

Chapter 1

Introduction

1.1 On 25 February 2016 the Senate referred the provisions of the Transport Security Amendment (Serious or Organised Crime) Bill 2016 (the bill) to the Senate Rural and Regional Affairs and Transport Legislation Committee (the Committee) for inquiry and report on 11 May 2016.¹

Conduct of the inquiry

1.2 The Committee advertised the inquiry on its website and wrote to a number of stakeholders inviting submissions. The Committee received seven submissions, all of which are available on the Committee's website.²

1.3 The Committee held a public hearing in Canberra on 30 March 2016. Full Hansard transcripts are available on the Committee's website. A list of organisations who gave evidence at the hearing can be found at Appendix 2 of this report.

Purpose of the bill

1.4 The bill's provisions would amend the *Aviation Transport Security Act 2004* (Transport Act) and the *Maritime Transport and Offshore Facilities Security Act 2003* (Maritime Act). According to the Explanatory Memorandum, the general intention of the bill is to:

...reduce criminal influence at Australia's airports and seaports by strengthening the aviation security identification card (ASIC) and maritime security identification card (MSIC) schemes.³

1.5 More specifically, the bill's provisions purport to:

- Create an additional purpose in the Aviation and Maritime Acts, in relation to access to aviation and maritime areas and zones, to prevent the use of aviation and maritime transport or offshore facilities in connection with serious or organised crime;
- Establish a regulatory framework supporting the implementation of harmonised eligibility criteria for the ASIC and MSIC schemes, which better target serious or organised crime-related offences;
- Clarify and align the legislative basis for undertaking security checking of ASIC and MSIC applicants and holders;

1 *Proof Journals of the Senate No. 141 - 25 February 2016*, p. 3817.

2 Senate Standing Committees on Rural and Regional Affairs and Transport, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/ (accessed 1 April 2016).

3 *Explanatory Memorandum*, p. 2.

- Allow for regulations to be made prescribing penalties for offences against the new serious or organised crime requirements that are consistent with existing penalty provisions across the ASIC and MSIC schemes; and
- Insert an additional severability provision to provide guidance to a court as to Parliament's intention.⁴

Background

The ASIC and MSIC schemes and Australia's transport security system

1.6 Australian transport regulations require individuals, including foreign workers, to hold a security card if they require regular access to secure areas of Australia's airports, seaports, Australian flagged ships, and offshore oil and gas facilities. These cards are the aviation security identification card (ASIC) and the maritime security identification card (MSIC).⁵

1.7 As at 31 March 2016, there were 254 455 valid ASICs and MSICs in use. This breaks down to 138 825 ASICs and 115 630 MSICs. An average 119 300 ASIC/MSIC applications were processed annually since 2010, since reapplication is required every two years.⁶

1.8 These cards are administered and issued by the Commonwealth's central background checking agency, AusCheck, under the *AusCheck Act 2007*, which is overseen by the Attorney General's Department.⁷ AusCheck conducts background checks on all applicants for an ASIC or MSIC, in order to identify individuals who should not be eligible to access secure areas in air and sea ports. The AusCheck website states that in administering the ASIC and MSIC schemes, it is responsible for:

- Coordinating background checking on each applicant;
- Applying a consistent ruling of the disqualifying requirements for each scheme to the findings; [and]
- Notifying the applicant and their issuing body of the outcome of the background check.⁸

1.9 The Department of Infrastructure and Regional Development stated that a background check is comprised of:

- A security assessment by the Australian Security Intelligence Organisation (ASIO);

4 *Explanatory Memorandum*, p. 4.

5 Department of Infrastructure and Regional Development, *Submission 4*, p. 2.

6 Department of Infrastructure and Regional Development, answer to question on notice, 13 April 2016 (received 15 April 2016).

7 Attorney General's Department, *Submission 5*, p. 2.

8 Attorney General's Department, 'Aviation and maritime schemes' at www.ag.gov.au/CrimeAndCorruption/AusCheck/Pages/Aviationandmaritimeschemes.aspx (accessed 25 February 2016).

- A criminal history check by CrimTrac; and
- Where required, an immigration check by the Department of Immigration and Border Protection – to confirm an applicant's right to work in Australia.⁹

1.10 The purpose of these background checks is to secure aviation and maritime infrastructure. As the Explanatory Memorandum noted:

An ASIC or an MSIC cannot be issued to a person who has an adverse criminal record. The eligibility criteria for determining whether a person has an adverse criminal record are specified in the Aviation Regulations and the Maritime Regulations. Currently, different eligibility criteria apply under the ASIC and MSIC schemes, which results in persons convicted of the same offence being treated differently in the aviation and maritime sectors.¹⁰

Current weaknesses in the ASIC and MSIC schemes

1.11 Some parliamentary and independent reviews have noted that the ASIC and MSIC schemes is potentially open to exploitation by serious criminals and organised crime syndicates. These reviews include:

- The Australian National Audit Office Report, *The Management of the Aviation Security Identification Card and Maritime Security Identification Card Scheme* (2011);
- The Parliamentary Joint Committee on Law Enforcement, *Inquiry into the adequacy of aviation and maritime security measures to combat serious and organised crime* (2011); and
- The National Ice Taskforce, *Final Report* (2015).

1.12 These reviews recommend that the ASIC and MSIC schemes be expanded to include consideration of criminal intelligence in the security vetting process, and in particular whether applicants have any links to serious or organised crime networks. For example, Recommendation 24 of the Final Report of the National Ice Taskforce (2015) stated that:

The Commonwealth Government should continue to protect the aviation and maritime environments against organised crime by strengthening the eligibility criteria for holders of Aviation Security Identification Cards and Maritime Security Identification Cards; and establishing a legal mechanism to enable compelling criminal intelligence to be used in determining suitability of workers to hold such a card.¹¹

9 Department of Infrastructure and Regional Development, *Submission 4*, p. 2.

10 *Explanatory Memorandum*, p. 2.

11 National Ice Taskforce, *Final Report* (2015), Recommendation 24, p. 140.

1.13 The bill has been designed to fulfil that recommendation. In his Second Reading Speech, the Minister for Infrastructure and Regional Development, the (then) Hon Warren Truss MP acknowledged that:

Importantly, this bill implements one of the government's key strategies in the fight to combat the drug ice. In December last year, the National Ice Taskforce, chaired by Ken Lay APM, released its final report, which made 38 recommendations across five priority areas. One of these recommendations, adopted by the government in its response to the final report, was to continue to protect the aviation and maritime environments against organised crime by strengthening the eligibility criteria for holders of ASICs and MSICs. This bill will give effect to this element of the government's comprehensive package of action across the five key priority areas, which together are intended to tackle Australia's ice problem head on.¹²

Human rights and financial impacts of the bill

1.14 The bill raises no human rights issues or financial impact concerns.¹³

Note on references

1.15 References to Hansard are to proof Hansard. Page numbers may vary between the proof and the official (final) Hansard.

Acknowledgements

1.16 The Committee thanks the organisations that provided submissions to this inquiry and attended the public hearing.

Structure of the report

1.17 This report consists of two chapters:

- Chapter 1 (this chapter);
- Chapter 2 discusses the key provisions of the bill and issues raised by witnesses and submitters. It also sets out the views and recommendations of the Committee.

12 The Hon Warren Truss, then Deputy Prime Minister and Minister for Infrastructure and Regional Development, 'Second Reading Speech - Transport Security Amendment (Serious or Organised Crime) Bill 2016' in *Proof House of Representatives Hansard*, 11 February 2016, p. 1.

13 *Explanatory Memorandum*, pp 2-3.