

The Senate

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Rural and Regional Affairs and  
Transport Legislation Committee

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Draft Aviation Transport Security  
Regulations 2003

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## *Committee Secretariat*

Mr Geoff Dawson	(Acting Secretary)
Mr Andrew Bomm	(Research Officer)
Ms Michelle Lowe	(Executive Assistant)

Parliament House, Canberra  
Telephone: (02) 6277 3511  
Facsimile (02) 6277 5811

**Internet:** [www.aph.gov.au/senate](http://www.aph.gov.au/senate)

**Email:** [rrat.sen@aph.gov.au](mailto:rrat.sen@aph.gov.au)



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# REPORT

## Conduct of the Inquiry

This Committee recently inquired into the Aviation Transport Security Bill 2003.<sup>1</sup> A number of submitters to that inquiry, though they supported the bill in principle, were concerned about the amount of detail to be included in regulations. The Department of Transport and Regional Services (DOTARS) provided draft regulations on 19 September - before the Committee reported on the bill, but after it had held hearings. The Senate referred the draft Aviation Transport Security Regulations 2003 to the Committee on 13 October 2003.<sup>2</sup>

The Committee advertised the inquiry in *The Australian* on 22 October and wrote to the organisations that had made submissions on the bill inviting submissions. The Committee received three submissions (see Appendix 1) and held a hearing on 28 November (see Appendix 2). Submissions and a transcript of evidence are available on the Parliament's webpage at <http://www.aph.gov.au>. The Committee thanks submitters for their contribution.

## Purpose of the Regulations

The draft Aviation Transport Security Regulations are intended to give effect to the Aviation Transport Security Bill 2003 by stipulating the details of the implementation of the security measures contained in the bill. DOTARS noted that consultation with relevant stakeholders over the Regulations is ongoing and will continue during the proclamation period.<sup>3</sup>

## Main Provisions of the Regulations

The draft Regulations received by the Committee contain the following provisions:

Part 1 – Preliminary: This includes definitions.

Part 2 – Transport Security Programs: This adds to the parties who must have a transport security program: a major air cargo agent that is, or is applying to become a regulated air cargo agent.

Part 3 - Airport Areas and Zones: This details procedures for issuing aviation security identity cards (ASICs). It defines certain airside and landside security zones and sets additional security requirements for them.

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1 Senate Rural and Regional Affairs and Transport Legislation Committee, *Provisions of the Aviation Transport Security Bill 2003 and the Aviation Transport Security (Consequential Amendments and Transitional Provisions) Bill 2003*, tabled in the Senate 9 October 2003.

2 Senate *Hansard*, 13 October 2003, p. 16180

3 DOTARS, Submission 1, p. 2

Part 4 – Other Security Measures: This stipulates the details of screening and clearing baggage and cargo. It sets out procedures relating to air cargo agents; dealing with weapons and prohibited items; the implementation of on-board security regulations relating to persons in custody are foreshadowed but not included in the draft which the Committee is reporting on.

Part 5 – Powers of Officials: This identifies the powers and responsibilities of aviation security inspectors, airport security guards and screening officers.

Part 8 – Enforcement: This outlines the system of penalties for infringements of the Regulations.

Part 9 – Review of Decisions: This allows for decisions made under the Regulations to be reviewed by the Administrative Appeals Tribunal.<sup>4</sup>

## **Issues Raised in Submissions**

The Committee received submissions from the Board of Airline Representatives Australia Inc. (BARA) and Qantas articulating concerns regarding the draft Regulations. However, both noted that the draft Regulation consultation process with DOTARS, of which they had been formerly critical, had improved substantially.<sup>5</sup>

### ***Persons in Custody***

BARA and Qantas both emphasised industry concerns over the carriage of Persons in Custody (PIC). They argued that the issue represented a security risk to airline passengers and staff, particularly when carrying PIC under the jurisdiction of the Department of Immigration and Multicultural Affairs (DIMIA) without reasonable information on which to make informed assessments of potential security risks.<sup>6</sup>

BARA and Qantas identified the most common PIC as those falling within the jurisdiction of DIMIA and requested the new Regulations to define PIC dealt with by DIMIA. These categories include criminal deportees, removees, supervised departures, monitored departures and turn around passengers.<sup>7</sup>

Qantas noted that DIMIA “apparently have the view that there is no risk to airlines in moving persons (PICs) without the knowledge of the airline.”<sup>8</sup> They added:

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4 From draft Aviation Transport Security Regulations, dated 24 September 2003

