M. Dolan & Ms F. Lynch (DOTARS), *Hansard*, 15 August 2003, p.35.

CHAPTER TWO

COMMITTEE COMMENTS, CONCLUSION AND RECOMENDATIONS

2.1 The Committee's consideration of the bills has taken longer than anticipated by the reference and - in the Committee's view - much longer than necessary.

2.2 The bills were referred to the Committee (through the Selection of Bills Committee) by the Government in, itself an unusual procedure.

2.3 The Committee and the Senate held a reasonable expectation that - given the time limit imposed on the Committee for the conduct of its examination of the bills - this report would have been presented earlier.

2.4 The reason for this delay is twofold: first, the Department of Transport and Regional Services has found it difficult, on this occasion, to provide the Committee with answers to questions taken on notice at hearings held on 25 May and 15 August. Second (and most importantly) it has taken several months and several preliminary drafts before it has been possible to provide the Committee (and all effected industry participants) with an incomplete draft of the regulations. The Department has acknowledged how important these regulations are to the operation of this legislation.

2.5 These draft regulations have been provided to the Committee and (the Committee has been informed) have been circulated to industry participants, although employee groups were not included in this category until the most recent draft of regulations was completed.

2.6 Without access to the draft regulations, the Committee notes, and this is a matter consistently highlighted during hearings, the legislative scheme proposed by the bills cannot be fully implemented. Significant areas of concern regarding security assessment, enforcement, cost of security assessments and other matters will inevitably now result in a need for further redrafting and consideration of the latest draft regulations.

2.7 In relation to other matters, the Committee's specific comment is contained in paragraph 1.45.

Conclusions

2.8 The Committee concludes that, subject to matters highlighted by the Committee's report, the legislation is satisfactory. The Committee also concludes however, that consultation between DoTaRS and industry was deficient. The Government must not continue to exclude or partially exclude industrial organisations and professional associations from consultation. The submissions and professionalism of the LHMU and FAAA in their presentation to the Committee

indicate the quality of their contribution to this important area of public policy making.

2.9 The Committee also adds to its conclusions an important observation; one of the ultimate lessons of September 11, 2001 is that aviation security measures are critical to limiting access to aviation facilities and aircraft. It is an area of government regulation which will be increasingly important in the future and - as potential terrorists become more sophisticated - more vulnerable.

Recommendation

The Aviation Transport Security Bill 2003 and the Aviation Transport Security (Consequential Amendments and Transitional Provisions) Bill 2003 be passed by the Senate.

**Senator Bill Heffernan
Chair**

ALP DISSENTING REPORT

Inadequate Committee Consideration of the Regulations

Further to the Committee comments regarding the importance of the regulations to the operation of this bill, Labor firmly believes that a further hearing is necessary to consider the draft regulations and permit industry comment on them.

The Government referred this bill for consideration by this Committee prior its debate in the House of Representatives and has acknowledge the importance of the Regulations, but this Report is deficient because it does not include an assessment of the draft Regulations

The Committee has been hampered in its consideration of this Bill by not having the opportunity to conduct a hearing into the draft Regulations as part of its consideration of the Bill.

While the Committee and the Aviation Security Industry Consultative Group have been provided a copy of the most recent version of the draft regulations, the Government has not provided a copy to the industrial organisations.

The Government must start valuing more highly the important contribution of the unions to public policy development and the expert advice they can provide on the practical operation of proposed legislation and regulations.

The Aviation Security Industry Consultative Group has been provided with the draft Regulations under a “not for comment” and “not for further distribution” caveat. Attempting to gag industry input on aviation security regulations is not conducive to the development of an effective regime.

Labor recommends the current version of the Regulations be provided to the unions and all industry organisations and that they be permitted by DOTRS to comment on their content at a public hearing.

Inadequate Response Regarding “Unlawful Interference In Aviation Security”

The FAAA raised issues relating to the definition of “*unlawful interference in aviation security*”. The response from the DOTRS is that this aspect will be further defined in the Regulations in a way that makes no reference to whether their purpose is industrial action. This is not adequate.

