



Australian Government
Department of Home Affairs

Submission to the inquiry into the Transport Security Amendment (Testing and Training) Bill 2019

Legal and Constitutional Affairs Legislation
Committee

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1. Introduction

The Department of Home Affairs (the Department) welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee Inquiry into the Transport Security Amendment (Testing and Training) Bill 2019 following the introduction of the Bill into the Senate on 4 December 2019.

This submission provides a response to the reasons for referral and principle issues for consideration for the introduction of the Bill.

1.1. Reason for referral and principle issues for consideration

The Bill was referred to the Committee by the Hon Anne Urquhart MP as set out in the Selection of Bills Committee Report No. 10 of 2019 Appendix 11. The reason for referral is to understand the implications of the Bill.

2. Home Affairs Submission

2.1. Purpose of the Bill

The Transport Security Amendment (Testing and Training) Bill 2019 introduces three key changes. Firstly, the Bill introduces measures into the *Aviation Transport Security Act 2004* (ATSA) to provide clear and explicit powers to permit aviation security inspectors to test a security system using 'test pieces' to ensure that industry are meeting their security obligations in all regulated areas. This measure clarifies and expands on existing powers which permit aviation security inspectors to enter and inspect security controlled airports, other regulated places, certain vehicles, and aircraft.

Secondly, the Bill will amend the ATSA and *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFSA) to relocate the existing frameworks which prescribe the requirements associated with screening officers' training, qualification and accreditation so they may be set by the Secretary in a legislative instrument, rather than Regulations.

Finally, the Bill introduces measures into the ATSA and the MTOFSA requiring screening officers to complete relevant training or accreditation before exercising certain powers.

2.1.1. Purpose of the security system testing changes

Currently, sections 79 and 80 of the ATSA provide aviation security inspectors with a range of powers to enter, inspect and observe procedures being performed in security controlled airports, other regulated areas and in aircraft to determine whether aviation industry participants are complying with the Act. Providing a clear and explicit statutory power in the ATSA to conduct system tests will ensure that aviation security inspectors can undertake tests at all regulated locations.

The Bill inserts a new express power for aviation security inspectors into section 79 of the ATSA. The effect of this amendment is that aviation security inspectors will be permitted to undertake covert security system tests using test pieces, which include items that resemble or mimic weapons, at security controlled airports and at the premises of aviation industry participants located outside the boundary of a security controlled airport. These premises include air cargo examination facilities where cargo is screened and cleared for uploading onto an aircraft.

The Bill also inserts an express power for aviation security inspectors into section 80 of the ATSA. The effect of this amendment is that aviation security inspectors will be permitted to conduct system tests on aircraft at security controlled airports. This includes testing an aircraft operator's compliance with security obligations before a flight, including procedures to search aircraft. System tests using test pieces on aircraft will only be conducted after giving reasonable notice to an aircraft operator. Aviation security inspectors will not conduct tests when passengers are on board, boarding or disembarking an aircraft. Currently, aviation security inspectors also engage with partner law enforcement agencies with every system test conducted.

Further, the Bill would provide aviation security inspectors with immunity from civil or criminal liability under a Commonwealth, State, or Territory law when they are conducting a system test, including where they are using inert items that resemble weapons to test these systems, provided that the inspector is exercising the power in good faith, and does not seriously engender the health or safety of any person; or result in significant loss of, or serious damage to property.

The intention is to enable aviation security inspectors to conduct system tests in the certain knowledge that they have an immunity against a breach of laws, such as those relating to bomb hoaxes. The immunity would apply where an inspector raises evidence that they were acting in the performance of their duties, and exercising their powers in good faith, and no serious damage or harm was caused to persons or property.

The Bill would provide a reversal of the evidential burden to require the defendant to point to evidence establishing a reasonable possibility that the matter is made out. The reversal of the evidential burden is appropriate in these circumstances as elements of the immunity would be better known to the defendant than the prosecution. The *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* notes that an evidential burden does not completely displace the prosecutor's duty to prove elements of an offence, but only defers that burden. If the defendant discharges the evidential burden, the prosecution must disprove those matters beyond reasonable doubt.

The explicit power for aviation security inspectors to conduct system tests using test pieces will provide opportunities to ensure that aviation security systems are fit for purpose and resilient against acts of unlawful interference with aviation, including attempted acts of terrorism.

2.1.2. Purpose of the Legislative Instrument Power

Qualification, training and accreditation requirements for screening officers are currently prescribed in the *Aviation Transport Security Regulations 2005* and the *Maritime Transport and Offshore Facilities Security Regulations 2003*. This Bill will provide the Secretary with the power to set national standards through a legislative instrument. The Secretary already holds a similar power to set training requirements for air cargo examination officers. These changes will bring national consistency to the Secretary's powers across the maritime and aviation passenger and baggage, and air cargo transport security sectors.

It is intended that the legislative instrument power will be used to set requirements for screening officers, in line with the Government's commitment to implement recommendations made by the Inspector of Transport Security (ITS) 2016 inquiry into aviation and maritime transport security education and training in Australia. The proposed changes include:

- Updating the qualification requirement for new screening officers from a generic security guarding qualification to a screening specific qualification (existing screening officers' qualifications are to be conditionally recognised).
- Introducing national minimum standards for on-the-job training and continuing professional development for screening officers.
- Introducing national competency testing for screening officers.

