

The Senate

Standing Committee on
Rural and Regional Affairs
and Transport

Aviation Legislation Amendment (2007
Measures No. 1) Bill 2007

July 2007

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Membership of the Committee

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Senator Glenn Sterle	ALP,	Western Australia	

Committee Secretariat

Ms Jeanette Radcliffe, Secretary
Ms Kerrie Martain, Principal Research Officer
Ms Trish Carling, Senior Research Officer
Ms Kyriaki Mechanicos, Research Officer
Ms Rosalind McMahon, Executive Assistant

PO Box 6100
Parliament House, Canberra
Telephone: (02) 6277 3511
Facsimile (02) 6277 5811

Internet: www.aph.gov.au/senate
Email: rrat.sen@aph.gov.au

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Abbreviations

AAA	Australian Airports Association
AAL	Adelaide Airport Limited
ACS	Australian Customs Service
AFAP	Australian Federation of Air Pilots
AIPA	Australian and International Pilots Association
CASA	Civil Aviation Safety Authority
DOTARS	Department of Transport and Regional Services
LHMU	Liquor Hospitality and Miscellaneous Union
RAAA	Regional Aviation Association of Australia
TSP	Transport Security Program

Chapter 1

Introduction

Background

1.1 The Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007 (the Aviation bill) was introduced into the Senate on 21 June 2007. On the same day, the Selection of Bills Committee referred the bill to the Senate Standing Committee on Rural and Regional Affairs and Transport (the committee) for inquiry and report by 30 July 2007.¹

1.2 The Aviation bill amends the *Aviation Transport Security Act 2004* and the *Civil Aviation Act 1988* and is intended to strengthen security and safety in the Australian aviation industry.

1.3 The Aviation bill contains four sets of amendments to the *Aviation Transport Security Act 2004*:

- changes to Transport Security Programs (TSP's) which will more closely align aviation security legislation with maritime security legislation and give certain industry participants greater flexibility during the TSP process;
- enhancements to aviation security by allowing broader and more effective coverage of potential acts of unlawful interference with aviation, including additional powers for certain Australian customs officers who operate at security controlled airports;
- clarification of provisions that relate to the screening and clearing of dignitaries. This amendment will allow the Regulations to specifically describe those dignitaries who are exempt from aviation security screening; and
- minor modifications to several existing provisions, and a new provision to cover interference with the operations of a security controlled airport by a person who is outside the boundary of the airport.²

1.4 The bill also contains two sets of amendments to the *Civil Aviation Act 1988*:

- Section 24 is amended to extend the offence of interfering with aircrew, or endangering an aircraft or passengers to apply to a person who is outside an aircraft; and

1 Selection of Bills Committee, *Report No. 11 of 2007*, dated 21 June 2007.

2 Explanatory Memorandum, Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007, p. 2.

- new Part IV creates a statutory framework that will permit the making of regulations for, and in relation to, the development, implementation and enforcement of drug and alcohol management plans, and of drug and alcohol testing, for persons who perform, or who are available to perform, safety-sensitive aviation activities.³

Conduct of the inquiry

1.5 The committee advertised the inquiry in *The Australian* on 27 June 2007 and 11 July 2007, inviting submissions by 11 July 2007. The committee also wrote directly to a number of key individuals, organisations and stakeholder groups inviting submissions. Details of the committee's inquiry, the Aviation bill and associated documents were also placed on the committee's website.

1.6 The committee received nine submissions which are listed at Appendix 1. The submissions were also placed on the committee's website for ease of access by the public.

1.7 The committee held one public hearing in Canberra on Monday, 16 July 2007. A list of witnesses who appeared at the hearing is at Appendix 2. Submissions and a Hansard transcript of the public hearing are available on the Parliament's internet website at www.aph.gov.au.

Acknowledgement

1.8 The committee appreciates the time and effort of all those who provided written and oral submissions to the inquiry. Their work has assisted the committee considerably in its inquiry.

