



## **Australian Government**

Australian Government response to the  
Senate Rural and Regional Affairs and Transport Legislation  
Committee report:

*The Transport Security Amendment  
(Serious or Organised Crime) Bill 2016*

## Introduction

The Australian Government welcomes the Senate Rural and Regional Affairs and Transport Legislation Committee's report on the introduction of the *Transport Security Amendment (Serious or Organised Crime) Bill 2016* (the Bill). The Australian Government would like to thank the Committee members for their work in delivering the report and associated recommendation.

The Bill introduces an additional purpose to the *Aviation Transport Security Act 2004* (the Aviation Act) and the *Maritime Transport and Offshore Facilities Security Act 2003* (the Maritime Act) to reduce criminal influence at Australia's security controlled airports, security regulated ports, and security regulated offshore oil and gas facilities. The additional purpose applies solely to the aviation and maritime security identification card (ASIC and MSIC) schemes.

The Aviation and Maritime Acts establish the framework for the Aviation Transport Security Regulations 2005 (the Aviation Regulations) and the Maritime Transport and Offshore Facilities Security Regulations 2003 (the Maritime Regulations) to create the ASIC and MSIC schemes.

The ASIC and MSIC schemes are an important part of securing the aviation, maritime and offshore oil and gas sectors. ASICs and MSICs are nationally consistent identification cards that show the holder has met the minimum security requirements to remain unmonitored within an aviation or maritime security zone. All individuals who require an ASIC or MSIC must have a valid background check.

The purpose of the background check is primarily to establish whether an applicant may pose a threat to aviation and maritime security. The background check does not currently consider whether they pose a criminal risk.

A number of inquiries and reports have identified vulnerabilities in the ASIC and MSIC schemes. These have focused on the limited purpose of the schemes, in particular their inability to address serious criminality at airports and ports. Notably, the 2011 Parliamentary Joint Committee on Law Enforcement (PJCLE), *Inquiry into the adequacy of aviation and maritime security measures to combat serious and organised crime*, highlighted that because the ASIC and MSIC schemes were never originally designed to harden the transport environment against serious and organised crime, organised crime groups have exploited gaps, weaknesses and inconsistencies in the application of the regimes.

The Bill will:

- create an additional purpose in the Aviation and Maritime Acts to prevent the use of aviation and maritime transport or offshore oil and gas facilities in connection with serious or organised crime;
- support the strengthening of the eligibility criteria for the ASIC and MSIC schemes to target serious criminal offences;
- clarify and align the legislative basis for undertaking background checking of individuals under the Aviation and Maritime Acts;
- 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.

The amendments to the Aviation and Maritime Acts provide for the implementation of new eligibility criteria for ASICs and MSICs that better target serious or organised crime.

The new eligibility criteria, to be specified in the Aviation and Maritime Regulations, will introduce new offence categories such as offences arising from: anti-gang or criminal organisation legislation; illegal importation of goods; interfering with goods under Australian Border Force control; and foreign incursion and recruitment.

## Australian Government response to the Final Report

### *Recommendation 1*

The Committee recommends that the Bill be passed.

The Australian Government agrees with this recommendation and thanks the Committee for its consideration of this complex issue.

### Additional Comments

The Australian Government disagrees with the assertion that the Bill potentially risks confusing the purpose of transport security legislation, weakening the schemes ability to prevent terrorism.

The Bill does not affect the national security assessment component of the background check, undertaken by the Australian Security Intelligence Organisation. The national security assessment is independent to the applicant's criminal history and will not change the existing processes. Including new offences, such as foreign incursion and recruitment, will in fact enhance the schemes' ability to exclude persons from secure zones and areas where they have been convicted of offences of the highest severity.

### Dissenting Report

The Australian Government notes the dissenting views of the Hon Senator Janet Rice.

The Australian Government disagrees with the Senator's comments and provides the following to help clarify the intention of the proposed ASIC and MSIC criteria.

Tax evasion is listed as a tier 5 offence - an adverse criminal record is found only where the sentence of imprisonment is at least 30 months, ensuring that only the most high-risk offenders in this category are captured. Arson is listed as a tier 4 offence - an adverse criminal record is found only where the sentence of imprisonment is at least 12 months, ensuring the offence will capture only the higher risk offenders within this category.

The existing criteria regularly sees applicants with minor drug offences, including fines for possession of a drug, found initially ineligible to hold a card unless through a discretionary review. The proposed changes will lift the threshold for less serious and lower-level criminal offences. As a result, more applicants are expected to be found initially eligible for an ASIC or MSIC, reducing the impact to their employment and increasing the staff available to employers.

All existing appeals processes remain available for applicants. Furthermore, under the proposed changes, ASIC applicants will be able to seek reconsideration of decisions by the Secretary (as per the current process available to MSIC applicants). This is in addition to the discretionary review and their ability to appeal a decision by application to the Australian Government's Administrative Appeals Tribunal.

### *Dissenting Report Recommendation 1*

That the Bill not be supported in its current form.

The Australian Government does not agree with the recommendation.

### *Dissenting Report Recommendation 2*

That the Government consult further with the sector to develop alternative solutions.

The Australian Government undertook extensive stakeholder consultation across the aviation and maritime sectors. Consultation began as early as August 2011, immediately following the release of the PJCLE's final report in June 2011.

This consultation concluded that extending the current ASIC and MSIC regimes is more efficient and effective than developing a new and separate scheme to counter serious or organised crime at our airports and ports.

The existing ASIC and MSIC schemes are well understood by industry. Introducing a new scheme would likely impose additional costs and lead to confusion and inadvertent non-compliance.