

2016

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TRANSPORT SECURITY AMENDMENT (SERIOUS OR ORGANISED CRIME) BILL 2016

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Infrastructure and Transport,
the Hon Darren Chester MP)

TRANSPORT SECURITY AMENDMENT (SERIOUS OR ORGANISED CRIME) BILL 2016

OUTLINE

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

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, *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.

Serious or organised crime reform

The Bill will:

- (a) 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;
- (b) support the strengthening of the eligibility criteria for the ASIC and MSIC schemes to target serious criminal offences;
- (c) clarify and align the legislative basis for undertaking background checking of individuals under the Aviation and Maritime Acts;
- (d) 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
- (e) 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.

The amendments to the ASIC and MSIC schemes will apply to all persons required by law to hold an ASIC or MSIC.

The Bill also provides for regulations to prescribe penalties for offences against requirements made for the purpose of preventing the use of aviation and maritime transport or offshore facilities in connection with serious or organised crime. These maximum penalties, which are graded for different classes of offenders, are consistent with existing maximum penalties for equivalent offences in the Aviation and Maritime Acts.

The Bill amends the Maritime Act to clarify the legislative basis for undertaking background checks of persons who have, or require, access to secure maritime zones. This amendment is intended to reduce reliance on the general regulation-making powers within the Act and align with current practice in the issuing of MSICs and the requirements in the Aviation Act.

Supporting these amendments is the inclusion of a severability provision to help clarify the Commonwealth's legislative power in relation to using the schemes to combat serious or organised crime within the aviation, maritime and offshore oil and gas sectors.

Financial impact statement

There will be no financial impact as a result of this Bill.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Transport Security Amendment (Serious or Organised Crime) Bill 2016

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The purpose of the Transport Security Amendment (Serious or Organised Crime) Bill 2016 (the Bill) is to amend the *Aviation Transport Security Act 2004* (the Aviation Act) and the *Maritime Transport and Offshore Facilities Security Act 2003* (the Maritime Act) to:

- (a) 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;
- (b) support the strengthening of the eligibility criteria for the aviation security identification card (ASIC) and maritime security identification card (MSIC) schemes to target serious criminal offences;
- (c) clarify and align the legislative basis for undertaking background checking of individuals under the Aviation and Maritime Acts;
- (d) 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
- (e) insert an additional severability provision to provide guidance to a court as to Parliament's intention.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms.

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.

Minister for Infrastructure and Transport, the Hon Darren Chester MP

NOTES ON CLAUSES

Clause 1: Short Title

Clause 1 provides that this Act may be cited as the *Transport Security Amendment (Serious or Organised Crime) Act 2016*.

Clause 2: Commencement

Clause 2 provides that the whole of the Act commences the day after it receives Royal Assent. Clause 2 also allows information about the date of the Royal Assent and commencement to be added to the commencement table, but this information does not form a part of the Act.

Clause 3: Schedules

Clause 3 outlines the effect of the Schedules to the Bill. The *Aviation Transport Security Act 2004* (the Aviation Act) and the *Maritime Transport and Offshore Facilities Security Act 2003* (the Maritime Act) are amended as set out in the Schedule to the Bill. Any other item in the Schedule has effect according to its terms.

Schedule 1 – Amendments

Aviation Transport Security Act 2004

Item 1 – Subsection 3(1) (note)

Item 1 repeals the note under subsection 3(1) of the Aviation Act and substitutes a note to make reference to an additional purpose, which is not otherwise provided for under sections 3-5 of the Aviation Act. This additional purpose is set out in new section 38AA of Division 4A of Part 3 of the Aviation Act (see Item 4). This additional purpose applies exclusively to Division 4A of Part 3, and is not intended to affect the application or interpretation of any other provisions in the Aviation Act.

Item 2 – Section 4 (at the end of the paragraph relating to Part 3)

Item 2 amends the simplified overview of Part 3 of the Aviation Act to make reference to the additional purpose of new Division 4A of Part 3, of preventing the use of aviation in connection with serious or organised crime (see Item 4). This purpose will be in addition to the purpose of safeguarding against unlawful interference, which is the purpose of Divisions 1-5 of Part 3.

Item 3 – Section 27 (after the paragraph relating to Division 4)

Item 3 amends section 27 of the Aviation Act to insert a simplified overview of new Division 4A of Part 3 after the paragraph relating to Division 4.

