

# **Air Navigation Amendment Regulations 2003 (No. 3) 2003 No. 269**

## **EXPLANATORY STATEMENT**

Statutory Rules 2003 No. 269

Minute No. 2003/30 - Minister for Transport and Regional Services

Subject *Air Navigation Act 1920*

Air Navigation Amendment Regulations 2003 (No. 3)

Paragraph 26(1)(a) of the *Air Navigation Act 1920* ('the Act') provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act. Paragraph 26(2)(a) of the Act specifically allows the Governor-General to make regulations, for or in relation to aviation security.

Part 7, Division 7, Subdivision 3 of the *Air Navigation Regulations 1947* ('the Principal Regulations') provides for the issue, expiry and cancellation of Aviation Security Identification Cards (ASICs). ASICs are a means of controlling access to security sensitive areas at an airport, and are issued to persons in accordance with Part 7, Subdivision 3 of the Principal Regulations. The requirements for the issue of ASICs need to be updated to reflect the Government's decision to tighten background and identity checking for persons working in security areas at Australian airports, in light of the increased threat to aviation security since 11 September 2001.

The purpose of the proposed Regulations is to provide for more stringent background and identity checking for persons working in airport security areas. The proposed Regulations would establish tighter arrangements for a planned national reissue of ASICs during the period 1 November 2003 to 30 June 2004, and would allow the Secretary of the Department of Transport and Regional Services (the Secretary) to direct an ASIC issuing body not to issue an ASIC to a person who has received an adverse security assessment, which would be provided to the Secretary by the Australian Security Intelligence Organisation (ASIO). In practice, ASIO would undertake a security assessment in relation to each ASIC applicant and provide the assessment to the Secretary, and an ASIC would only be issued to a person who does not receive an adverse assessment. Provision would also be made for tighter criminal record checking for new ASIC applicants. The proposed Regulations would also reduce the period of validity of an ASIC from 5 years to 2 years and mandate a new tamper evident form of ASIC.

The Act specifies no conditions that need to be met before the power to make the proposed Regulations may be exercised.

Details of the proposed Regulations are set out in the Attachment A and Regulation Impact Statement is at Attachment B.

The proposed Regulations would commence on 1 November 2003, to coincide with the planned commencement of a national reissue of ASICs.

The Minute recommends that Regulations be made in the form proposed.

Authority: Section 26 of the *Air Navigation Act 1920*

## **ATTACHMENT A**

Details of the proposed *Air Navigation Amendment Regulations 2003 (No. 3)*

### **Regulation 1**

Regulation 1 provides that the name of the regulations is the *Air Navigation Amendment Regulations 2003 (No. 3)*.

### **Regulation 2**

Regulation 2 provides that the Regulations commence on 1 November 2003.

### **Regulation 3**

Regulation 3 provides that Schedule 1 amends the *Air Navigation Regulations 1947*.

### **Schedule 1**

Amendments to the *Air Navigation Regulations 1947* are described below by reference to the regulation being amended, omitted or inserted.

### **Regulation 78**

This amendment omits Principal Regulation 78 which defines offences of strict liability. It is a consequential amendment, following-on from the *Criminal Code* harmonisation exercise. Offences of strict liability are now clearly described under the *Criminal Code*.

### **Regulation 80**

The amendments to subregulation 80(1) allows Commonwealth agencies to apply to become ASIC issuing authorities.

### **Regulation 88      Definitions for Subdivision 3**

The current Regulations specify that spent convictions are excluded from the definition of conviction for the purposes of the issue and cancellation of ASICs. The amended Note 4 to Regulation 88 provides that convictions for offences under Part 2 of the *Crimes (Aviation) Act 1991* (which sets out offences under that Act) or Part 5.3 of the Criminal Code (terrorism offences) are not taken to be spent for the purposes of police record checks for ASIC applicants. This allows consistency with the proposed amendments to Schedule 4 of the *Crimes Regulations 1990*.

The newly inserted items 6, 7, and 8 in the definition of an offence under Regulation 88, ensure that offences dealt with in the *Crimes (Aviation) Act 1991* or Part 5.3 of the Criminal Code, and offences constituted by the production, possession, supply or import of explosives, or explosive devices are taken into account when assessing whether to issue a security identification card.

### **Regulation 90      Security Identification Cards - Issue by issuing body**

The amendments to these Regulations removes the existing Regulation 91 'Relation-Back Period' and consequently apply the Spent Convictions scheme (under the *Crimes Regulations 1990*) to the process of assessing an ASIC applicant's criminal record. This serves to simplify the criminal

history check conducted on ASIC applicants, as well as making the check consistent across the nation.