5 Qantas, Submission 2, p. 3 and BARA, Submission 3, p. 5

6 Qantas, Submission 2, pp. 4-6 and BARA, Submission 3, pp. 5-7

7 Qantas, Submission 2, p. 5 and BARA, Submission 3, p. 5

8 Qantas, Submission 2, p. 4



Qantas must be informed of all categories of departure when the passenger has been detained in any form of custody prior to departure ... It is too late for Qantas to deal with an unruly, disruptive or violent passenger once the aircraft has departed, especially if that passenger has a 'change of heart' about leaving.<sup>9</sup>

BARA and Qantas called for the Regulations to require government agencies to inform airlines of the category of PIC at least 24 hours prior to departure. They further insisted the Regulations stipulate that airlines are given reasonable information on PIC before they embark.<sup>10</sup>

DOTARS advised that the Regulations on persons in custody are still under negotiation between DOTARS and DIMIA. DOTARS noted that 'any changes to PIC requirements will have serious implications for an agency such as DIMIA, which transports more than 13,000 persons in custody each year.'<sup>11</sup>

### ***Areas and Zones***

Part 3 of the Aviation Transport Security Bill 2003 stipulates certain security controlled zones in airports. The most sensitive areas of an airport to security threats can be determined and delineated, against which appropriate security measures can be applied. The bill replaced the scheme of 'airside controlled areas' and 'sterile areas', as defined in Air Navigation Regulations 1947, with a scheme in which security controlled airports are divided into an 'airside area' and a 'landside area'.<sup>12</sup> The Regulations control matters such as the determination of defined areas, access, screening and security checking of persons with access to restricted areas.

BARA and Qantas were critical of a number of proposed changes to the designation of airport areas and zones under the Regulations. The following clauses were nominated as a source of concern.

#### **Clause 3.41**

Both submitters rejected the Regulations' redefining of the commonly accepted terms "sterile area" and "airside". They asserted that the change will create confusion and require unnecessary training and cultural change, compounded by the fact that definitions applicable under other agencies' regulations that airlines operate under, will remain the same.<sup>13</sup>

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9 Qantas, Submission 2, p. 6

10 Qantas, Submission 2, p. 6 and BARA, Submission 3, p. 6

11 DOTARS, *Hansard*, 28 November 2003, p.4ff. DOTARS, additional information: persons in custody.

12 Air Navigation Regulations 1947, reg. 56ff. *Air Navigation Act 1920*, s.20ff

13 Qantas, Submission 2, p. 9 and BARA, Submission 3, p. 7

Both argued for the omission of clause 3.41(b) on the basis that the area described can be geographically different on any given day, depending on where an aircraft is parked on the apron. They contended that the security imperative of protecting interference with baggage is addressed in clause 4.03(2).<sup>14</sup>

### **Clause 3.43**

BARA stated that:

BARA questions whether it is possible for an airport authority to make provision for physical barriers and erect signage (reference clause 3.43(f)) in an area that is a baggage sortation area (reference clause 3.41(b)(ii)) between the baggage check-in area and the area used to load an aircraft as required by the draft regulations.<sup>15</sup>

### **Clauses 3.44 and 3.45**

Neither BARA nor Qantas supported permitting only Airport Operators to determine security areas and zones, especially in the case of single user terminals. They suggested that Terminal Operators should also be permitted to determine these areas.<sup>16</sup>

DOTARS indicated in evidence that a regulation addressing these concerns is being drafted.<sup>17</sup>

### **Clause 3.46**

BARA stated that:

There does not appear to be provision for emergency public access to airside or landside cargo security zones. The possible need for emergency searching or opening of cargo necessitates such a provision.<sup>18</sup>

### **Clause 3.47**

BARA and Qantas rejected the requirement for additional fencing around airside fuel storage areas when the facility is located within the airport security fence. They also called for clarity on the definition of “searched” in clause (2)(c)(ii) when all other regulations adopt the term “cleared”.<sup>19</sup>

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14 Qantas, Submission 2, p. 9 and BARA, Submission 3, p. 7

15 BARA, Submission 3, p. 7

16 Qantas, Submission 2, p. 9 and BARA, Submission 3, p. 7

17 Ms F. Lynch (DOTARS), *Hansard*, 28 November 2003, p.16

18 BARA, Submission 3, p. 8

19 Qantas, Submission 2, p. 9 and BARA, Submission 3, p. 8

### **Clause 3.49**

Qantas sought clarification on whether a defined landside fuel storage area applied only to locations within the airport boundary.<sup>20</sup>

### ***Demerit Points System***

The bill authorises regulations establishing a demerit points system whereby aviation industry participants accruing a prescribed number of points may have their transport security program cancelled (Clause 125).