3 Explanatory Memorandum, Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007, p. 2.

Chapter 2

Overview of the Bill

2.1 Schedule 1 of the Aviation bill amends the *Aviation Transport Security Act 2004* and the *Civil Aviation Act 1988*. The proposed amendments are intended to enhance the legal framework used to regulate and maintain security and safety within the Australian aviation industry.

Provisions of the bill¹

2.2 The main provisions contained in Schedule 1 of the bill, as detailed in the Explanatory Memorandum, are outlined as follows:

Aviation Transport Security Act 2004

2.3 **Item 1 – Section 7** replaces the existing subsection 7(2) and is designed to ensure that a state or territory agency operating a security controlled airport is subject to the Act in the same way as any other airport operator.

2.4 **Item 2 – Section 9** inserts a new definition of the term 'eligible customs officer'.

2.5 **Items 3, 4 and 5 – Section 10** amend the definition of *unlawful interference with aviation*. This definition is central to the operation of the Act and, in particular, forms the basis of the definition of *aviation security incident*. These definitions also identify those aviation security incidents that must be reported to the Department.

2.6 **Item 6 – Section 19** repeals and replaces existing subsection 19(4) and clarifies that, in the case of an application for a TSP being refused due to the failure of the Secretary to make a decision within the time allowed, an appeal may be made to the Administrative Appeals Tribunal.

2.7 This item also introduces new subsections 19(5) to (7) which allow the Secretary to issue a notice to extend the time allowed to consider an application for a TSP when the Secretary requests further information from the applicant relevant to the approval of the TSP.

2.8 **Item 7 – Section 20** repeals existing subsection 20(3) which only allows the Secretary to approve a TSP for a period of five years. The new provision allows the Secretary to approve a TSP for any period of at least 12 months, but not more than five years.

1 The following section of the report is based on information contained in Explanatory Memorandum, Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007, pp. 21-30.

2.9 **Item 8 – Section 21** ensures that, when a TSP is varied in accordance with a direction by the Secretary, the varied TSP is not taken to be a new TSP – meaning that a variation to a TSP will not change the date that the TSP is due to expire.

2.10 **Item 9 – Section 22** supplements Item 8 and ensures that a variation to a TSP does not change the date when the TSP is due to expire.

2.11 **Item 10 – Section 23A** inserts a note making it clear that an alteration to a TSP does not extend the period that TSP is in force (beyond the period it was originally approved).

2.12 **Item 11 – Section 24** repeals the requirement that a TSP must be revised every five years (consistent with amendments made at Items 8 to 10).

2.13 **Item 12 – Section 26A** provides that a TSP holder may request that their TSP be cancelled. (This provision is consistent with a provision contained in the *Maritime Transport and Offshore Facilities Security Act 2003* for maritime industry participants).

2.14 **Item 13 – Section 27** adds a paragraph which permits the Regulations to include offences for causing disruption or interference in relation to security controlled airports.

2.15 **Item 14 – Section 38B** authorises the making of regulations prescribing offences in relation to the disruption to, or interference with, the activities of the operator of a security controlled airport, or the activities of an aircraft operator at a security controlled airport.

2.16 Examples of disruptive conduct within an airport include making remarks about bombs in baggage at check-in or screening points and leaving items of baggage or parcels unattended within a terminal building.

2.17 Disruptive conduct outside an airport can include directing light emitting devices (such as laser devices) into the airport through or over the top of the airport's perimeter fence.

2.18 **Item 15 – Section 62** inserts a new paragraph 62(1)(aa) to ensure that there is no doubt that the Regulations may prescribe security features that must be included on board an aircraft.

2.19 **Item 16 – Section 75** amends Section 75 to include 'eligible customs officers' in the list of officials who hold powers under the Act.

2.20 **Item 17** inserts new sub-section 84(1A) that ensures a search conducted under the Act by a law enforcement officer must, if practicable, be conducted by a person of the same sex as the person being searched. The Explanatory Memorandum to the bill states that this is consistent with searches conducted under the provisions of the *Crimes Act 1914*.