Labor recommends an amendment to ensure this Bill does not override the legal rights of aviation employees that are currently prescribed in other Federal legislation.

Inadequate Response to Scrutiny of Bills Committee Comments

The comments by the Scrutiny of Bills Committee also deserve more attention. In particular, the issue with the delegation of the power to the Secretary to issue special security directions which, if breached result in a strict liability offence. This is considered by that Committee to inappropriately delegate the power to create criminal offences to a member of the Public Service.

Labor recommends that these issues receive further consideration in the finalisation of the bill and Regulations

Aviation Industry Participants

Both Airservices Australia and the FAAA submitted that their organisations should be defined as *aviation industry participants*.

While the DOTRS responds that they are having discussions with Airservices Australia about their role, there appears to be merit in that organisation, the provider and operator of critical aviation safety infrastructure, being more directly and legislatively responsible for security of those facilities.

With respect to the FAAA and other unions, their request reflects their view that this government treats them as secondary players in aviation security. Labor contends that unions represent employees who are critical to the effective operation of the aviation security regime and to the effective delivery of these outcomes on the ground on a day to day basis. They should therefore be consulted on an equal footing with other industry participants.

Labor recommends that consideration be given to defining Airservices Australia as an aviation industry participant in the Regulations. Labor also recommends that Regulations require the regulator to formally consult with aviation industrial organisations in the same way they consult other organisations such as aviation facility owner and operator associations.

Airside screening

The bill does not require the screening of all individual baggage handlers etc. This issue also goes to the matter of vehicles going airside not being physically checked.

The DOTRS has responded to this security gap with the explanation that the relevant operators and individuals have an ASIC pass.

DOTRS' comment misses the point that the security risk is not necessarily with an intentional act on the part of the individual or driver, but that substance or devices could inadvertently be carried airside, or intentionally planted on an ASIC pass holder by a different party.

DOTRS also commented that they are ‘significantly working’ on the issue of checking vehicles going airside.

Labor recommends consideration that this gap be properly addressed in the Regulations.

Passengers in Custody

The concerns raised by the Board of Airline Representatives relating to unsatisfactory arrangements for the carriage of passengers in custody have not been adequately addressed by the DOTRS or the Report.

That airlines are not receiving adequate notice to enable appropriate arrangements for this practice is of grave concern to Labor.

Labor recommends that the Bill or the Regulations must tighten the obligations on police and DIMIA to consult and liaise with airlines on these matters and impose penalties for breaches of those requirements.

Missing ASIC Passes

The hearings revealed significant inadequacies in the control of ASIC passes, especially in circumstances where employees leave employment or have their ASICs stolen.

While ASIC passes are now reissued each two years, the Regulations should require a cross checking or audit role on who is using ASIC passes.

While the report reflects the industry concerns that the airside security requirements in the bill change the traditional lines of responsibility for landside security and highlights the potential for confusion of roles and responsibilities, no recommendation is made to fix this problem.

Labor recommends the Regulations be agreed with industry and reflect clear, transparent roles and that the role of Government and other authorities also be spelled out.

Senator Kerry O’Brien

ADDITIONAL COMMENTS AUSTRALIAN DEMOCRATS

In general the Australian Democrats agree with the bulk of the Committees report, however feel it important to draw the Senate's attention to certain matters and make recommendations additional to those made in the Committee's main report.

The Democrats are concerned at the lack of consultation with some Industry participants and the apparent haste in which this legislation and accompanying draft regulations have been prepared. The Committee noted the dangers of passing such broad reaching enabling legislation without draft regulations being presented to the Parliament, and the Democrats express concern that these were not provided in a more timely fashion.

The points regarding the application of the definition 'industry participant' (raised in sections 1.24 and 1.25 of this report) have not been sufficiently answered by DOTARS. The concern remains that the ambiguity surrounding this definition may result in the arbitrary application of the legislation so that businesses providing a service to the aviation industry, but not strictly involved in aviation per se (such as accountants), will not be required to produce transport security programmes. Alternatively, such businesses may find themselves in the absurd position of needing to prepare transport security programmes.