Subregulation 90(1) provides the authority for an ASIC issuing body to issue an ASIC for areas within an airport, or at more than one airport. ASIC issuing bodies are designated under written instrument.

Subregulation 90(2) specifies the conditions which must be satisfied before an ASIC issuing body may issue an ASIC to any person.

Subregulation 90(3) makes it an offence for an issuing body to grant an ASIC to an applicant who has an adverse criminal record, unless the Secretary of the Department of Transport and Regional Services approves the issue of an ASIC to that person under the authority of Regulation 92. The term 'adverse criminal record' is defined under Subregulation 90(4).

Subregulation 90(4) serves to define the term 'adverse criminal record'. The Regulations give further clarification and introduce new, tighter checking requirements, under which a card may not be issued to a new ASIC applicant who has been convicted and sentenced for any period of imprisonment for a Subdivision 3 offence. In achieving this, a new term 'adverse criminal record' is introduced, which is then further defined to reflect a three tiered approach for criminal records checking. This approach enables a current ASIC holder to continue in employment, but imposes the amended requirements for new ASICs issued from 1 November 2003. In order to achieve this, it allows for three categories of criminal records checks:

1) Employees who held a valid security identification card prior to 1 December 1998 will have their criminal records checked back to 1 December 1998 and be denied an ASIC for conviction, and sentence of at least seven days imprisonment, for a prescribed offence. This category of check is a result of the Government's decision to 'grandfather' criminal records provisions for employees who held a security identification card prior to the introduction of the ASIC regime in December 1998. These initial 'grandfathering' provisions are detailed under the *Air Navigation Regulations 1947*-Regulation 91.

2) Employees who were initially issued their ASIC between 1 December 1998 and 1 November 2003 will have their criminal records checked back 10 years (five years for a minor) and be denied an ASIC for a conviction, and sentence of at least seven days imprisonment, for a prescribed offence. This category of check is a result of applying the existing criminal records checking provisions.

3) Employees who apply for an ASIC after 1 November 2003 will have their criminal records checked back 10 years (five for a minor) and be denied an ASIC for a conviction, and sentence of any term of imprisonment, for a prescribed offence. This category of check applies tighter criminal records provisions.

Subregulation 90(5) provides that a security identification card may only be issued to a person if the issue of a card to that person would not present a significant threat to aviation security. It allows the Secretary to deny issue of an ASIC where an adverse security assessment is advised by ASIO in relation to an ASIC applicant. Where an adverse assessment is advised, the matter is referred to the Secretary of DOTARS who can direct the issuing body not to issue an ASIC to the given applicant. This provision has been drafted broadly so that it can pick up other information received by the Secretary on applicants who may constitute a threat to aviation security. For example, if the Secretary were to be formally alerted by the Commissioner of the Australian Federal Police about an applicant's mental state, and this history identifies that person as a danger to aviation security, this provision provides the required flexibility to preclude the applicant from holding an ASIC.

Subregulation 90(6) makes it an offence for an issuing body to issue an ASIC against a direction from the Secretary under Subregulation 90(5).

Subregulation 90(7) makes offences against Subregulations 90(2), 90(3), and 90(6) offences of strict liability.

Subregulation 90(8) allows for ASICs to be issued on a conditional basis.

Subregulation 90(9) states that where an ASIC is issued subject to any conditions, that those conditions are communicated to the ASIC holder in writing.

### **Regulation 95      ASICs - period of issue and expiry**

Regulation 95 the affect of reducing the period of validity of an ASIC from 5 years to 2 years.

Subregulation 95(1) provides for the maximum validity of an ASIC to be 2 years.

Subregulation 95(2) provides for an ASIC issued after 1 November 2003 to expire on the date specified on the ASIC or at the end of 2 years. ASICs issued prior to 1 November will expire on the 30 June 2004 if there is no earlier expiry date specified. This is required to allow for the national reissue to occur during the period 1 November 2003 to 30 June 2004.

Subregulation 95(3) provides for the expiry period of a visitor identification card being as specified on the card, or when specified by the Secretary or the issuing body.

### **Regulation 95A      Form of certain ASICs**

To ensure that the security identification card is tamper-evident, an additional Regulation has been inserted to clarify the form that a security identification card must take and outline the elements that must be included.

Subregulation 95A(1) & 95A(2) prescribe the elements that must be incorporated in the form of an ASIC including a recent photograph, holder's full name, unique number and expiry date. The ASICs are also required to be stamped by a Kinegram hot stamp device to protect against tampering.