Both BARA and Qantas opposed demerit points, predominantly on the basis that penalising an employer for breaches by individuals represents a denial of natural justice and no improvement to airport security.<sup>21</sup> They acknowledged DOTARS' indication that they will not be making regulations concerning demerit points. However, BARA noted that the system remains in the bill and could be given effect by regulations in the future.

In evidence DOTARS indicated that in light of industry opposition the Government does not intend establishing a demerit points system at this time; however it wishes to retain the relevant power in the bill in case of future need.<sup>22</sup>

### ***Transport Security Programs***

Part 2 of the Aviation Transport Security Bill 2003 nominates various aviation industry participants to develop and comply with a transport security program regulating the operations of all persons performing a security function on behalf of the program holder. The Regulations are to provide additional detail on the content and form of transport security programs.

BARA and Qantas noted in submissions that at the time of writing there were very few regulations related to the preparation and content of transport security programs.

They shared the view that:

DOTARS should review, update and publish the Australian National Civil Aviation Security Program prior to industry participants commencing their program re-writes. This will ensure that industry participant programs are consistent with and conforming to the National Civil Aviation Security Program as is prescribed by the International Civil Aviation Organisation (ICAO).<sup>23</sup>

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20 Qantas, Submission 2, p. 9

21 Qantas, Submission 2, p. 7 and BARA, Submission 3, pp. 8-9

22 Dr A. Turner (DOTARS), *Hansard*, 28 November 2003, p. 13

23 Qantas, Submission 2, p. 7

DOTARS agreed that the National Civil Aviation Security Program (NCASP) did require revision. However, the Department argued that the NCASP, though helpful as a guiding principle, is not essential to aviation participants preparing security programs. It further commented that updating NCASP was not possible until the bill had become enacted.<sup>24</sup> It expects that developing security programs and updating the NCASP will work ‘in parallel’.

Up to a point the experience from developing the individual programs will inform the national program.<sup>25</sup>

Qantas and BARA were concerned about the absence of appropriate dispute resolution methods in the case of disagreement over the content of programs. DOTARS replied that the relevant parties would have to demonstrate that their obligations under the program are fully understood and agreed to before the DOTARS would approve a transport security program.<sup>26</sup>

Qantas and BARA were also unsure as to the mechanisms for ensuring that other organisations comply with security obligations, given that their own relationship would be contractual, and contracts are ‘notoriously slow to alter and prevalent to litigation’.<sup>27</sup> Both suggested that all industry participants be required to submit a transport security program to DOTARS for approval.<sup>28</sup> DOTARS commented that the bill allows the department to demand a transport security program from any aviation industry participant, but at this stage ‘we do not propose to throw the net any wider than it is.’<sup>29</sup>

### ***Regulated Cargo Agents***

Presently, regulated air cargo agents are monitored against a model security program that serves as an acknowledgement of the agent’s lawful responsibilities and establish a minimum standard for the industry. Under the Regulations, all designated regulated cargo agents will be held accountable against a written instrument titled the Code of Cargo Security Standards. Additionally, regulated cargo agents transferring more than 5 kilotonnes of international air cargo in a calendar year will have to operate under an approved transport security program.<sup>30</sup>

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24 Dr A. Turner (DOTARS), *Hansard*, 28 October 2003, pp. 14-15

25 Dr A. Turner (DOTARS), *Hansard*, 28 October 2003, p.15

26 Ms F. Lynch (DOTARS), *Hansard*, 28 November 2003, p.16

27 Qantas, Submission 2, p. 8

28 Qantas, Submission 2, p. 8 and BARA, Submission 3, p. 10

29 Ms F. Lynch (DOTARS), *Hansard*, 28 November 2003, p. 18

30 DOTARS, Submission 1, p. 5

Qantas submitted that all cargo agents should be regulated by a transport security program. They argued:

As significant quantities of cargo is ultimately loaded onto passenger aircraft, carriers need to be assured that cargo is screened and protected to the same standard as if screened at the airport.<sup>31</sup>

Although indicating that the details were still under scrutiny, DOTARS stressed that under the Regulations larger operators would come within approved transport security programs where previously they were not. They also indicated that it was not practical for smaller operators to operate under these arrangements due to the size and often ad hoc nature of their activities. DOTARS emphasised that using the Code would yield exactly the same security outcome as a program. Programs and the Code represent two different administrative approaches, to be used for bigger and smaller cargo agents respectively; they do not represent different standards of protection.<sup>32</sup>