2.21 **Item 18** inserts new Division 3A into Part 5 of the Act, which deals with the powers of 'eligible customs officers'. This suite of powers is largely drawn from powers already given to law enforcement officers under the Aviation Transport Security Act. These new powers for eligible customs officers include:

- stop and search provisions;
- request to leave an aircraft, airport or an area or zone of an airport;
- restrain and detain (until the arrival of a law enforcement officer); and
- the removal of vehicles from an area or zone of an airport if the officer is unable to have the vehicle removed by the person in control of it.

2.22 **Item 19 – Section 91** inserts new paragraph 91(1)(d), which makes it clear that a person who is an airport security guard is not a person who is an 'eligible customs officer'.

2.23 **Item 20 – Section 126** amends subsection 126(1)(a). (This is as a result of the amendments to TSP's under section 19 that allow for an aviation industry participant to apply for a review of the decision not to approve their TSP).

2.24 **Item 21 – Section 131** clarifies that, apart from certain screening and clearing requirements, privileges and immunities conferred under the Commonwealth Acts specified in subsection (1) upon certain dignitaries, diplomats and other persons are not affected by the Act or Regulations. Subsection (2) has been inserted to allow the Act or Regulations to set out requirements for the screening and clearing of dignitaries which will not be limited by the Acts referred to in subsection 131(1).

2.25 **Item 22** specifies that the amendment made by Item 7 only applies to TSP's given after this item commences. (Item 8 applies to TSP's approved before or after this item commences).

Civil Aviation Act 1988

2.26 **Item 23** inserts new paragraph 9(1)(da) to give the Civil Aviation Safety Authority (CASA) the new function of administering new Part IV of the Civil Aviation Act which provides for drug and alcohol management plans and testing.

2.27 **Item 24** replaces existing subsection 24(1). Currently, under subsection 24(1), the offence of interfering with a crew member or performing an act which threatens the safety of the aircraft or of a person on board, is limited to persons who are on board an aircraft. The amendment extends the coverage of the offence to include persons who are outside the aircraft. (For example, a person on the ground who deliberately directs a laser emitting device at an aircraft will commit an offence under new subsection).

2.28 **Item 25** inserts new Part IV of the *Civil Aviation Act 1988*. Part IV establishes a statutory framework in which regulations may be made to permit CASA to require drug and alcohol management plans and testing of persons performing safety-sensitive

aviation activities that impact directly or indirectly on the safety of civil air operations in Australian territory, or the operation of Australian aircraft outside Australian territory. This set of amendments will also:

- (subject to the Regulations) allow CASA to regulate and monitor compliance with company drug and alcohol management plans, and carry out its own random testing program;
- define terms such as 'body sample', 'drug or alcohol test', 'positive test result', 'safety-sensitive aviation activities' and 'testable drug' which will be used in Part IV;
- authorise the making of regulations for, and in relation to, the development, implementation and enforcement of drug and alcohol management plans and testing (covering persons who perform, or who are able to perform, safety-sensitive aviation activities); and
- provide that the results of drug and alcohol tests are not admissible in legal proceedings under the Civil Aviation Act and Regulations, or in other proceedings that could be prescribed in the Regulations for this purpose.

Key amendments

2.29 As indicated in Chapter 1, the Aviation bill contains four sets of amendments to the *Aviation Transport Security Act 2004* and two sets of amendments to the *Civil Aviation Act 1988*. The following section summarises the key amendments and the evidence received by the committee in relation to the amendments.

