



Our Ref.: Let.1919

14 July 2009

Regulatory Burdens: Social & Economic
Infrastructure Services
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Sir/Madam

The Board of Airline Representatives of Australia (BARA) is the industry representative organisation that represents the interests of international airlines operating to and from Australia. BARA has 36 member airlines, including Qantas Airways and Pacific Blue/V Australia.

BARA has reviewed those parts of the Productivity Commission Draft Research Report titled *Annual Review of Regulatory Burdens on Business; Social and Economic Infrastructure Services* that relate to air transport. BARA's responses to the Draft Report in relation to comments about aviation security regulations, aviation safety regulation, disability discrimination legislation and advance passenger processing are set out below.

1. Aviation security regulations

BARA endorses each of the comments relating to problems with aviation security regulations attributed to Qantas in the Draft Report. The problems identified by Qantas are similarly experienced by foreign airlines that operate international services to and from Australia. BARA, therefore, endorses the Draft Recommendation 6.2 contained in the Draft Report. A provision to allow the Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government to grant exemptions, variations and alternative procedures to the existing regulations that would meet the required regulatory outcome would facilitate greater flexibility for airlines in meeting genuine security outcomes.

BARA also welcomes the acknowledgement in the Draft Report that "Improving communication between the regulator and the industry prior to implementing aviation security regulations could improve alignment of the regulation with the required outcomes and lessen the risk of implementing unnecessary or unachievable regulatory requirements". BARA is, therefore, disappointed that the Draft Report merely considers at Draft Recommendation 6.3 that the Aviation Security Advisory Forum (ASAF) should provide greater focus on consultation with industry with regard to existing and proposed aviation security regulation. This Draft Recommendation demonstrates a lack of understanding by the Productivity Commission of how poorly ASAF has performed in the past in consulting with industry stakeholders about the actual wording of new aviation security legislation. BARA has little confidence that there would be any marked and sustained improvement in that performance in the future simply because the Productivity Commission might recommend a greater focus on consultation.

In this regard BARA holds the strong view that the only effective means by which consultative arrangements on aviation security regulatory requirements might be improved is via the Qantas proposal to establish a formal mechanism by which a proposed draft regulation would be released for public consultation. BARA agrees that the notice of proposed rule making model adopted by CASA in relation to aviation safety regulation would be a viable tool for public consultation.

It appears that the Productivity Commission rejects the Qantas NPRM model on the spurious grounds that it would duplicate the RIS process “to some extent” and would risk delays in implementing regulations and increase their complexity. The claim that an NPRM approach would increase the complexity of aviation security regulations is completely unfounded. It is noted that the Draft Report offers no evidence in support of this claim. Further, the assertion that an NPRM process would risk delays is also disputed by BARA. It is BARA’s experience that the present arrangements for industry consultations regarding aviation security regulation are far from timely, are ad hoc and provide little transparency regarding the extent to which industry views are taken into account in setting the ultimate regulatory provisions. BARA is of the opinion that a formalised consultative process in relation to aviation security regulations, based on the NPRM model, would improve the transparency of the process and ultimately deliver a more targeted regulatory regime that does not unnecessarily interfere with the efficiency of airline and airport operations. If this does take a little more time, it is nonetheless preferable in almost all cases to deliver an efficient and workable aviation security outcome. And if the process does, in fact, duplicate the RIS process “to some extent”, BARA would accept such a minor duplication as a reasonable cost of overcoming the existing consultation shortcomings.

2. Aviation safety regulation

BARA notes that the Draft Report acknowledges concerns outlined by Qantas and Virgin Blue in relation to the rigidity, prescriptive approach and outmoded focus of aviation safety regulation. The Draft Report also details the failure over a long period of time of Government agencies and forums to finalise and implement regulatory reform. Yet the Draft Report opts out of any serious analysis of the impact of such failure on airlines, merely noting that “as the regulatory reform program has not been completed the Commission is unable to comment on the overall effectiveness of [the] arrangements”.

