

**AUSTRALIAN FEDERATION
OF AIR PILOTS**



President:
Bryan Murray

Executive Director:
Terry O'Connell

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Attention: Committee Secretary
Senate Rural and Regional Affairs and Transport Committee
Department of the Senate
Parliament House
Canberra

**Regarding the inquiry into the Aviation Legislation Amendment (2007 Measures No.1)
Bill 2007**

The Australian Federation of Air Pilots (AFAP) represents over 2400 pilots operating commercially in Australia and overseas. Our membership is broad based in that it covers pilots in the domestic and regional airline sectors, pilots operating charter, helicopter, EMS, flying training, and GA services. We therefore have a profound interest in aviation security and the pending introduction of drug and alcohol testing of safety-sensitive aviation personnel.

Amendments to the Aviation Transport Security Act 2004

We support the changes to the Act in particular the widening definitions covering unlawful interference and threats to security generally. However with regard to the Act and the Government's aviation security strategy, the Federation questions whether, in the Australian operating context, there is any real security enhancement resulting from the carriage of Air Security Officers (ASOs). We believe that if the budget allocated to support this group was redirected to improve security at the major and regional airports, it would result in a much more cost effective security outcome.

Amendments to the Civil Aviation Act 1998

The Federation asserts at the outset that there is no place for anyone with a drug or alcohol problem working in the aviation workplace. The potential costs for drug or alcohol impaired performance could be catastrophic in both human and financial terms.

However, we continue to question whether, with respect to Australian commercial operations, that a significant drugs and alcohol problem actually exists, and whether the resources allocated (both from Government and Industry) to implement and sustain drugs and alcohol (D&A) testing programmes would be better spent elsewhere in the aviation system to improve public safety eg. improving security, and enhancing airspace and aerodrome safety.

Nevertheless, the Federation acknowledges international trends, the significant public interest and the political reality in relation to D&A testing. A copy of our D&A Testing policy is attached for your information.

With regard to the proposed amendments, and the supporting paperwork, the following brief comments are offered for your consideration:

- The definition of 'safety sensitive activities' is broad and includes "activities that impact directly or indirectly on the safety of" Australian operations. We support that – safety sensitivity is not simply an 'airside' issue. As referred to in our policy, the

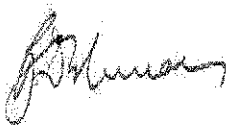
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'landside' aviation infrastructure includes numerous activities that meet this definition and thus relevant personnel will be subject to testing programmes eg. catering, freight forwarders, engineering workshops, and aviation enterprise management and the aviation safety decision makers in the bureaucracy.

- We continue to harbour serious concerns about the provision under industry D&A testing programmes (the industry component legislation), to test pilots following an accident or incident. The Federation believes 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.
- With regard to the industry component, a question arises as to how the very small operators eg. outback single engine charter services provided by one pilot, will comply with the legislation. As well as the impracticality from their perspective, the cost burden could be enormous We note that the CASA component is designed only to conduct random checks. How will pre-employment or post-accident checks, for example, be covered?
- The detail as to how and under what circumstances a random test may be carried out, be it conducted by the operator or a CASA contractor, needs to be considered carefully ie. The location and timing of such tests. Testing in the aircraft, or in the vicinity of the aircraft, or gate lounge or tarmac would be completely unacceptable. Flight crews should be allowed to go about their business unhindered especially during 'tight' turn-arounds – that is a basic flight safety issue.
- With regard to random testing, since we had no feedback to our submissions to the Review into the Safety Benefits of Introducing Drug and Alcohol Testing of Safety-sensitive Personnel in the Aviation Sector, we are yet to receive an explanation as to why the random testing of pilots was never introduced in the United Kingdom. We recommend that the Committee should do so in its deliberations. We suspect that the issue discussed above would be one reason.
- And finally, the legislation must ensure that a reasonable interval exists between tests. Doubling up of testing must be avoided ie. A pilot just tested under an operator programme immediately being challenged to undergo a CASA random test.

Thank you for the opportunity to submit comments on these important amendments

Regards



Captain Bryan Murray
President - Australian Federation of Air Pilots.



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The AFAP fully supports a civil aviation workplace free of problematic substance use.

If D&A testing is to be introduced, it must:

- be justified on the basis of a rigorous and credible risk and cost/benefit analysis;
- be established in accordance with the guidelines set out in ICAO Doc. 9645-AN/945 – Prevention of Problematic Use of Substances in the Aviation Workplace; and at least the standards laid down for testing set out in the US Dept of Transportation Omnibus Employee Testing Act;
- be subject to a widespread and meaningful consultative process which includes the issue of an NPRM
- be publicly funded and managed by a central authority, preferably a statutory authority other than a law enforcement agency;
- be administered in accordance with strict, legally enforceable, protocols and procedures which guarantee the efficacy and confidentiality of the entire testing, storage and retrieval processes; and
- exclude random testing, or testing of any kind following an accident unless it is clearly justified by the facts and circumstances of the accident, and only then until the pilot has been cleared to undergo the test by his or her nominated medical practitioner.