### **Regulation 97      Cancellation of ASICs by issuing body**

Regulation 97 reflects the new criminal records checking requirements for the issue of an ASIC, as outlined above in Regulation 90 & 91, namely those identified in the current Regulations and those adopted by these amended Regulations for new ASICs issued from 1 November 2003. It also clarifies that cancellation of an ASIC is required if the Secretary has advised that a person represents a threat to aviation security.

Regulation 97(1)(b) of the Principal Regulations has been omitted, as it involves cancellation of an ASIC by the issuing body where it is advised that the ASIC holder is a threat to aviation security. This is incorporated in Regulation 97(1)(c).

### **Regulation 99      Cancellation of ASICs by Secretary**

Regulation 99(1)(b) of the Principal Regulations has been omitted, as it involves cancellation of an ASIC by the Secretary where it is advised that the ASIC holder is a threat to aviation security. This is incorporated in Regulation 99(1)(c).

**Regulation 101      Security identification card holder convicted of Subdivision 3 offence**

Regulation 101 reflects tighter background and identity checking, requiring ASIC holders to report all convictions of Subdivision 3 offences to the issuing body regardless of the length of imprisonment.

## **ATTACHMENT B**

### **Air Navigation Amendment Regulations 2003 - Aviation Security Identification Cards**

#### **Regulation Impact Statement**

**September 2003**

#### **Part 1 Problem**

##### **1.1 Background**

Since the acts of terrorism in the USA on September 11 2001, the aviation sector has been under pressure to demonstrate its ability to effectively prevent further terrorist attacks through clear, consistent and achievable security standards. Governments around the world have been working with the aviation industry to make security controls more effective. Australia's focus on security was heightened after the Bali Bombings in October 2002 when it became evident that Australia and Australians are potential terrorists' targets.

In response to these events, the Australian Government has undertaken a review of national aviation security policy and arrangements. The Department of Transport and Regional Services (The Department) has broad policy approval to reform aviation security legislation, and to align Australian aviation security with the revised International Civil Aviation Organisation (ICAO) standards.

One of the key Government decisions is to tighten the background and identity checking for persons working in security sensitive areas at major Australian airports. This requires a reform of the procedures and processes for issuing Aviation Security Identification Cards (ASICs). Improvements to the ASIC regime are a key component of the Government's aviation security reform agenda. The Government has requested that the Department amend the existing rules governing the ASIC regime as a matter of urgency.

##### **1.2 What is the problem being addressed?**

The Department is working towards implementing the Government decision in two phases. Firstly the *Air Navigation Regulations 1947* (ANRs) will be amended to implement the following aspects of the Government's decision:

- To require industry to deny persons unescorted access to security sensitive airport areas at an airport, unless they have passed a Politically Motivated Violence (PMV) background check.
- To reduce the maximum validity period of ASICs from 5 years to 2 years.
- To undertake a national reissue of ASICs in a new tamper evident format during 2003-2004 (the period for reissue is currently planned for 1 November 2003 - 30 June 2004).
- To ensure that criminal history checks on new ASIC applicants are tightened to deny unescorted access to any person with a conviction and sentence to any term of imprisonment for an offence prescribed under the existing legislation.

This Regulation Impact Statement (RIS) outlines the impact of amending the ANR to implement these decisions.

The second phase of the Government's decision will be introduced as part of the Aviation Transport Security regulatory package, and will include expanding the ASIC regime to all airports where passenger screening is mandated, and to pick-up other aviation security sensitive areas, such as fuel facilities, control towers and sterile areas.

### **1.3 Why is Government Regulation Necessary?**

The current access control and ASIC arrangements are outlined in the ANRs. Government intervention is required to rectify shortcomings of the current scheme for the following reasons:

- The problem is one of market failure

The current deficiencies in the ASIC program expose Australia's aviation industry to an unnecessary level of threat from an unlawful interference with aviation. In the event of an act of unlawful interference, consumers will be reluctant to travel without an immediate enhancement in security. The consequence of a failure and the effect on the community is too great for the market to operate independently and at the same time produce the optimal level of security.

- The solution requires a nationally consistent set of standards that is enforceable

Australia has 38 security sensitive airports. All of these have flights that connect airports at capital cities. It is imperative that any improvements to the ASIC regime are recognised nationally. Private ownership of Australia's airports means that the necessary level of consistency may not be possible without government intervention.

#### The solution requires a whole of government approach

The current ASIC regime only assesses applicants' criminal record checks. There is also a requirement to disqualify a person from holding an ASIC if they are an unlawful non-citizen, however there is currently no mechanism available to check for this. This is insufficient for persons who have access to significant Australian aviation infrastructure. The Government's decision, from the review of the ASIC regime, attempts to resolve this with a 'three tier' background check program.