The Draft Report, therefore, ignores the fact that airlines presently have to operate within a regime where two systems of regulation operate side by side adding further complexity to the arrangements and very considerable costs for airlines and their passengers. BARA believes that this situation should be a matter of considerable concern to the Productivity Commission. Such a glaring failure of the efficiency of the regulatory system as it applies to aviation should be the subject of detailed comment.

3. Disability discrimination legislation

BARA believes that the Draft Report adopts a dismissive approach to valid airline concerns about the potential for conflict between disability discrimination legislation and other legislation. For example, the Draft Report acknowledges that the screening of mobility aids to re-enter the secure area to be at the arrival gate for use by passengers with disabilities clearly does cause delays. However, instead of considering possible regulatory amendments that might facilitate means of overcoming these delays to “goods” that are indispensable to people with disabilities, the Draft Report merely notes that “delays at airports in order to meet security requirements are not uncommon”. The Draft Report should note that mobility aids are not “goods” in the normal sense

of the word. They are essential items of equipment for persons with disabilities and all regulatory impediments to their speedy delivery to their owners at the arrival gate should be addressed. Similarly, the Draft Report opts out of any serious consideration of airlines' problems related to carriage of mobility aids and manual handling to assist passengers from their own wheelchairs to airline wheelchairs and into aircraft seats. According to the Draft Report these "are issues for the airlines to address". The Draft Report, therefore, completely misses the point that a potential conflict exists between different pieces of legislation and the airlines are caught in the middle of that potential conflict. BARA believes that any review of regulatory burdens on business should give detailed consideration to the extent of such conflicts and the commercial and industrial relations implications of their existence.

BARA is also disappointed that the Draft Report dismisses the Qantas suggestion that the *Disability Standards for Accessible Public Transport 2002* should contain a clear exemption in relation to compliance with civil aviation safety, transport security and OHS legislation simply because it raises the wider issue of whether safety, security and OHS legislation applying to other transport industries should also be exempted from these standards. Again, it is BARA's view that any review of regulatory burdens on business should give detailed consideration to the extent of such issues and the commercial and industrial relations implications of their existence.

4. Advance passenger processing

BARA is concerned that the Draft Report does not acknowledge the quite draconian nature of the penalty regime attached to the advance passenger processing (APP) reporting obligations. BARA acknowledges that airlines generally manage to achieve reporting levels that exceed the chosen compliance threshold of 99.8%. However, the airlines' capacity to meet this requirement came at a considerable cost due to the need to put in place new and extensive computer systems.

Further, for those airlines operating to and from Australia there are also ongoing administrative costs associated with the regulatory reporting compliance due to the fact that all their partner airlines and all the origin airports used by those partner airlines may not have in place the infrastructure and resources to allow the collection and transmission of a passenger's passport details. The Draft Report fails to recognise how onerous a task it is for airlines to identify passengers not captured by "the system" and to collect and transmit their APP data. As noted by Qantas, this practice is labour-intensive, costly and can compromise the scheduled departure time of aircraft.

The Draft Report also seems to assume that the systems and practices that exist to enable most airlines operating to and from Australia to meet the compliance requirements are failsafe. That is not the case. There are many variables to be monitored by airlines to ensure that APP reporting compliance is achieved and system failures can occur. BARA is concerned that, in the event of a system failure in any one month, the penalty imposed on the airline concerned is particularly severe. If an airline's reporting rate falls below the threshold rate in any month then the airline faces fines for each and every offence in the subsequent month. Such a penalty is out of proportion to the border security risk presented by a one-off failure to meet the threshold reporting rate.

BARA maintains that the APP regime should be reviewed to consider means of basing it on risk management principles and establishing a penalty regime that better reflects border security risks associated with one-off reporting failures.

Please contact the undersigned on _____ on matters related to the contents of the submission.

Yours sincerely

Warren Bennett
Executive Director