Amendments to the *Aviation Transport Security Act 2004*

Transport security programs

2.30 Under the current legislation, many aviation industry participants are required to have a Transport Security Program (TSP) which plays a central role in the management of aviation security obligations. Under the proposed amendments included in Items 6-12:

- an aviation industry participant will be able to ask for its TSP to be cancelled (if, for example, a particular aircraft operator no longer intends to operate a regular public transport service, or no longer intends to operate from a particular airport); and
- the process by which TSP's are processed will be enhanced by varying deadlines when further information is needed.²

2 Explanatory Memorandum, Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007, p. 21.

Enhanced aviation security powers for Australian Customs Officers

2.31 Under the proposed amendments, officers of the Australian Customs Service (ACS), defined as 'eligible customs officers', who operate at security controlled airports will be given powers to ensure more effective coverage with respect to 'potential acts of unlawful interference with aviation'. The proposed amendments are the result of a recommendation made by Sir John Wheeler in his report – *An Independent Review of Airport Security and Policing for the Government of Australia*. It is envisaged that by allowing customs officers to provide an initial immediate response to potential acts of unlawful interference with aviation, the ACS will be able complement the work of airport police.

2.32 It is proposed that 'eligible customs officers' will only exercise these powers when:

- a law enforcement officer is not immediately available;
- prompt action is required to prevent a security event from developing or continuing; or
- intervention is necessary to detain persons believed to have been involved in a security event.

2.33 The intention under the amended legislation is that an 'eligible customs officer' would only take action under these powers (to deal with persons or vehicles) pending the arrival of a law enforcement officer who will determine what further action is required. Customs officers will have no power to question a person who is stopped in the exercise of these powers.³

2.34 Evidence provided to the committee indicated a general level of support for changes to the Act which seek to clarify and broaden powers in relation to potential acts of unlawful interference with, and threats to, aviation security.⁴

2.35 There was also general support for the provision of enhanced aviation security powers for Australian customs officers who operate at security controlled airports.⁵ The Australian Airports Association and Adelaide Airport Limited did, however, express concern about the lack of detail in terms of airport operational issues with regard to 'eligible customs officers'. It was argued that:

3 Explanatory Memorandum, Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007, pp. 21-22.

4 Regional Aviation Association of Australia *Submission 1* Australian and International Pilots Association, *Submission 8*; and Qantas Airways Ltd, *Committee Hansard*, 16 July 2007, p. 7.

5 Liquor Hospitality and Miscellaneous Union, *Submission 5*; Australian and International Pilots Association, *Submission 8*; Australian Customs Service, *Submission 9*; and Qantas Airways Ltd, *Committee Hansard*, 16 July 2007, p. 7.

Parts 89A through to 89H confer significant powers and responsibilities on 'eligible customs officers' and given that Customs Controlled area virtually now encompasses all of the airside of an airfield then our request for clear operational guidelines will ensure the safety of aircraft, passengers and indeed ACS officers.⁶

2.36 The committee was particularly interested to understand the rationale and intended operation of new section 38B, which refers to offences causing disruption in relation to security controlled airports; as well as proposed new section 131 of the *Aviation Transport Security Act 2004*, which relates to the screening and clearing of dignitaries.

Disruptive action

2.37 Under new section 38B, regulations will be able to be made which prescribe offences with respect to activities that cause disruption of, or interference to, aviation or airport operations within the airport. This amendment will also extend the coverage of the Act to disruptive actions that take place outside the boundaries of a security controlled airport.

2.38 During the committee's hearing, the Department of Transport and Regional Services (DOTARS) was asked specific questions about the way in which 'causing disruption or interference' is defined in new Section 38B. Concerns were raised about the apparent breadth of the section and whether the amendment could be interpreted to include any activity seen to be disruptive – including commercial and industrial activity.

2.39 A departmental representative told the committee that DOTARS was aware of the need to make the distinction between industrial and security issues and predicted that:

In framing the regulations, I anticipate that we would be trying to clarify that we are not trying to take security into an industrial realm, for example. What we are trying to do is give ourselves a broader head of power to craft regulations that allow us to address some real threats, and I think our record has been very good on that front.⁷

2.40 The committee was also told that new section 38B would operate within the context of the exemption within existing section 10(2) of the Act. Section 10(1) in Division 5 of Part 1 of the Act defines unlawful interference with aviation. Section 10(2) provides that unlawful interference with aviation does not include lawful advocacy, protest, dissent or industrial action that does not result in, or contribute to, an action mentioned in section 10(1). The committee was advised that the intention was for regulations under section 38B to be consistent with section 10 and that the

6 Adelaide Airport Limited, *Submission 7*, p. 1.

7 Mr Andrew Tongue, Department of Transport and Regional Services, *Committee Hansard*, 16 July 2007, p. 28.

Department could pick up the exemptions in section 10(2) in the creation of the Regulations.