DOTARS argued that the actual standard of protection (for example, whether all cargo should be screened, or cargo agents employees should be background checked) is a different question. DOTARS commented that the regulated cargo agent scheme is essentially a 'trusted shipper' scheme, and the technology to screen all cargo does not exist; but the whole approach to cargo chain security 'remains under close scrutiny.' The Government does not accept that all staff of a regulated cargo agent should undergo backgrounds checks. 'We are looking at background checks for key participants in the industry rather than for every participant.'<sup>33</sup>

### ***Other Issues***

Qantas submitted that the proposed Regulations omitted certain aspects of aviation security that warranted inclusion:

Qantas believes that the following areas should be codified and regulated in the Aviation Transport Security Regulations 2003:

- The Air Security Officer Program
- The Counter Terrorist First Response Program
- Background checks and associated Aviation Security Identification Cards issued to employees of Regulated Cargo Agents and Major Cargo Agents<sup>34</sup>

Qantas also listed a considerable number of other clauses which it contended needed to be removed or amended. These focussed primarily on the issue of exceptions for

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31 Qantas, Submission 2, p. 11

32 Ms F. Lynch (DOTARS), *Hansard*, 28 November 2003, p.8. Dr A. Turner, p.9

33 Dr A. Turner (DOTARS), *Hansard*, 28 November 2003, p.8-9

34 Qantas, Submission 2, p. 10

airlines to carry particular prohibited items necessary for their normal operations, as well as procedural aspects of the screening process.<sup>35</sup>

DOTARS noted that reforms to the weapons and prohibited items list have occurred since the Committee received the draft Regulations.<sup>36</sup>

### ***Amendments to the Aviation Transport Security Bill 2003***

DOTARS provided recent Government amendments to the bill, and made the following explanations:

- Power to frisk search: this codifies existing arrangements, and does not extend the power to frisk search beyond what now exists. Putting a provision in the bill means that detailed procedures can be put in regulations.<sup>37</sup>
- Power to direct aircraft on the ground: this carries over existing powers.<sup>38</sup>
- Power to direct aircraft in flight: this removes any legal ambiguity about whether the power exists. The amendment allows the captain of the aircraft to disobey a direction if this is reasonably necessary to protect the aircraft's safety.<sup>39</sup>

### **Comment**

The Committee notes the Government's explanations on matter of policy. The Committee notes that discussions with industry on the details of the regulations are continuing. The Committee trusts that DOTARS will pay due attention to the concerns raised in submissions.

### **Senator the Hon Bill Heffernan Chair**

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35 Qantas, Submission 2, pp. 10-14

36 DOTARS, Submission 1, p. 2 DOTARS, Submission 1, p. 2

37 Dr A. Turner (DOTARS), *Hansard*, 28 November 2003, p.11. Ms F. Lynch, p.12

38 Dr A. Turner (DOTARS), *Hansard*, 28 November 2003, p.12

39 Dr A. Turner (DOTARS), *Hansard*, 28 November 2003, p.12

# **APPENDIX ONE**

## **SUBMISSIONS**

<b>Submission No</b>	<b>Author</b>
1	Department of Transport and Regional Services
2	QANTAS
3	Board of Airline Representatives of Australia Inc. (BARA)





# **APPENDIX TWO**

## **HEARINGS AND WITNESSES**

**Canberra, Friday, 28 November 2003**

Department of Transport and Regional Services  
Ms Fiona Lynch, Director, Regulation Review  
Dr Andrew Turner, Assistant Secretary, Aviation Security Regulation

Qantas Airways Ltd  
Mr David Hawes, Group General Manager, Government and  
International Relations  
Mr Trevor Jones, Manager, Security Policy, Planning and Compliance



# APPENDIX THREE

## ADDITIONAL INFORMATION

Additional information accepted as public evidence of the inquiry.

Type:

A. Answers to questions put by the Committee

C. Miscellaneous further comment

D. Miscellaneous documents

Dated	Type	From	Topic
28/11/03	A	Dept of Transport and Regional Services	Persons in custody
1/12/03	A	Dept of Transport and Regional Services	Regulated air cargo agents
1/12/03	A,C	Qantas	Persons in custody; Government amendments to the ATS Bill
1/12/03	D	Qantas	Draft regulations as received 17/6/03

