

## **Auditing performance**

### **Introduction**

- 8.1 Auditing performance is integral to the establishment of procedures and provision of training because it tests whether training outcomes are achieved and maintained. Incentives to meet performance standards are also important. In the aviation industry incentives usually take the form of penalties for under-performance.
- 8.2 The Committee has considered how the major aviation industry stakeholders conduct their audits and apply penalties. The stakeholders reviewed are:
- the screening services contractors;
  - the airports and airlines; and
  - the regulator, DoTaRS.

### **Audits undertaken by screening service contractors**

- 8.3 There are significant commercial imperatives for screening services to be of a high standard. Group 4 told the Committee that there was competition between the three screening contractors:

I know full well that if I do not perform for my customers—the screening authorities—to the standard they expect, I will have both competitors breathing down my neck looking to take over the business. I think that what that does is enhance the outcome.<sup>1</sup>

- 8.4 In addition, the liability exposure of the screening service provider should the process fail was significant. Group 4 advised the Committee that it had insurance cover of \$200 million for any one incident, and the cost was substantial. Group 4 added:

Even with such insurance in place, this does not necessarily cover the entire risk, nor does it remove further liability from the supplier. Therefore, it is incumbent on the provider to ensure all operatives participating the aviation screening process are adequately trained and experienced.<sup>2</sup>

- 8.5 As a result security screening companies had a program of internal audit which extended to the performance of subcontractors.<sup>3</sup> Chubb told the Committee that its regular audits of screening points included more than a systems test—they included reviews of training records and spot assessments of staff.<sup>4</sup>
- 8.6 Chubb Security Personnel told the Committee that the disciplinary procedures for breaches by staff ranged from retraining for lesser breaches, to relocation from aviation screening work to elsewhere in the organisation for serious misconduct.<sup>5</sup> An example of serious misconduct was a failure at a secondary screening point.<sup>6</sup>

## Audits undertaken by airports and airlines

- 8.7 Like the security screening companies, airports and airlines have internal audit programs. The programs comprise audits of internal processes as well as contractor performance.

---

1 Mr Alexander George, *Transcript*, 24 November 2003, p. 3.

2 Group 4 Securitas, *Submission No. 67*, p. 379.

3 Chubb Security Personnel, *Submission No. 66*, p. 375.

4 Ms Alisa Goodyear, *Transcript*, 24 November 2003, p. 13.

5 Mr Michael McKinnon, *Transcript*, 24 November 2003, p. 18.

6 A passenger triggering a response at a walk-through screening machine is directed to a secondary screening point. The passenger has to successfully pass through this point, or be physically searched, before proceeding into a secure zone.

- 8.8 For example, APAM told the Committee that it assessed its screening contractor's training records to ensure compliance with all requirements.<sup>7</sup> APAM also conducted penetration tests:

We focus on three key areas. The first, obviously, is the screening point. We also focus on our primary air side access gate for vehicles ... We do tests there to make sure that they do the appropriate checks. We also do those checks through the cargo terminals. ... we have an ongoing program of conducting those tests. When we see another area of weakness, we look at bringing in another testing regime.<sup>8</sup>

- 8.9 APAM advised that its contract with its screener included a key performance indicator system under which financial penalties could be invoked for under-performance. The principle areas covered were compliance with regulations; meeting standards during audits; and reporting certain categories of information.<sup>9</sup>
- 8.10 As well, if APAM discovered individuals not displaying their ASICs, the ASIC or the access it provided was suspended for a short period of time. This, APAM told the Committee, was its own initiative rather than a regulator requirement.<sup>10</sup>
- 8.11 BAC told the Committee that it audited the visitor log books of companies at Brisbane airport. Recently, the authority for a company to issue visitors passes had been withdrawn until it complied with BAC's requirements.<sup>11</sup>
- 8.12 BAC also carried out breach testing at the airport. Representatives explained that when its security staff attempted to breach a screening point they used 'test pieces' rather than actual weapons because to do otherwise would have been illegal.<sup>12</sup>
- 8.13 The submission from Qantas provided an overview of its inspection program:
- Each year on its domestic network, Qantas undertakes in excess of:
- 400 screening point systems tests;
  - 140 audits; and
  - 730 access penetration tests.<sup>13</sup>

---

7 Ms Pamela Graham, *Transcript*, 21 October 2003, p. 7.

8 Ms Pamela Graham, *Transcript*, 21 October 2003, p. 55.

9 Ms Pamela Graham, *Transcript*, 21 October 2003, p. 14.

10 Ms Pamela Graham, *Transcript*, 21 October 2003, p. 16.

11 Mr Edward McPheat, *Transcript*, 12 November 2003, p. 57.

12 Mr Edward McPheat, *Transcript*, 12 November 2003, p. 59.

13 Qantas Airways Ltd, *Submission No. 17*, p. 102.

8.14 Penetration tests could involve passenger screening points as well as freight terminals. Qantas gave an example of a penetration test:

... one of our inspectors [would try] to get access to the apron through an open freight terminal, just walking from the road through the terminal. If they are able to access a security restricted area where they have not been challenged, we would say that we have undertaken an access control test and it has failed. ... we would take that information to that airport operator or to that terminal operator and seek a remedy to that.<sup>14</sup>