ASIC applicants will now be assessed via a Police Record Check through the Australian Federal Police (AFP); a security assessment through Australian Security Intelligence Organisation (ASIO); and a citizenship check on all ASIC applicants through the Department of Immigration, Indigenous, and Multicultural Affairs (DIMIA) to ensure integrity of character. Coordination of these agencies is integral to the new arrangements.

## **Part 2 Objectives**

### **2.1 What are the objectives of Government action?**

The regulatory proposal is designed to achieve resolution of the fundamental problems identified under Part 1. As such, the objectives of this legislative reform process are:

- To implement recommendations of the National Security Committee relating to background checking and ASICs.
- To achieve a set of nationally consistent, appropriate, enforceable regulations that apply to all Australia's security controlled airports and security sensitive areas within these airports.

- To maintain Australia's status as a secure provider of aviation transport infrastructure, thus avoiding the social and economic costs associated with implementing inappropriate security measures for Australia's civil aviation operations.

In order to rectify identified shortcomings in the current ASICs scheme, the Government has decided as follows:

#### Airport Access Control

- Access control is to remain the responsibility of airport operators with DOTARS continuing to play the role of regulator.

#### Staff Background Checking

- One of the weaknesses identified under the current system is a lack of security assessments on ASIC applicants. PMV checks will now become a key part of background checking procedures:
  - an Administrative Appeals Tribunal Process will be put in place to address civil liberties concerns.

#### Aviation Security Identification Cards

- There will be a national reissue of ASICs in 2003 - 2004:
  - arrangements for reissue will be determined by DOTARS in consultation with the aviation industry;
  - the new ASICs will take advantage of new technology, making them tamper evident and more difficult to forge; and
  - the maximum validity period of ASICs will be reduced from five to two years with new criminal history and PMV checks required for each renewal.

## **2.2 What regulation is currently in place?**

Details of the current ASIC regime are housed under *the Air Navigation Act 1920* and subordinate *Air Navigation Regulations 1947*.

## **Part 3 Options**

In discussing the options available for regulation of ASIC arrangements at Australia's airports, there are a number of key factors to consider. These include the fact that the problem of aviation security is a result of market failure, the need for a consolidated and consistent approach, privacy issues in attaining background information, and coordination of various Government agencies in this background checking process. Given the problems in the current system, maintaining the status quo has been deemed unacceptable by the Government, and has thus not been elaborated upon.

### **3.1 Self-regulation**



Self-regulation refers to the circumstance where industry formulates the rules for its own operation and where industry is solely responsible for the enforcement of these rules. An example of this would be a code of conduct developed by a peak industry body.

One factor supporting the use of self-regulation is that the major participants of Australia's aviation industry currently comprise a cohesive group committed to achieving the goal of a secure aviation network. In addition, the industry has viable associations and peak bodies including the industry consultative group, hosted by the Department, which provide a regular forum for all major industry participants.

The general public is particularly sensitive to aviation security issues. Allowing industry to set security standards would not assuage public concern over aviation security. As such, aviation security is an area where the level of risk, and appropriate response to that risk, is better determined by government. Intelligence information granted by the Australian Security Intelligence Organisation (ASIO) indicates that there is a real and continuing risk of interference to Australian aviation, and that an incident of this nature has the potential for extreme impact on the Australian community. Market failure in the transport security sector dictates that these potential risks are unable to be satisfactorily resolved via self-regulation.

As a result, the option of self-regulation is not recommended.

### **3.2 Quasi-regulation or Co-regulation**

Quasi-regulation or co-regulation refers to the arrangement whereby standards are designed by industry, but enforced by government. Enforcement may take the form of non-regulatory means (eg, official government endorsement) - this is quasi-regulation. Alternatively, enforcement may be via direct legislative backing (eg, prescribing an industry code) - this is co-regulation. However, a common theme of both quasi-regulation and co-regulation is that they provide a specific industry solution rather than a scheme of general application.

Quasi-regulation and co-regulation fail to provide universal sanctions for noncompliance. Public interest in aviation security dictates that the intervention of government necessarily creates a public (and consumer) expectation of full compliance by all members of industry, regardless of whether they are part of an industry peak body or association. To be effective, any aviation security regulatory framework needs to apply to the whole of Australia's aviation industry.

As such, the options of quasi-regulation or co-regulation are not recommended.

### **3.3 Explicit government regulation**

Australia has a long history of government regulation with respect to aviation security. The current legislative framework establishes minimum security standards for aviation industry participants, ensuring that national security outcomes are achieved, and consumers' interests recognised. Industry members must demonstrate that they meet these security requirements in order to lawfully operate. The Department also has responsibility for monitoring and ensuring compliance.