Screening and clearing of dignitaries

2.41 Under the amended legislation, the provisions in relation to the screening and clearing of dignitaries will be clarified. New section 131 will provide for the Act or regulations to set out requirements for the screening and clearing of dignitaries. In his second reading speech, the Minister said that the intention of the proposed amendments is to provide for "the most senior dignitaries, their spouses and minors to be exempt from aviation security screening. Other dignitaries and VIPs will still be able to apply for aviation security screening exemptions on a case-by-case basis."⁸

2.42 These proposed amendments were of particular concern to several industry participants.⁹ In its submission, Virgin Blue Airlines Pty Ltd said that it was opposed to exempting any persons from the screening and clearing requirements, and argued that:

... the approach adopted by the Government introduces security vulnerabilities and risks to the security framework and therefore the travelling public. Clearly if a person, who is exempt from screening and clearance under legislation, can enter a sterile area or board an aircraft whilst in possession of a weapon or prohibited item, either intentionally or inadvertently, then this poses a risk to security.¹⁰

2.43 The Australian Airports Association and Adelaide Airport Limited also indicated that they did not "support the exemption of 'certain' dignitaries from aviation security screening."¹¹

2.44 In evidence, officers representing DOTARS told the committee that the proposed amendments in relation to the screening and clearing of dignitaries had come about as the result of advice suggesting that Australia had not been meeting its international legal obligations in relation to the processing of visiting dignitaries.¹²

2.45 The committee noted that there was considerable opposition from industry participants to the granting of exemptions of any type, and questioned DOTARS

8 Explanatory Memorandum, Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007, p. 22, and Second Reading Speech, Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007, p. 1.

9 Australian Airports Association, *Submission 6*, p.1.; Adelaide Airport Limited, *Submission 7*; and Mr G. Askew, Qantas Airways Limited, *Committee Hansard*, 16 July 2007, p. 7.

10 Virgin Blue Airlines Pty Ltd, *Submission 3*, p. 2.

11 Australian Airports Association, *Submission 6*, p.1; and Adelaide Airport Limited, *Submission 7*, p. 1.

12 Advice provided to DOTARS by the Department of Foreign Affairs, Defence and Trade and the Attorney-General's Department.

extensively in relation to this issue. The committee was particularly interested to determine whether proposed changes to the legislation (allowing a particular 'class' of person exemption from security screening) could create a dangerous precedent.

2.46 Departmental representatives told the committee that the changes would not involve a large number of people, that the amendment was actually only creating a power to grant an exemption, and that:

The actual granting of exemptions is typically the sort of thing that would be a policy decision by government around a class of people. It is certainly not creating a catch-all power that is going to see thousands and thousands of people with exemptions. It was a bit of a gap in the act that we felt, because of our international obligations, we needed to give ourselves the power.¹³

Amendments to the *Civil Aviation Act 1988*

Interference with air crew and endangering aircraft or passengers

2.47 The proposed amendments to Section 24(1) extend the application of the existing section, which prohibits a person on board an aircraft from taking action which would endanger the safety of the aircraft or those on board, to include a person outside the aircraft.

