



10 July 2007

By Electronic Transmission

Ms. Jeanette Radcliff
Committee Secretary
Senate Standing Committee on Rural and Regional Affairs and Transport
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Email: rrat.sen@aph.gov.au

Dear Ms. Radcliff,

**Re: Inquiry into the Aviation Legislation Amendment (2007 Measures No. 1)
Bill 2007**

Thank you for the opportunity for the Australian and International Pilots Association (**AIPA**) to provide a submission to the Inquiry into the Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007.

While the relatively short time frame available precludes a fully detailed submission by this Association, there are nevertheless aspects of Schedule 1 of the bill that Australian airline transport category flight crew wish to briefly comment upon, these being:

- (2) 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;
- (3) 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,
- (6) 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.

In relation to the first point, the proposed enhancements to aviation security, AIPA supports the extension of regulation making powers to include disruptive activities

to areas that are outside of security controlled airport zones. Similarly, airline pilots support the proposed extension of security legislation to areas outside airport boundaries. AIPA considers this to be proactive and positive safety and security action by the Government

Likewise, AIPA does not seek to raise any significant objections in principle to the clarification of expedited clearance or exemption from screening for certain dignitaries or Heads of State. However, this submission indicates general safeguards that must support this clarification and does not support its discretionary application to VIPs. AIPA also highlights the need for security screening facilitation for operating air crew members to be similarly appropriate to the risks presented by this particular population.

The final issue commented upon is the Bill's creation of the statutory framework that will permit the making of regulations to require Alcohol and other drug testing of safety sensitive aviation personnel. AIPA highlights that while pilots do not object to the principle underpinning the proposed legislation, this is a complex issue that is of significant concern to airline pilots. This submission therefore restates some of the key safeguards proposed by this Association to Minister Vaile, DoTaRS and the aviation safety regulator developing the enabling legislation.

AIPA's senior representatives would be happy to expand on these points in more detail as witnesses before the Committee. Please contact me if I can provide any additional information, clarification or assistance.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ian Woods', written in a cursive style.

Captain Ian Woods
President

Tel: 61 – 2 – 8307 7777

Fax: 61 – 2 – 8307 7799

Email: office@aipa.org.au

AIPA Submission to Senate Standing Committee on Rural and Regional Affairs and Transport:

**Inquiry into the AVIATION LEGISLATION AMENDMENT
(2007 MEASURES NO.1) BILL 2007**

Submission:

The Australian and International Pilots Association wishes to provide the Committee with comments on the following aspects of the Aviation Legislation Amendment (2007 measures No.1) Bill 2007:

(2) 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;

1. Airline transport pilots support the expanding of the definition of *unlawful interference with aviation* to include Section 38B. This new section address an issue the Association has discussed with the government and the aviation regulator in the recent past. That is, the interference with aircraft operations by persons who are not either within aircraft, the security controlled zones of the airport or the airport precincts.
2. AIPA and the International Federation of Airline Pilot's Associations (IFALPA) have raised concerns about the use of laser devices directed toward aircraft by persons remote from the airport and brought the issue to the attention of the Government and safety regulator. As has been the case in the USA and internationally, there has also recently been instances of this potentially dangerous behaviour within Australia.
3. As the issue occurs during the take-off or landing stages of flight, the safety implications of such acts are significant. The Bill's proposed extension of the security legislation concerning interference with a crew member within Subsection 24(1), and specifically in the case of laser devices 24(2), to cover such acts is therefore seen as an appropriate evolution of security and safety

measures to combat emerging trends and threats. The government is to be commended for this action.

4. Similarly, unruly, disruptive or violent behaviour and/or activities in non security controlled parts of an airport reduce the overall security and good order of aviation activities. The increasing instances of “check in rage” impact the personnel providing essential ground functions within airports, thereby making the aviation environment less safe and accessible to citizens. This disruption of the facilitation of air transport also extends to those who make unacceptable security comments about explosives or threats to aviation, whether or not the comment is intended as a joke. AIPA therefore supports the extension of the new section 38B to environments or zones that are outside the primary aircraft operational areas that have been traditionally the focus of aviation security measures. AIPA, again, sees this as the appropriate evolution of security measures in response to developing risk.
5. The proposed Section 89A of the Bill, which provides appropriately trained customs officers with the powers to stop and search persons, issue directions to leave an aircraft, area or zone of an airport , or to physically restrain persons until they can be dealt with by a law enforcement offices is also supported. It is agreed that these are practical steps that facilitate appropriate security oversight.

(3) 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.

