



Senator Amanda Stoker
Chair
Senate Standing Committee on Legal and Constitutional Affairs Legislation
Parliament House
Canberra ACT 2600

Dear Senator Stoker

The Department of Home Affairs (the Department) appeared at the hearing for the Legal and Constitutional Affairs Legislation Committee's inquiry into the Transport Security Amendment (Serious Crime) Bill 2019 on Wednesday, 26 February 2020.

In my capacity as First Assistant Secretary, Aviation and Maritime Security Division, I gave evidence to the Senate Committee and have reviewed the Hansard record. I am writing to clarify and correct my testimony.

On page 14 and 24 of the Hansard, in my evidence I stated that the Department's statistical analysis was comprised of a sample of around 1,200 current card holders. For clarification, please note that the sample comprised of roughly 1,600 aviation and maritime security identification card (ASIC and MSIC) applicants.

On page 14 of the Hansard, in my evidence I stated that the Department's statistical analysis was comprised of a sample of individuals who had disclosed to the Department that they had court outcomes.

For clarification, the Department assessed a sample of applicants whose disclosable court outcomes were provided to the Department as part of the applicant's criminal history check which is conducted by the Australian Criminal Intelligence Commission. I am providing the following correction of evidence to the question "What we looked at were individuals with disclosable court outcomes. This means they would have been convicted and sentenced by a court of at least one offence, and the outcome for each offence had not been spent under state, territory or Commonwealth spent conviction schemes. That's the sample we used to determine whether they would be eligible or not."

On page 14 and 15 of the Hansard, the Hon Senator Carr asked about spent convictions and whether they would be considered when assessing a person's eligibility to hold an ASIC or MSIC under the proposed new eligibility criteria. In my evidence on page 14 and 15 of the Hansard I stated that spent convictions are included in applicants' criminal history.

For clarification, the Commonwealth spent convictions scheme applies to all criminal histories that are obtained for the purposes of the ASIC and MSIC schemes. A conviction is spent where:

- it has been 10 years since the date of conviction (or 5 years for juvenile offenders); and
- the individual was not sentenced to imprisonment or was not sentenced to imprisonment for more than 30 months; and
- the individual has not re-offended during the 10 years (5 years for juvenile offenders) waiting period; and
- the conviction is not excluded from the spent convictions scheme. This relevantly includes where the conviction is of a type prescribed in Schedule 2 of the *Crimes Regulations 2019*.

I would like to make a correction to a question on page 14 from the Hon Senator Carr on whether an “assault charge or conviction when you were 17 and you were now 50 and working on the wharves, would that be regarded as being suitable to be one of the 300 people?” I responded in part, “If that person has had a conviction in their past then it remains on their history, which is what we would review.”

For clarification, I am providing the following correction of evidence to the question: “If that person has had a conviction in their past and the spent conviction scheme does not apply, then it remains on their criminal history that is provided to the Department to consider, which is what we would review.”

On page 22 of the Hansard, the Hon Senator Carr asked a question “this is about employment rights; that is why we are so anxious about this.” I responded in part “About 400 discretionary cards are issued each year. Of those 400, 90 percent are approved.” I would like to clarify this response and I am providing the following correction of evidence: “About 400 discretionary cards are issued each year. On average 90 percent of discretionary review applications are approved.”

Yours sincerely

Vanessa Holben

First Assistant Secretary, Aviation and Maritime Security Division

/s/ March 2020