2.48 The committee notes that these amendments reflect concerns within the aviation industry regarding an increasing incidence of lasers being used to interfere with aircraft, particularly on approach to, and on take-off from, airports. The proposed amendments to the Civil Aviation Act will mean that a person who threatens the safety of an aircraft, either by laser or other means, will be committing an offence.¹⁴ The committee notes that aviation industry representatives were generally supportive of this amendment.¹⁵

Mandatory drug and alcohol testing program

2.49 On 2 May 2006, the Commonwealth government announced the development of new regulations which would require the aviation sector to introduce mandatory drug and alcohol testing for safety sensitive personnel.¹⁶ The Commonwealth government's announcement is based on a January 2006 report jointly prepared by

13 Mr Andrew Tongue, Department of Transport and Regional Services, *Committee Hansard*, 16 July 2007, p. 18.

14 Second Reading Speech, Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007, p. 1 and Explanatory Memorandum, Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007, p. 29.

15 Virgin Blue Airlines Pty Ltd, *Submission 3*; Australian and International Pilots Association, *Submission 8*; and Qantas Airways Limited, Tabled Document, 16 July 2007, p. 2.

16 The Hon. Warren Truss, MP, Minister for Transport and Regional Services, Media Release, 2 May 2006.

DOTARS and CASA into the safety benefits of introducing drug and alcohol testing for safety-sensitive aviation personnel.¹⁷

2.50 Under new Part IV of the Civil Aviation Act, it is intended that CASA will have responsibility for the oversight of the drug and alcohol testing of safety sensitive personnel in the civil aviation industry. CASA will have the authority to give lawful effect to a drug and alcohol testing regime, especially where it extends to organisations and safety sensitive personnel over which the Authority does not already have clear and direct regulatory authority.

2.51 Under the new legislation, safety sensitive personnel will include flight crew, cabin crew (flight attendants), flight instructors, aircraft dispatchers, aircraft maintenance and repair personnel, aviation security personnel, including screeners, air traffic controllers, baggage handlers, ground refuellers and other personnel with airside access, and contractors.

2.52 The new regime will consist of two components:

- **Industry Component:** a drug and alcohol regime to be implemented by the civil aviation industry (and those associated with its safety sensitive functions) and which will include a requirement for industry participants to develop and implement a drug and alcohol program.
- **CASA Component:** a scaleable random testing regime of safety sensitive personnel associated with the civil aviation industry, including those not captured under the drug and alcohol program conducted by industry.¹⁸

2.53 Industry participants may elect to randomly test their employees under the Industry Component, however, it is not intended that such random testing be mandated by CASA. Under the CASA Component, it is proposed that CASA will engage a contractor to undertake random testing on its behalf.

2.54 Although several stakeholder groups doubted the existence of a drug and alcohol problem in the Australian aviation industry, there was considerable support for the introduction of mandatory drug and alcohol testing throughout the Australian aviation sector. Industry representatives did, however, make a number of comments about the practical implications of the new arrangements and the Regulations which would govern the proposed regime.

2.55 The Regional Aviation Association of Australia (RAAA) Association indicated that the Association was not aware of a major alcohol or drug problem within the professional sector of the aviation industry. However, the Association also

17 Explanatory Memorandum, Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007, p. 3.

18 Explanatory Memorandum, Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007, p. 3.

recognised that the absence of evidence does not necessarily mean that there is not a problem and ultimately described the amendments as being positive:

The gathering of data as a result of the programs proposed by the legislation should help us as an industry to determine the true extent of the use of alcohol and other drugs by members of the industry. This can only be useful.

A number of our members currently have very stringent alcohol and other drug programs in place. These are a pre-requisite for providing support to mining companies, and involve every member of the companies involved regardless of whether or not their activities can be defined as 'safety sensitive'. The experience of those who have such programs in place has been universally positive.¹⁹

2.56 The Australian and International Pilots Association (AIPA) also argued that there is no evidence to suggest that the use of drugs and alcohol is a problem in Australia's aviation industry. The Association did, however, acknowledge the inevitability of drug and alcohol testing being introduced and advocated a holistic approach to the way in which these programs are managed. AIPA suggested an approach which "supports the overall mitigation of human performance impairment, including related issues such as fatigue, work systems and environmental stressors."²⁰