6. AIPA believes that security screening policy must be based upon the mitigation of risk as the underlying principle. As a consequence, screening conducted in aviation setting must be appropriate to the particular populations present in order to achieve the best balance between hazard minimisation and operational facilitation.
7. It is appropriate that passengers be screened for weapons or implements that may threaten an aircraft. This appropriateness is based upon the fact that in order for a passenger to constitute a significant threat the person generally

needs some type of implement, device or offensive substance with which to facilitate their action. This is the basis behind the ICAO Guidelines on Liquid, Aerosol and Gel (LAGs) screening that have animated much of the international community's LAGs screening provisions. Significantly, however, AIPA notes that the ICAO LAGs Guidelines are directed at passengers, not operating crew members. The rationale is obviously that, as with conventional weapons, the possession of an offensive capacity is necessary for the facilitation of a passenger's desire to harm an aircraft.

8. Operating Flight crew (and to a lesser extent cabin crew), on the other hand, do not need to bring such devices through a security screening point as items capable of being used as offensive weapons are often part of an aircraft's safety equipment, to which crew members have ready access. For example, a uniformed operating crew member could not proceed through security with an axe; however, once the crew member is onboard the aircraft they have access to an emergency crash axe. In a more extreme example, if pilots wish to harm the aircraft they do not need to bring a weapon of offensive substance through the security screening process; they are in control of the actual aircraft!
9. Security screening therefore must be appropriate to the population concerned. For the above reasons it is necessary to screen passengers for weapons and LAGs. The appropriate screening of flight crew, on the other hand, must be similarly risk based. AIPA submits that the security screening of operating flight crew member consists primarily of identity verification, confirmation of ASIC clearance, possession and validity, and cross referencing of the crew member with the assigned duty for which they are attempting to conduct.
10. As a consequence of this type of risk based approach and the subsequent application of appropriate security screening of operating crew members, the vast majority of the major aviation States do not apply the ICAO LAGs screening guidelines to uniformed crew members. AIPA has identified more than 25 countries, including the European Union, USA, Canada, Japan and the UK who either do not apply the LAGs screening to operating crew or who have a direct exemption in place.

11. Australia, however, currently does not permit any LAGs exemption to operating crew members. In order to better target security risk, maximise the use of scarce resources and facilitate commercial aviation operations, AIPA [and the FAAA] have [jointly] met with DoTaRS and with Minister Vaile's office to request the international LAGs exemption for uniformed operation crew members be also applied here in Australia. To date however, no response has been received.
12. The application of LAGs screening of crew members is a significant operational issue that AIPA has found, following its discussions with the Government and DoTaRS, to apparently have not been fully considered prior to implementation. AIPA representatives highlighted that consultation with professional organisations such as the representatives of flight crew would have provided valuable insight into the issues that could have could have been reasonably foreseen to arise. It was stressed that there was no such consultation with respect to the implementation of the LAGs screening provisions.
13. As a consequence AIPA has formally requested inclusion on the Aviation Security Advisory Forum. The implementation of the Air Security Officer program clearly indicated the value that such consultation can contribute to the evolution and development of effective security oversight.
14. However, AIPA has today been informed by DoTaRS that the Association has been denied the membership of this forum and the subsequent formal opportunity to contribute the expertise of airline pilots. In the light of past experiences such as LAGs implementation, AIPA is deeply disappointed that DoTaRS should take this decision and seek to exclude AIPA from this Forum.
15. Regarding the security screening of dignitaries and Heads of State, AIPA agrees that it is appropriate, from the risk based perspective, that very senior dignitaries and/or Heads of State be accorded expedited security clearance. AIPA does not oppose this facilitation, relevant to the upcoming APEC meeting in Sydney, in principle. However, some aspects of the Bills proposals are of concern.

16. AIPA has carefully noted the following Hansard quote from Senator Abetz's second Reading speech on this Bill in the Senate Chamber on Thursday 28 June 2007. In this speech to the Chamber Senator Abetz said:

'Thirdly, is an amendment to the Aviation Transport Security Act 2004 which will provide, through Regulations, 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.'

17. AIPA does not support the discretionary extension of expedited or exempted security screening for VIPs or others as this quote suggests will be the case. This definition of the VIP class of passenger, amplified by an apparently unrestricted discretionary power, is far too wide and could include anyone from celebrities to the wealthy. The underlying basis of this exemption appears to be status and privilege, not any objective risk matrix. The proposal is therefore strongly opposed by airline pilots.