The definition of safety-sensitive personnel to include:

- all personnel with airside access eg. flight crew members, flight attendants, maintenance personnel, flight instructors, dispatchers, drivers, passenger and baggage screeners, fuellers, ground security coordinators, ATC, airport security; and
- any employee, manager, or company director of any organisation (with airside access or otherwise) that is involved in or the delivery of, any service or product that ultimately may have an impact on the safety of an aircraft operation eg. Catering Firm, Component Manufacturer, Supplier, Airline management personnel and members of the Board of Directors

The AFAP does not support the delegation of new regulations related to D&A testing, to the industry.

All D&A testing regulations must recognise and be consistent with the provisions of Federal and State Privacy Acts and Regulations.

D&A testing rules and procedures must provide for and protect the civil rights of individuals including the right of challenge and appeal with regard to:

- the way in which D&A testing processes are administered;



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- the outcome of the specific individuals test;
- and any administrative or punitive action that may result from the testing.

The AFAP believes D&A testing should be conducted by a single authority.

If D&A testing is to be delegated to the industry, the list of organisations required to discharge this responsibility is more extensive than recommended being determined by our policy in relation to who is able to conduct the testing.

The AFAP supports the recommendation relating to maximum permissible limits for alcohol use. The limits must be applied uniformly to all safety-sensitive personnel.

The AFAP supports the recommendation regarding drugs subject to a scientific study being implemented to determine to what extent, if any, performance is impaired by passive consumption.

Employers and the Authority be required to educate pilots on the use of medication, and local and general dental and other anaesthetics and their compatibility with flying duties (e.g. by the use of a manual or leaflet)

Education should include National legislation on the subject and a list of accepted and prohibited medication, and whom to contact in case medication not on the list is being is under consideration.

The AFAP supports the recommendation regarding education and understanding of over the counter or prescription drugs.

The AFAP believes that any D&A testing programme be publicly funded and managed by a central authority, preferably a statutory authority other than a law enforcement agency.

D&A testing should be limited to:

- Pre-employment testing;
- Return to duty and follow up testing for rehabilitation cases;
- Post-accident testing subject to the AFAP policy in relation to impacts on safety investigation; and
- Reasonable suspicion testing subject to the following:
 - such testing is justified by at least two supervisors trained in accordance with ICAO Manual 9645-AN/945 in recognising the physical behavioural and performance indicators of problematic substance abuse;



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- such testing is based on short term factors (i.e. what the supervisors see at the time of performance, and not long term factors such as excessive use of sick leave);
- such testing is not based only on third party reports; and
- such testing is authorised only if the supervisor's observations are made during, just preceding, or after the individual performs safety sensitive duties

The AFAP supports pre-employment testing for all personnel who qualify in accordance with the policy in relation to Safety sensitive personnel.

The AFAP opposes random testing of any kind.

However, the AFAP acknowledges that there may be a case for testing on the basis of reasonable suspicion provided an agreement is reached between operators, employees and the Authority on what constitutes "reasonable suspicion".

Notwithstanding the AFAP's opposition to random testing, any testing initiative must be properly resourced and applied uniformly.

Alcohol concentration and time limits be established and applied uniformly to all safety sensitive employees, regardless of category.

The AFAP supports the recommendation regarding prohibited drugs generally subject to a pilot having the right to refuse to undergo such a test following an accident until such time as he or she has been cleared to undergo the test by his or her nominated medical practitioner.

The AFAP believes that the best way to prevent, identify, and eradicate problematic substance use is through a specifically tailored peer intervention employee assistance programme.

The AFAP supports the recommendation relating to a 'positive' test result subject to:

- a rigorous review process being in place; and
- 'licensing' action against the pilot or any other punitive measures are considered only after all avenues of professional help have been exhausted

D&A testing must be conducted by an independent D&A Testing Organisation, preferably a Statutory Authority. Law enforcement agencies are inappropriate agencies for this purpose.

Operator/Authority D&A prevention, identification and eradication policy must include a requirement for a specially tailored peer-intervention employee assistance schemes

Problematic D&A prevention programmes must focus on education and rehabilitation, and incorporate return to duty programs.



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The AFAP does not support the imposition of additional requirements and therefore costs which cannot be justified on safety/ cost/benefit grounds – in particular for the GA sector. If D&A testing is to be imposed, it must be funded from the public purse and administered by a single statutory authority.