Item 4 – After Division 4 of Part 3

Item 4 inserts new Division 4A– Serious or organised crime, and new sections 38AA and 38AB in Part 3 of the Aviation Act.

New sections 38AA and 38AB provides the authority for amendments to the Aviation Regulations for the purpose of combating serious or organised crime in connection with aviation. The additional purpose applies solely to the aviation security identification card (ASIC) scheme, and is intended to

facilitate the introduction of eligibility criteria, which will be harmonised across both the ASIC and maritime security identification card (MSIC) schemes.

Item 4 also provides for the ability to prescribe penalties for offences against the new serious or organised crime amendments consistent with other aviation security offences. By prescribing maximum penalties, new subsection 38AB(3) provides for discretion to be applied in making regulations imposing penalties. It also takes into consideration the need to provide an appropriate level of deterrence for the relevant classes of offenders. These offence provisions are consistent with existing penalties in relation to access to secure aviation areas and zones in Part 3 of the Aviation Act.

Item 5 – At the end of section 132

Item 5 inserts an additional severability, or read-down provision, to provide guidance to a court as to Parliament's intention. The purpose of this provision is to help clarify the Commonwealth's legislative power in relation to serious or organised crime and the use of the ASIC scheme as a measure to combat it within the aviation sector.

Maritime Transport and Offshore Facilities Security Act 2003

Item 6 – At the end of subsection 3(1)

Item 6 inserts a note under subsection 3(1) of the Maritime Act that makes reference to an additional purpose of the Maritime Act. The new additional purpose is set out in new section 113E of Division 6 of Part 6 of the Maritime Act (see Item 12). This additional purpose has been added as a note as it applies exclusively to Division 6 of Part 6, and is not intended to affect the application or interpretation of any other provisions in the Maritime Act.

Item 7 – Section 101 (after the paragraph relating to Division 5)

Item 7 amends section 101 by inserting a simplified overview of new Division 6 of Part 6.

Item 8 – After paragraph 105(2)(b)

Item 8 inserts new regulation making provision to establish a clear and transparent authority supporting the MSIC background check of persons who remain unmonitored in port security zones. This provision is intended to improve the transparency of the MSIC scheme, and clarify and align the legislative basis for background checking applicants with that of the ASIC scheme.

Item 9 – After paragraph 109(2)(b)

Item 9 inserts new regulation making provision to establish a clear and transparent authority supporting the MSIC background check of persons who remain unmonitored in ship security zones. This provision is intended to improve the transparency of the MSIC scheme, and clarify and align the legislative basis for background checking applicants with that of the ASIC scheme.

Item 10 – After paragraph 113(2)(b)

Item 10 inserts new regulation making provision to establish a clear and transparent authority supporting the MSIC background check of persons who remain unmonitored in on-board security zones. This provision is intended to improve the transparency of the MSIC scheme, and clarify and align the legislative basis for background checking applicants with that of the ASIC scheme.

Item 11 – After paragraph 113D(2)(b)

Item 11 inserts new regulation making provision to establish a clear and transparent authority supporting the MSIC background check of persons who remain unmonitored in offshore security zones. This provision is intended to improve the transparency of the MSIC scheme, and clarify and align the legislative basis for background checking applicants with that of the ASIC scheme.

Item 12 – At the end of Part 6

Item 12 inserts new Division 6 – Serious or organised crime and new sections 113E and 113F in Part 6 of the Maritime Act.

New section 113E of the Maritime Act provides the authority for amendments to the Maritime Regulations for the purpose of combating serious or organised crime in connection with maritime transport and offshore facilities. The additional purpose applies solely to the MSIC scheme, and is intended to facilitate the introduction of eligibility criteria, which will be harmonised across both the ASIC and MSIC schemes.

Item 12 also provides for the ability to prescribe penalties for offences against the new serious or organised crime amendments consistent with other maritime security offences. By prescribing maximum penalties, new subsection 113F(2) provides for discretion to be applied in making regulations imposing penalties. It also takes into consideration the need to provide an appropriate level of deterrence for the relevant classes of offenders. These offence provisions are consistent with existing penalties in relation to access to security maritime zones in Part 6 of the Maritime Act.

Item 13 – At the end of section 208

Item 13 inserts an additional severability, or read-down provision, to provide guidance to a court as to Parliament's intention. The purpose of this provision is to help clarify the Commonwealth's legislative power in relation to serious or organised crime and the use of the MSIC scheme as a measure to combat it within the maritime sector and offshore facilities.