18. The Association's information is that non-screened diplomatic baggage (under the 998 & 999 diplomatic visa classes) already represents a far larger volume than may be commonly assumed. AIPA understands that discretionary screening of such persons is established practice, facilitated by Customs officers designated as "Victors." AIPA submits that in reviewing the appropriateness of extending expedited or exempted security clearance to VIPs (on the proposed case-by-case basis), the Committee should determine the exact role of "Victor" customs officers, the discretionary powers they possess and the volumes and classes of passengers who's expedited/exempted screening is currently facilitated by them.

(6) 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.

19. AIPA accepts that there is clearly no place for impaired personnel within a safety sensitive operational environment—whatever task they conduct. However, since the Government’s first review of the necessity of this legislation, the Association has consistently contended that in relation to airline transport category flight crew there is no defined risk that this legislation addresses; quite simply, there has never been an accident of a large jet Regular Transport Category (RPT) aircraft where the casual factors have been ascribed to the problematic use of substances. In this regard a “one size fits all” A&OD strategy is not the appropriate hazard mitigation strategy to apply to airline transport category flight crew.
20. The Bill’s Explanatory Memorandum (EM) contains statements that AIPA [and other organisations] have opposed as not being based on sufficient evidence. For example the EM states ‘...*there are still significant concerns in relation to flight accidents and serious incidents attributable to the use of drugs and alcohol...*’ AIPA submits that for airline transport category operations and flight crew there is simply no evidence to support this contention and therefore require the subsequently proposed massive regulatory response. As licensed professional personnel who are subject to a medical certification regime, which already enables CASA to monitor A&OD oversight, flight crew do not exhibit the risk profile that requires the application of this legislation to them.
21. Nevertheless, AIPA accepts that the Government has determined that flight crew will fall under the proposed Alcohol and Other Drug testing legislation. AIPA therefore highlights to the committee that there are multiple factors contributing to human performance impairment, with problematic use of substances being only one such risk. Throughout the government’s review of the safety case for this legislation, and within the CASA Project Team developing the its key components, AIPA has advocated a holistic approach that supports the overall mitigation of human performance impairment, including related issues such as fatigue, work systems and environmental stressors.
22. This approach is consistent with the Australian harm minimisation philosophy, which is based upon an underlying foundation of education support and rehabilitation. The result is an intervention strategy that focuses on substance

use not the substance user—a subtle but critical distinction. In this type of non-punitive approach, testing forms only a minor component at the “back end” of the program and any positive test results indicate system failure, not success. 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 the Bill’s EM.

23. AIPA believes that any A&OD intervention strategy must not only embrace these “first principles” but must be consistent with both Australia’s proposed Part 61 flight crew licensing regulations and current Part 67 medical regulations—in both regulatory content and language. Such an internally consistent strategy must then be centred upon a Medical review Officer (MRO) who determines the relevant circumstances of any testing activity and declares cut-off exceedance based on specialist review. AIPA submits that consistency with CASR Part 61 and 67 and the requirement of the MRO function as the key component of both the CASA and Industry Drug and Alcohol Management Plans (DAMPs) must be mandated.

24. AIPA wishes to highlight to Committee several other broad concerns that have been presented to the DoTaRS and the CASA A&OD Project Team:
 - a. A&OD testing of aviation safety sensitive personnel must only be conducted within Australia (for example, as required by US FAA regulations);
 - b. Testing analysis only to be conducted within Australia;
 - c. Highest quality of testing analysis must be prescribed;
 - d. Cost of testing not to be borne by the individual;
 - e. Legislative protection of privacy aspects;
 - f. Testing records treated as medical records;
 - g. Legislative protection of the security and access to testing records;
 - h. Appropriate expungement provisions to apply.

25. AIPA acknowledges that some of these suggestions have been adopted by CASA and the Industry Project Team developing the enabling legislation. This has been particularly so with respect to the adoption of the harm minimisation philosophy and the associated concepts of education, support and rehabilitation. Other important issues have been incorporated in the

proposals developed by the Project Team including limiting testing to within Australia and not mandating random testing for industry DAMPs. AIPA supports CASA in these actions.

26. The last issue of concern that this submission discusses is the consultation conducted by CASA with respect to the A&OD Project Team membership. Despite making multiple requests for formal inclusion in the Project Team AIPA has been relegated to observer status. While the Association notes that the Project Team manager has facilitated the full participation of the AIPA observer in the Team's discussions and AIPA has contributed significantly to the work of the project team, we must nevertheless bring to the Committee's attention that AIPA's exclusion from formal Project Team membership does not accord with the Minister's consultation statement. AIPA is at a loss to understand why the only Association in the country to have formally negotiated an A&OD tripartite agreement (between AIPA, CASA & Qantas) and therefore who possesses significant expertise, has been so excluded.

—oOo—