Because the current deficiencies in Australia's ASIC arrangements arise from inherent market failure in the provision of aviation security, it is appropriate for the Government to explicitly regulate in this area. While the consequences of a terrorist incident are catastrophic, market forces cannot be relied upon to arrive at the optimal level of security. In addition to this fact, private ownership of Australia's airports means that it would be impossible to guarantee consistency in the absence of Government enforced standards. Any inconsistencies in the

application of background checking, and hence access to critical facilities, would severely compromise the entire system.

More pervasive background checks are a key element of the proposed system. In the absence of Government regulation, privacy laws would prevent industry participants from accessing important information on the employees who have access to security sensitive areas at an airport. Privacy Principle 11 (under the Privacy Act 1988) states that such personal information can only be released where legislation requires.

As such, explicit government regulation, in the form of amended ANRs, is the most appropriate option.

### **3.4 Government regulation and control**

The final option considered is that of Government regulation, administration and physical control over the security function at airports. This would replace the current industry roles, for example, in access control arrangements and as ASIC issuing authorities.

This approach could reduce the responsibility for monitoring compliance by industry with respect to ensuring adequate security and may provide more consistently applied standards. This service delivery model would however be an approach inconsistent with established Government policy on devolution of responsibility. There is significant financial benefit for Government in the current Australian model where the owners of the infrastructure hold responsibility for security and where the costs associated with physical aviation security are borne by the consumer.

There would still need to be a high level of industry involvement in the implementation of revised ASIC arrangements due to the nature of the aviation industry.

The financial cost would be prohibitively high for Government to assume security roles at all categorised airports. Cost recovery measures directed at getting consumers to bear some of the cost would be difficult to implement without damaging passenger numbers and politically challenging for Government.

As such, the option of Government regulation and control is not recommended.

## **Part 4 Impact Analysis**

### **4.1 Impact analysis of amendments to ANRs**

#### *Impact on Consumers*

There are no significant changes to the current facilitation or travel arrangements, from the point of view of the travelling passengers or of members of the general public, that are anticipated to arise from the regulatory proposal. That is, the proposal will have no impact on passenger processing at airports or cause any additional delays or inconvenience for consumers.

#### *Impact on Industry*

Approximately 60,000 staff at the 38 security sensitive airports around Australia will be directly affected by the amendments to the ANRs. These 60,000 ASIC holders will need to have their ASIC reissued in the new tamper evident design with a two year expiry. In order for their ASIC to be reissued, applicants will be subject to a criminal history check by the AFP, a Security Assessment by ASIO, and a citizenship check by DIMIA.

The costs imposed on industry as part of this reissue will include: fees for testing by ASIO and AFP, and publication of the ASIC in the new tamper evident format. There may also be some minor administrative costs associated with altering the issuing body's ASIC program to comply with the new standards. All of these costs will be met by industry.

It is at the ASIC issuing bodies discretion as to whether they will issue their own ASICs, or purchase them from another issuing body. The initial costs of purchasing the ASIC producing infrastructure will be met by industry. The cost per ASIC charged by issuing authorities will be determined by market forces.

### *Impact on Government*

The current environment necessitates a consistent ASIC system which establishes appropriate standards and measures to safeguard against the risk of unlawful interference with aviation.

The revised ASIC regime will have minimal impact upon the Department. Departmental staff will need to apply for an ASIC as part of the re-issue if they require one in the course of their employment. The role of the Department in enforcement and inspection will not change. It is expected that the budget allocation to the Department for this role will not be significantly altered.

ASIO and AFP will be impacted by these regulations in terms of additional workload associated with the reissue of the 60,000 ASICs. This financial implication has been allocated for in the context of their 2003 - 2004 budget requirements.

### *Benefits*

The revised ASIC regime will serve to address shortcomings of the current system, as identified in the National Security Committee's report. It will also ensure a set of nationally consistent, appropriate, enforceable regulations that apply to all Australia's security controlled airports and security sensitive areas within these airports, and maintain Australia's status as a secure provider of aviation transport.

These changes will strengthen confidence in Australian civil aviation, and have related benefits for other dependant industries, such as tourism. The positive effects of a secure aviation infrastructure are a benefit for the whole Australian community, but are difficult to accurately quantify in monetary terms.

Perhaps the greatest benefit associated with the proposed amendments to the *Air Navigation Regulations 1947* is a reduced risk of terrorist incident at an Australia airport. Any terrorist attack on Australia's civil aviation industry would impose a substantial monetary and psychological cost on the nation. These are the direct costs, which the proposed amendments seek to avoid. This is the major aviation security benefit of amended ANRs.