Recommendation: That the Senate closely consider the relevant definition prior to the passage of this legislation and adopt amendments with a narrower, more specific definition should this be deemed necessary.

The Democrats were initially concerned at the apparent lack of transparency resulting from the introduction of ASIO checks on ASIC holders to assess a propensity for politically motivated violence. We were initially concerned that DOTARS was not able to provide the Committee with answers regarding the appeals processes in the event of a negative response. From information subsequently provided to the Committee by DOTARS (see section 1.40 of this report), it would appear that the applicant will be provided information upon which to form the basis of an appeal. The Democrats are disappointed that this information could not have been provided sooner and that ASIO was not available to answer questions during the Committee's hearings. It is felt that ASIO's presence may have been able to clear up much of the initial confusion and misinformation.

The FAAA raised a concern regarding employees' ability to engage in otherwise legal industrial action as outlined in section 1.43 of this report. The Democrats remain concerned that the answer provided by the Department does

not rule out the possibility that the omission to perform an act could be deemed to be *unlawful interference with aviation*. The Democrats concur with the suggestion by the FAAA that industrial action undertaken pursuant to the *Workplace Relations Act 1996* be excluded from the definition of ‘unlawful interference with aviation’ (see section 1.43) provided adequate measures are put in place to ensure airport operators can ensure the security of airports by making other arrangements.

Recommendation:

That the Senate consider adopting amendments which would address this concern.

The imposition of demerit points on ASIC-issuing authorities as a result of the actions of individuals (some of whom may not be directly or indirectly employed by the issuing authority), such as failure to display an ASIC or failure to hand in an ASIC upon termination of employment, continues to be a concern. The failure by DOTARS to provide the Committee with draft regulations in a timely manner has not assisted in determining whether the issue has been adequately resolved.

Recommendation: That the Senate closely examine this matter prior to passing the legislation and that the Minister provide further advice of consultation undertaken with issuing authorities and how their concerns have been allayed.

Senator Lyn Allison

9th October 2003

APPENDIX ONE

SUBMISSIONS

Submission No	Author
1	Australian, Liquor, Hospitality and Miscellaneous Workers Union
2	Airservices Australia
3	Robyne Campbell
4	Department of Transport and Regional Services
5	Australian Airports Association
6	Flight Attendants' Association of Australia
7	The Board of Airline Representatives of Australia

APPENDIX TWO

HEARINGS AND WITNESSES

Canberra, Tuesday, 6 May 2003

Airservices Australia

Mr Paul Dawson, Acting General Manager, Organisation Development
Unit

Mr Michael Howard, Officer of Security Risk Management

Department of Transport and Regional Services

Mr Martin Dolan, First Assistant Secretary, Aviation and Airports
Policy

Ms Fiona Lynch, Policy and Regulation, Aviation Security

Canberra, Friday, 15 August 2003

Australian Airports Association

Mr Stephen Byron, , Board Member,

Board of Airline Representatives of Australia

Mr Warren Bennett, Executive Director,

Department of Transport and Regional Services

Mr Martin Dolan, First Assistant Secretary, Aviation and Airports
Policy

Ms Fiona Lynch, Policy and Regulation, Aviation Security

Flight Attendants Association of Australia

Mr Guy MacLean, Manager Safety and Regulatory Affairs,
International Division

Mr Brian Mason, National Industrial Officer,

APPENDIX THREE

ADDITIONAL INFORMATION

Additional information accepted as evidence of the inquiry:

A. Answers to questions put by the Committee

C. Miscellaneous further comment

Date	Type	From	Topic
28/2/03	C	Flight Attendants Association of Australia	Aircraft self service bar units
13/6/03	A	Dept of Transport & Regional Services	Answers to questions at hearing 6/5/03
19/9/03	A	Dept of Transport & Regional Services	<ul style="list-style-type: none">• Answers to questions at hearing 15/8/03• Draft regulations