2.57 AIPA argued for an approach that is more consistent with a 'harm minimisation' philosophy, and will result in an intervention strategy that focuses on substance use rather than the substance user. In this type of program, testing is only a minor component of the program. AIPA suggests that:

This is in contrast to the US style punitive approach, which formed much of the basis of the DoTaRS *Review of the safety benefits of introducing drug and alcohol testing for safety-sensitive personnel in the aviation industry* – and is subsequently reproduced in the Bill's EM.²¹

2.58 AIPA also highlighted a number of additional proposals that had been put to the DOTARS and CASA Alcohol and Other Drugs Project Team including that:

- testing of aviation safety-sensitive personnel only be conducted within Australia;
- testing analysis only to be conducted within Australia;
- only highest quality of testing analysis to be prescribed;
- the cost of testing is not to be borne by the individual;
- there be legislative protection of privacy aspects;
- testing records be treated as medical records;

19 Regional Aviation Association of Australia, *Submission 1*, pp. 1-2.

20 Australian and International Pilots Association, *Submission 8*, p. 8.

21 Australian and International Pilots Association, *Submission 8*, p. 9.

- there be legislative protection of the security and access to testing records; and
- appropriate provisions apply with regard to expunging information.²²

2.59 AIPA acknowledged that several of the above proposals have been adopted by the Alcohol and Other Drugs Project Team in developing the enabling legislation – particularly those in relation to a harm minimisation philosophy, limiting testing to within Australia and not mandating random testing for industry Drug and Alcohol Management Plans. AIPA indicated support for these actions.²³

2.60 A spokesman for the Liquor, Hospitality and Miscellaneous Union, LHMU, told the committee that the union does not oppose drug and alcohol testing, "nor provisions that require employers to ensure the safety of passengers and employees in aviation security"²⁴. The LHMU also argued for an approach based on education and rehabilitation:

... the LHMU believes that employers – and now, to a certain extent, CASA – have a positive obligation to ensure that employees who have a drug or alcohol problem are identified, educated and assisted along the road to sobriety by way of rehabilitation and not by way of punitive measures.²⁵

2.61 The Australian Federation of Air Pilots (AFAP) also questioned whether the misuse of drugs and alcohol really is a significant problem in the Australian aviation industry. AFAP also suggested that the resources allocated to drug and alcohol testing programs might be better spent in other areas of the aviation system – particularly aviation security. At the same time, AFAP acknowledged that international trends, public interest and political considerations mean that drug and alcohol testing will become a reality under the new legislation.

2.62 In its submission, the AFAP made a number of comments about the proposed amendments. The Federation raised specific concerns about the intention to test pilots following an accident or incident, and argued that:

... such tests should not be required unless clearly justified by the facts and circumstances of the accident, and in the case of an accident where the pilot is injured, only administered when cleared to do so by the pilot's nominated medical practitioner.²⁶

22 Australian and International Pilots Association, *Submission 8*, pp. 9-10.

23 Australian and International Pilots Association, *Submission 8*, p. 9.

24 Mr Simon O'Hara, Liquor Hospitality and Miscellaneous Union, *Committee Hansard*, 16 July 2007, p. 14.

25 Mr Simon O'Hara, Liquor Hospitality and Miscellaneous Union, *Committee Hansard*, 16 July 2007, p. 14.

26 Australian Federation of Air Pilots, *Submission 4*, p. 2.

2.63 The AFAP also raised concerns about the ability of small operators to comply with the legislation, both in relation to the practical considerations and the financial burden being placed on them. It was also noted that under the amendments, it is proposed that the CASA component only conduct random checks – which raised some questions about how pre-employment or post accident checks will be conducted.²⁷

2.64 The AFAP also argued that details regarding how, and under what circumstances, a random test may be carried out need to be clarified – particularly issues such as the location and timing of random tests. Testing in the aircraft, in the vicinity of the aircraft, gate lounge or tarmac were also described as being completely unacceptable.²⁸

Committee comment

2.65 The committee notes that there is general support across the aviation industry for those amendments to the Act designed to enhance security. In particular, there appears to be broad support for moves to expand the definition of 'unlawful interference with aviation' to include activities beyond the boundaries of the airport. During the inquiry, several industry organisations indicated that they have previously raised concerns with DOTARS about the use of laser devices directed toward aircraft from locations outside the airport boundary. The committee joins industry participants in welcoming the enhanced measures in the legislation to deal with this problem.