### *Costs*

Sydney Airport is Australia's second largest ASIC issuing body, and will issue around 12,650 cards in the reissue period. They have provided the Department with the following cost information. These figures are generally accepted, by other issuing authorities, as reasonable estimates:

- The criminal history check will cost \$32.73 per card, and will need to be completed each time the card is reissued.

- The PMV check will cost \$13 per card, and is a once only check for each applicant.
- The ASIC itself will cost \$8.50 per card to produce.
- Initial equipment, facilities, and staffing costs of the reissue (for the period November 2003 to June 2004) will total \$328,383 for Sydney Airport. This includes:
  - Hot Stamp Machine at \$5,417 a year, over 5 years
  - Foil cost at \$10,000 for 8 months
  - 2 new PCs at \$1,300 a year, over 3 years
  - ASIC test software at \$7,222 per annum over 3 years
  - EBI licence at \$2,167 a year, over 3 years
  - AFP system at \$550 per annum
  - ISDN line for JADE system at \$750 per annum
  - Telephone call-centre set-up cost at \$7,222 per annum, over 3 years
  - Call centre - call answering charge \$27,830
  - Temporary staff at \$140,000
  - Staff overtime at \$60,000

Detailed cost information received from Sydney Airport states that the maximum cost per ASIC, under the amended ANRs, will be close to \$126.39 per card. This is in the worst-case scenario.

As a direct result of industry consultation, it was agreed between the Department, AFP, and industry representatives that it is appropriate to waive the requirement for persons who have had an ASIC issued in the last 12 months to undergo a new police records check as part of the reissue. Qantas estimate that this will apply to 7,800 of their staff, and that this provision will save them in excess of \$300,000. Sydney Airport have stated that this will apply to 5,000 of their 12,650 ASIC holders, and result in significant cost savings for them.

Based on the detailed cost information received from Sydney Airport, it is estimated that the proposed regulation reforms will cost the aviation industry approximately \$7 million in the 2003-2004 period. Ongoing costs will be limited to the cost of producing the required ASICs (estimated at \$126.39 per card).

Industry will also have to introduce a process to ensure that employees who qualify for an ASIC are reissued an ASIC, within a timeframe that will be specified in the legislative amendments. This will have cost implications for the organisation that the individual belongs to, and for the Government agencies involved in the reissue. The additional costs to Government agencies have been dealt with in the context of the 2003-04 Commonwealth Budget.

## **Part 5 Consultation**

ASIC reform is being implemented through amendments to the ANRs. However, it also forms part of the framework of the ATS regulatory package, therefore much of the consultation with Industry for developing the ATS Regulations included discussions on the ASICs regime.

The Department developed and facilitated a multi-faceted consultation strategy with members of the aviation industry to progress the ATS Regulations. This strategy sought to involve industry from the early stages of Regulation development and drafting, through to seeking final comment on the total Regulation package. Although the foundations for the ASICs reform were set out in the Government review and decision, finer details and issues for implementation were resolved through direct consultation with industry.

This extensive consultation stems from the Department's desire to capitalise upon the valuable knowledge that resides within the aviation industry to provide specific detail within the regulations. The Department's strategy utilised several avenues of consultation including, but not limited to:

- Seeking written comment on all working documents;
- A broad industry consultation group. This group consisted of 87 contacts that represented the aviation industry and relevant government departments. The group met frequently over three months to debate regulation issues in a discussion group forum (See Attachment A for a list of aviation industry members consulted);
- Discussion at the quarterly Industry Consultative Meeting (ICM). this meeting provides the opportunity for a diverse range of industry members to meet and discuss the prominent developments and issues in aviation security on a regular basis;
- The 'ASICs Working Group'. This group was drawn from the ICM to discuss proposals and develop the design of the card and tamper evident seal; and
- Several individual meetings between the Department and industry stakeholders throughout the development process. These meetings were used to discuss issues that would directly affect one party or where one party had specific concerns over the implications of the Regulations. For example, representatives from ASIO and AFP were consulted on several occasions to discuss administrative issues.

The principle objective of the extensive consultation process was to capitalise upon industry knowledge and incorporate detail into a workable and practical set of regulations.

#### *Consultative Statement*

Industry were proactive in contributing comments towards the draft regulations and understood that their contribution would assist the Department to develop a set of practical and workable regulations.

Industry were supportive of the concept of a nationally consistent approach to ASICs and on several occasions vocalised their support for the model of explicit Government regulation. Industry also supported the concept of a tamper evident nationally consistent design and the introduction of politically motivated violence (PMV) checking for staff that require ASICs. The ASICs Working Group developed the design of the new card.