Through the legislative instrument, the Secretary will also have the power to vary or exempt training and qualification requirements for screening officers in certain circumstances. This power could be used to support transitional training arrangements in the event that new equipment or screening requirements are introduced.

This Bill establishes the legislative levers needed to address the ITS recommendations, while still allowing an appropriate level of parliamentary scrutiny around the proposed changes.

The legislative instrument power provides a significant national security benefit as it will allow the training and education standards for screening officers to be updated efficiently in response to changes in the security environment, advances in screening technology and changes to international best practice.

2.1.3. Purpose of the changes to screening officer powers

Currently, individuals are able to use screening powers set out in the ATSA (e.g. frisk) and the MTOFSA, as soon as they are authorised and required to conduct screening, regardless of whether they have completed training or accreditation in that specific

function. The Bill introduces measures requiring screening officers to complete specific training and accreditation before they exercise their powers under the Acts.

The training measures proposed by the Bill will allow for the introduction of a robust accreditation testing program where screening officers must demonstrate competency in each screening function before they can undertake that task.

The Bill, if passed, will support industry by developing an environment where screening officers can screen in certain tasks when competent and therefore exercise relevant screening officer powers under the ATSA, while still completing training in other more challenging functions. This will lead to both better security outcomes and greater flexibility in workforce planning for industry.

2.2. Background of the Bill

Aviation security inspectors and screening officers play a critical role in securing our airports and seaports. It's important that we ensure that our legislation supports an effective compliance framework. As a means of achieving this aim, appropriate standards for screening officer training and assessment must be set. These standards must be adaptable and reflective of advancements in technology and updates in the security environment.

The proposed amendments in this Bill address recommendations from by both the Inspector of Transport Security (ITS) and the International Civil Aviation Organization (ICAO).

The ITS highlighted the importance of strengthening training and qualification requirements. The ITS made a number of recommendations including the establishment of a more rigorous covert system test program, the introduction of a screening officer specific qualification and the introduction of national competency testing for screening officers. The Australian Government accepted all of the recommendations.

The Australian Government also agreed to recommendations from a 2016 ICAO security audit, including strengthening covert system test protocols, and the creation of a more robust training and assessment program for screening officers. If passed, this Bill will establish the legislative levers needed to address these recommendations, and ensure Australia continues to meet international standards and best practice.

2.3. Impact on Industry

Industry regulated under the ATSA and MTOFSA are already assessed through various compliance activities, such as system testing at passenger screening points in airport terminals. The proposal to expand these activities beyond the screening points at airports will help to ensure that industry is meeting its security obligations in all regulated areas.

The proposed changes to screening officer training, qualification and accreditation requirements will recognise the experience of existing screening officers and they will not need to obtain a new qualification or complete additional on-the-job training. A 12 month transition period will be provided to accredit the existing workforce.

If the Bill is passed and the measures implemented, new screening officers will be subject to all of the new screening officer training, qualification and accreditation requirements. The intention of these requirements is to provide new screening officers with a consistent knowledge base and ensure they have the skills and training required to undertake this important work.

When annual accreditation testing is introduced, screening officers will only need to pass accredited testing in the job functions they perform. Should a screening officer fail a single test, for example in X-ray screening, they would still be able to perform their duties in other functions, while undertaking further training in conducting X-ray screening functions.

Compliance activities, such as systems testing are already conducted with the aviation industry at screening points in airport terminals. The proposal gives a clear power that will permit aviation security inspectors to use test pieces that mimic or simulate weapons, when undertaking these activities, which will help to ensure that industry are meeting their security obligations in all regulated areas.

2.4. Consultation

In developing the Bill, the Department of Infrastructure, Transport, Cities and Regional Development has been consulted.

The Government has consulted extensively with the aviation, air cargo, and maritime transport and security industries about strengthening the training, qualification and accreditation requirements for screening officers.

Industry has been actively engaged in the development of the proposed approach in relation to the training measures. This includes involvement in regular industry forums, a technical advisory committee for the development of the specialised screening qualification and targeted working groups. During 2017 and 2018, over 500 screening officers from a number of screening service providers and screening authorities took part in an accreditation testing trial.

Industry has been engaged in relation to the testing measures through the Department of Home Affairs' Systems Test Working Group which includes aviation industry participants such as airport operators, airlines and screening service providers. The Department will continue to liaise with affected industry participants. Advice on the system test changes proposed by the Bill will be provided to state and territory government representatives

through the Ministerial Council for Police and Emergency Management's Firearms and Weapons Policy Working Group.

3. Conclusion

Screening officers and aviation security inspectors play a pivotal role in ensuring Australia's transport security remains resilient against unlawful interference with aircraft or vessels, such as acts of terrorism. The Bill will ensure inspectors can undertake their critical compliance activities in all regulated locations and will ensure all specific requirements for screening officers remain effective and flexible in an increasingly complex transport security environment.