2.66 The committee shares the concern of some submitters that the operation of many of the proposed amendments in the bill will be implemented through regulations which have yet to be drafted. The unavailability of the proposed regulations for examination by the committee and interested stakeholders during this inquiry is a matter of some concern to the committee. While the committee notes the Department's assurances that a number of the issues and questions raised by the committee (including the 38B amendment) will be clarified in the Regulations, it has been difficult for the committee to assess the implications of the proposed amendments in isolation from the Regulations.

2.67 In this context, the committee notes that in its current form new section 38B of the Aviation Transport Security Act appears to have a broad application. The committee notes that it is the Department's intention to limit the application of new section 38B to a range of activities consistent with those set out in section 10 of the Act. While the committee considers that it is desirable for such limitations to be set out in the primary legislation, the committee welcomes the Department's assurance and notes that the Regulations will be subject to parliamentary scrutiny via the disallowance process.

27 Australian Federation of Air Pilots, *Submission 4*, p. 2.

28 Australian Federation of Air Pilots, *Submission 4*, p. 2.

2.68 Similarly, the committee notes the industry's broad support for the introduction of drug and alcohol testing programs across the aviation industry is tempered by concerns about the practical implementation of the proposed measures. The committee notes that these concerns could be addressed through the involvement of stakeholders in the drafting of the Regulations.

2.69 The committee shares the concerns expressed by several organisations regarding the granting of exemptions from security clearance for certain dignitaries. Whilst the committee understands the importance of balancing its international legal obligations with its aviation security obligations, the committee has serious reservations about the granting of any type of exemptions. The committee is particularly concerned that this would set a precedent for further exemptions over time and that this may become difficult to manage as security issues become more critical over coming years.

2.70 While the committee accepts the need for the bill and supports its passage, the committee notes that the successful implementation of the bill will depend largely on the extent to which concerns such as those raised by stakeholders during this inquiry are addressed in the drafting of relevant regulations. The committee anticipates that the drafting of the Regulations will be based on full consultation with all stakeholders. The committee remains concerned about the exemption of certain dignitaries, diplomats and other persons from security screening and clearing.

Recommendation

2.71 The committee recommends that the bill be passed.

Senator the Hon. Bill Heffernan

Chair

Appendix 1

Submissions received by the Committee

1. Regional Aviation Association of Australia
2. Office of Transport Security Department of Transport and Regional Services
3. Virgin Blue Airlines Pty Ltd
4. Australian Federation of Air Pilots
5. Liquor Hospitality and Miscellaneous Union (LHMU)
6. Australian Airports Association
7. Adelaide Airport Limited
8. Australian and International Pilots Association
9. Australian Customs Service

Appendix 2

Witnesses who appeared before the Committee at the Public Hearing

Monday, 16 July 2007

Parliament House

CANBERRA

Australian International Pilots Association

Captain Colin Adams, Past President and Member, Board of Management

Mr Guy Maclean, Government and Regulatory Affairs Advisor

Qantas Airways Limited

Mr Geoffrey Askew, Group General Manager Security

Dr Graeme Peel, Group General Manager Occupational Health and Safety

Liquor, Hospitality and Miscellaneous Union

Mr Simon O'Hara, National Legal Officer

Department of Transport and Regional Services

Mr Michael Mrdak, Deputy Secretary

Mr Andrew Tongue, Deputy Secretary

Civil Aviation Safety Authority

Mr Shane Carmody, Deputy Chief Executive Officer