Industry did raise concerns regarding cost implications associated with the ASIC introduction. The Department recognises this issue for industry, however maintains that the benefits of PMV

checking all ASIC holders through ASIO, is central to satisfying Government decisions and achieving the broader objectives of the regulatory reform.

The Department has a long history of maintaining a strong and productive relationship with the aviation industry, in an otherwise volatile aviation environment. This working history has enabled the Department to conduct a successful consultation process through an open and honest exchange between stakeholders throughout the development of the revised ASICs regime.

## **Part 6 Conclusion**

The Department recommends that explicit Government regulation continue to be used to implement Australia's access control and ASIC arrangements.

The current deficiencies in the ASIC program expose Australia's aviation industry to an unnecessary level of threat from an unlawful interference with aviation. As part of the Government's response to broader national security issues, it is imperative that these shortcomings be rectified. However, prevailing market forces dictate that this will not occur in the absence of Government intervention.

Explicit Government Regulation is required to ensure consistency across each of Australia's 38 security sensitive airports. The entire security system is compromised if access control arrangements differ between the various ports. Amended ANRs will ensure a nationally consistent set of standards to be enforced by the Department.

Multi-faceted background checking is an essential component of a tightened ASIC regime. The privacy issues surrounding the security checks means that it is appropriate for these to be handled by Government agencies. Moreover, Government agencies will be the only bodies with access to the data required to complete such checks. Coordination of the Police Record Check, security assessment, and citizenship check will result in a 'three tier' background assessment.

The Department recommends explicit Government regulation in relation to access control and ASIC arrangements, in the form of amended ANRs, to be implemented in full consultation with industry.

## **Part 7 Implementation**

The Department has ensured that all relevant parties have been consulted at every stage. Stakeholder input has been essential in finalising the practical details of the new regime. The issuing guidelines and card design have been addressed in the ASIC working group, which is an industry forum chaired by Sydney Airport.

Under the amended regulations, it is proposed that the reissue will be staggered over eight months between 1 November 2003 and 30 June 2004. The Government set the 30 June 2004 deadline, and adopted a staggered approach to avoid a difficult peak in the ASIC issuing workload at the end of the two-year validity period.

The Department of Transport and Regional Services is committed to working with each of the ASIC issuing bodies to assist them in amending their ASIC programs in accordance with the new regulations. The Department will play a key role in liaising between the ASIC issuing bodies and key government agencies, such as ASIO and AFP, to ensure a smooth transition.

Phase two of the ASIC reform agenda, which will come as part of the *Aviation Transport Security Regulations*, will have minimal effect on those ASIC holders who have their cards reissued in

accordance with the proposed amendments to the ANRs. Any impact resulting from the *Aviation Transport Security Regulations* will be dealt with under a separate RIS.

