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Australian Government
Australian Customs Service

**SUBMISSION TO THE
SENATE STANDING COMMITTEE ON RURAL AND REGIONAL
AFFAIRS AND TRANSPORT**

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

JULY 2007

Introduction

This submission is made by the Australian Customs Service (Customs) to the Standing Committee on Rural and Regional Affairs and Transport (the Committee) in relation to the *Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007*. This submission is made to assist the Committee with its deliberations.

Background

The purpose of the *Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007* (the Bill) as it relates to Customs, is to amend the *Aviation Transport Security Act 2004* (ATSA) to specifically designate Customs officers at airports with powers in relation to aviation security.

New Division 3A of the Bill seeks to provide Customs officers with powers to allow them to:

- stop and search persons and vehicles at airports;
- request persons to leave an aircraft, an airport or an area or zone of an airport;
- restrain and detain persons until the person can be dealt with by a law enforcement officer; and
- remove vehicles from an airport, or from an area or zone of an airport, if the Customs officer is unable to have the vehicle removed by the person in control of it.

These amendments are in response to the *Independent Review of Airport Security and Policing for the Government of Australia* by Rt Hon Sir John Wheeler DL (the Wheeler Review). Recommendation VI of the Wheeler Review states “all police, AFPPS and Customs officers deployed to an airport be given clear and unambiguous powers, including to stop, search, detain and arrest where necessary within the airport and adjacent roads and parking areas”. Government supported the Wheeler Recommendations on 20 September 2005 (JH05/0335/CAB). These amendments have been developed in consultation with the Department of Transport and Regional Services and the Australian Federal Police and reflect a whole-of-government approach to the strengthening of aviation security.

Expansion of Australian Customs Officers Powers

Under the *Customs Act 1901* Customs officers have the powers to stop, question, search, detain and arrest for offences under that Act. However, under the ATSA, Customs officers are not ‘law enforcement officers’ and as a result are unable to deal with any behaviour that may be a threat to aviation security. This presents a real vulnerability to aviation security where timely responses to incidents are critical.

1. The power to stop and search a person or vehicle

Some Customs officers, such as Air Border Security (ABS) officers, work 24-hour shifts at a number of airports and operate away from the airport terminals. ABS officers have border control responsibilities and conduct a number of duties including daily

airside operations, aircraft search, baggage monitoring and containment exercises, intelligence collection, transit passenger and crew checks, airside and perimeter area patrols, and targeted staff exit searches. Duties such as these present ABS officers with a unique insight into the activities of the airport and place them in positions whereby they may be exposed or witness to threats to aviation security in the airside environment.

The power to stop and search (under the ATSA) would enable an ABS officer to immediately allay any suspicion an officer may have in relation to threats to aviation. For instance, a Customs officer conducting a routine perimeter patrol of an airport may see an unmarked light commercial van carrying persons who are not wearing clothes appropriate for airport work.

Under the *Customs Act 1901* the Customs officer may stop a vehicle only if that vehicle is in a Customs place, and only to ascertain if there is appropriate documentation to authorise the movement of any goods in the vehicle that may be subject to Customs control. Unless the officer has a belief that the van contains goods subject to Customs control they may not exercise general search powers. However, the proposed powers in the ATSA would enable the Customs officer to stop the vehicle and search both the vehicle and the person, based on reasonable suspicion that a risk to aviation exists.

In addition, the ability of Customs officers to search persons they stop is necessary to ensure officer safety. Persons working airside often carry on their persons tools related to their duties. If a person is reasonably suspected of being a threat to aviation security, a search of the person is important to maintain both the personal safety of persons in the immediate area, and of the airport infrastructure.

2. *The power to request a person to leave an aircraft or area or zone of an airport*

This amendment provides for Customs officers to safeguard against unlawful interference with aviation by authorising officers to request persons to leave an aircraft or zone of an airport. Customs officers, such as ABS officers, may utilise the power to remove persons in instances where potential threats to aviation (including to the airport or aviation infrastructure) are detected.

For example, a Customs officer examining the passenger cabin of an aircraft, post disembarkation of passengers, notices a cleaner or non-operational aircrew enter the cockpit of the aircraft. Under the *Customs Act 1901* Customs officers have no power to ask a person to leave any area unless that area is being used for the examination of passengers' baggage or is within an aircraft that is embarking or disembarking passengers.

The enhanced power to remove under the ATSA will allow Customs officers to request that the person leave the aircraft so that the examination of the cabin may be completed without interference. In addition, were the Customs officer may identify a suspicious package during the examination, such a power would ensure that Customs can immediately secure the area and protect the persons within the vicinity by requesting them to relocate to a safe location.

3. *The power to restrain and detain persons*

The ability to restrain a person who is reasonably suspected of committing an offence against the ATSA is crucial to ensuring the security and safety of the airport environment. When exercised in conjunction with the proposed stop and search powers, Customs officers will be able to respond immediately to any threat to the airport while awaiting the arrival of a law enforcement officer.

An instance may arise where a Customs officer patrolling the baggage make-up area on the tarmac sees a person apparently interfering with baggage. The officer may then use the proposed powers to stop and search that person. Upon conducting a search the person may become agitated, defensive and even physically abusive. To mitigate the risk this person presents to the Customs officer, the officer may exercise the power to restrain until the person can be dealt with by a law enforcement officer.

While officers have the power to detain persons reasonably suspected of committing a serious Commonwealth offence at a designated Customs place, a significant number of offences under the ATSA do not constitute a serious Commonwealth offence, and thus Customs are unable to respond to any threat using existing powers.

4. *The power to request a person to remove vehicles from an airport, or from an area or zone of an airport*

Under the *Customs Act 1901* Customs officers have no power to request a person to remove a vehicle from an airport area or to cause a vehicle to be moved that represents a risk to aviation security or that is in a secure area without authorisation. Exercising the power to remove vehicles under the proposed ATSA amendments, Customs officers will be able to mitigate risks to aviation and safeguard the airport against further risks.

If a Customs officer detects a vehicle that either is unauthorised or presents a risk to aviation, the officer may request the person to remove the vehicle from the airport area, or remove the vehicle themselves. This may occur in the instance where an ABS officer detects a vehicle without proper airport authorisation. Requesting the driver to stop the vehicle, the officer may also search the vehicle to allay any further suspicion. Based on the fact that the vehicle is unauthorised to be in the area, the Customs officer may then request the driver to remove the vehicle. If the driver is incapable of removing the vehicle or does not cooperate, the Customs officer, without damaging the vehicle, can exercise the power to remove the vehicle themselves.

Training Requirements

The amendments to the ATSA define an eligible Customs officer as an officer that satisfies the training and qualification requirements prescribed by the *Aviation Transport Security Regulations*. During consultation on the drafting of this Bill, it was agreed that the complementary regulations will cross-reference training qualifications that Customs officers currently undertake in respect of similar powers. This training includes:

- searching of persons;
- restraining of persons;
- searching of vehicles.

As such, only those Customs officers that meet current training requirements will be authorised to exercise the proposed new powers. Such a standard ensures that Customs officers are competent in exercising the new enhanced powers.

Summary

The expanded powers of Australian Customs officers at airports as described in the *Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007*, are intended to give Customs officers an enhanced capability in contributing to aviation security.

Customs has consulted extensively with the Department of Transport and Regional Services and the Australian Federal Police to identify what powers should be given to Customs officers under the ATSA to address the risk of unlawful interference with aviation. The proposed amendments are the result of this consultation.

AUSTRALIAN CUSTOMS SERVICE
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