**Attachment A  
Participants****Aviation Transport Security Bill Consultation**

Mr Vince Scanlon	<b>Australian Airports Association</b>
Mr John McArdle	<b>Australian Airports Association</b>
Mr Warren Bennett	<b>Board of Airline Representatives of Australia Inc.</b>
Mr Jonathan Jackson	<b>National Jet Systems Pty. Limited</b>
Mr Trevor Jones	<b>Qantas Airways Limited</b>
Mr Geoffrey Askew	<b>Qantas Airways Limited</b>
Mr Bob Mason	<b>Regional Aviation Association of Australia</b>
Mr Rick Sheely	<b>Qantas Airways Limited</b>
Mr Phil Scanlon	<b>Virgin Blue Airlines</b>
Mr Neil Shea	<b>Regional Express</b>
Mr Peter Mallet	<b>Regional Express</b>
Mr Michael Jones	<b>Regional Express</b>
Mr John McArdle	<b>Adelaide Airport Ltd</b>
Mr Stephen Goodwin	<b>Brisbane Airport Corporation Ltd</b>
Ms Pam Graham	<b>Australia Pacific Airports (Melbourne) Pty Ltd</b>
Mr Les Kirby	<b>Australia Pacific Airports (Melbourne) Pty Ltd</b>
Mr Rick Gates	<b>Westralia Airports Corporation Pty Ltd</b>
Mr Steve Whitmore	<b>Westralia Airports Corporation Pty Ltd</b>
Mr Ron Elliot	<b>Sydney Airports Corporation Ltd</b>
Mr Stephen Fitzgerald	<b>Sydney Airports Corporation Ltd</b>
Mr Phil Warwick	<b>Cairns Port Authority</b>
Mr Stephen Byron	<b>Canberra International Airport Pty Ltd</b>
Ms Ferdi Lumbaca	<b>Canberra International Airport Pty Ltd</b>
Mr Richard Doyle	<b>Canberra International Airport Pty Ltd</b>
Mr Barrie Briggs	<b>Gold Coast Airport Ltd</b>
Mr Bob Calaby	<b>Darwin International Airport Pty Ltd</b>
Mr Malcolm McCallum	<b>Alice Springs Airport Pty Ltd</b>
Mr Sandy White	<b>Voyages Hotels and Resorts Pty Ltd</b>
Mr Reith MacLeod	<b>Broome International Airport Pty Ltd</b>
Mr Don Bridges	<b>Christmas Island Airport</b>
Mr John Huber	<b>Hamilton Airport Pty Ltd</b>
Mr Wayne Tucker	<b>Hobart International Airport Pty Ltd</b>
Mr Graham Verhay	<b>Australia Pacific Airports (Launceston) Pty Ltd</b>
Mr John Langford	<b>Hobart International Airport Pty Ltd</b>
Mr Ray Oakley	<b>Airports Plus Consultants</b>
Mr Paul Finch	<b>Norfolk Island Administration</b>
Mr Chris Jackson	<b>Town of Port Hedland</b>
Mr John Truman	<b>Ballina Shire Council</b>
Mr Bevan Edwards	<b>Coffs Harbour City Council</b>
Mr Richard Barnard	<b>Port of Devonport Corporation</b>
Mr Andrew Liepa	<b>General Manager Operations</b>
Mr Joe Rutkin	<b>Nhulunbuy Corporation Ltd</b>
Mr Daryl Tonkin	<b>City of Kalgoorlie/Boulder</b>
Mr Guy Thompson	<b>Shire of Roebourne</b>
Mr Rick Spry	<b>Shire of Wyndham East Kimberley</b>
Mr Trevor Heard	<b>Mackay Port Authority</b>
Mr Howard Ludgate	<b>Maroochy Shire Council</b>
Mr G Adamson	<b>Maroochy Shire Council</b>
Ms Jennifer Welk	<b>Australia Airports (Mount Isa) Pty Ltd</b>
Mr David Young	<b>Whitsunday Shire Council</b>
Mr David Blackwell	<b>Rockhampton City Council</b>
Mr Allan Leeson	<b>Burnie Airport Corporation</b>
Mr Wray Eivers	<b>Groote Eylandt Mining Co</b>



Mr David Batch	<b>Australian Federal Police</b>
Mr George Valance	<b>Mildura Rural City Council</b>
Mr Errol Raiser	<b>Australian Federal Police</b>
Mr Richard Roberts	<b>Australian Protective Services</b>
Mr Anthony Berry	<b>Australian Protective Services</b>
Ms Helaine Hallahan	<b>Attorney-General's Department</b>
Mr Michael Howard	<b>Airservices Australia</b>
Mr Tom Grant	<b>Airservices Australia</b>
Mr John Moody	<b>Civil Air Safety Authority</b>
Mr Rob Elder	<b>Civil Air Safety Authority</b>
Mr Graham Hanna	<b>Immigration</b>
Ms Gail Batman	<b>Customs</b>
Ms Pip Spence	<b>Prime Minister and Cabinet</b>
Ms Wendy Southern	<b>Prime Minister and Cabinet</b>
Ms Louise Van Meurs	<b>Australian Quarantine and Inspection Service</b>
Mr Colin Hunter	<b>Australian Quarantine and Inspection Service</b>
Ms Helen Peel	<b>Department of Finance</b>
Mr Nick Belyea	<b>Department of Planning and Infrastructure</b>
Mr Drew Gaynor	<b>WA Transport</b>
Mr Peter Keage	<b>Tourism Victoria</b>
Ms Marianne Richards	<b>Department of Infrastructure</b>
Mr Mike Milln	<b>Transport SA</b>
Mr Greg Nott	<b>Transport NSW</b>
Mr Chris Sanders	<b>Transport NSW</b>
Mr John Morandini	<b>Transport NSW</b>
Mr Rod Nelson	<b>Department of Infrastructure, Planning and Environment</b>
Mr Doug Barry	<b>Department of Infrastructure, Energy and Resources</b>
Mr Andrew Wilson	<b>Chief Minister's Department</b>
Mr Damien Vasta	<b>Queensland Transport</b>
Mr Phillip Hayes	<b>SNP Security</b>
Mr Tom Roche	<b>SNP Security</b>
Mr Terry Bennett	<b>Group 4 Security</b>
Ms Alisa Goodyear	<b>Chubb Security</b>
Mr Paul Cullis	<b>Australian Air Express</b>