8.15 Qantas subsequently provided details of the failure rates for its access penetration tests. Its submission stated that for 2002, some 7.3 per cent of the 730 domestic access penetration tests had failed. The failure rate for the 66 international penetration tests had been 12.1 per cent.<sup>15</sup>

8.16 Qantas told the Committee that if a screener failed to abide by a screening process, Qantas asked the contractor to move that person to a new site. If a skills test was failed, the contractor was asked to remove and retrain the screener before allowing him/her to return to screening.<sup>16</sup>

8.17 Qantas also had quarterly meetings with its three screening contractors with a view to benchmarking their performance.<sup>17</sup>

8.18 Virgin Blue told the Committee that it also audited the airports in its network and conducted access penetration tests. While the rate for successfully preventing penetration was not quantified, Virgin Blue commented that it was 'fairly high.'<sup>18</sup>

## Committee comment

8.19 The Committee is reassured by the evidence that aviation transport participants have self audit programs. Besides the duty of care responsibilities and potential liabilities arising from a major 'security incident', a significant motivation arises from the presence of the regulator. As APAM told the Committee:

We audit a number of our processes because we know we are going to be audited by the department as well. We are always in a program of self-audit.<sup>19</sup>

---

14 Mr Geoffrey Askew, *Transcript*, 12 November 2003, p. 17.

15 Qantas, *Submission No. 74*, p. 413.

16 Mr Geoffrey Askew, *Transcript*, 12 November 2003, p. 11.

17 Mr Michael McKinnon, *Transcript*, 24 November 2003, p. 16.

18 Mr Philip Geoffrey Scanlon, *Transcript*, 12 November 2003, pp. 31, 34.

19 Ms Pamela Graham, *Transcript*, 21 October 2003, p. 55.

- 8.20 It is important, however, that the types of audit which are undertaken reflect the various threats which are likely to occur. In this regard the Committee was concerned to learn, when APAM briefed it on a serious breach at Melbourne Airport (see below),<sup>20</sup> that APAM's breach testing did not include people trying to sneak through a gate when no-one was looking.<sup>21</sup>
- 8.21 **The Committee expects that when DoTaRS assesses the proposed transport security programs of aviation participants, it ensures that internal audit programs reflect potential security threats.**

## Audits undertaken by the regulator

### Competency of Department of Transport and Regional Services staff

- 8.22 There has been criticism of the level of expertise of DoTaRS personnel.
- 8.23 Qantas commented that the restructuring of the Aviation Security Policy Branch had resulted in a 'loss of significant expertise'. It was vital, Qantas argued, that there be 'some security, airport, airline, aviation, law enforcement or similar operational expertise' to enable desired policy outcomes to be achieved.<sup>22</sup>
- 8.24 BAC and SACL expressed concerns similar to Qantas.<sup>23</sup> As well, Adelaide Airport commented that there lacked 'a suitable succession training program to retain expertise, or experienced personnel at the Executive or Head Office level.'<sup>24</sup>
- 8.25 The Committee asked DoTaRS to respond to Qantas' comments. The department responded:

[The] comments tend to over-simplify the organisational change that has been affecting what is now the Office of Transport Security, and is a common feature of most organisations, including Qantas, at some stage in their evolution

The twenty-two Aviation Security Regulation staff directly involved in aviation security compliance activities at this time,

---

20 The incident occurred on 27 July 2003 and involved a passenger gaining access to the apron of Melbourne airport. *Transcript*, 21 October 2003, pp. 49–56.

21 Ms Pamela Graham, *Transcript*, 21 October 2003, p. 55.

22 Qantas, *Submission No. 17*, p. 107.

23 BAC, *Submission No. 65*, p. 367; SACL, *Submission No. 15*, p. 89.

24 Adelaide Airport, *Submission No. 18*, p. 120.

both in Regional and Central offices, either have backgrounds of the kind referred to by Qantas, or have long standing experience working in the aviation security field. These backgrounds are appropriate for an organisation whose role it is to regulate, rather than to deliver, aviation security.<sup>25</sup>

## Training of departmental inspectors

8.26 The training provided to DoTaRS inspectors was criticised in a submission from Mr Christopher Smith:

Aviation Security Inspectors continue to be tasked to inspect airlines and airports without the benefit of professional training in legislation, security programs or the audit process. ... The lack of formal training often means valuable time is wasted clarifying the Branch priorities and policies. ... Some suggest Inspectors should be able to assess threats and develop or analyse security procedures to counter the threat. Again this needs formal training and development.<sup>26</sup>

8.27 DoTaRS responded that it had long recognised the importance of a structured training program,<sup>27</sup> and it was currently developing manuals and guidance materials for the introduction of new auditing procedures in the second half of 2004 which would accompany the new regulatory framework. There would also be appropriate surveillance training for security inspectors.<sup>28</sup>

8.28 A theme in the evidence presented by the ANAO was that while DoTaRS had focussed on strategic issues it had been slow in implementing the ANAO's recommendations.<sup>29</sup>

8.29 This view is supported by the fact that it was in 1988 that the ANAO recommended that the then Department of Transport and Regional Development (DoTaRD) 'implement a training and development program to ensure that staff undertaking audits have formal training in security inspection and assessment techniques,' and 'develop operational guidelines outlining the policies, procedures and standards to be adopted

---

25 DoTaRS, *Submission No. 87*, p. 538.

26 Mr Christopher Smith, *Submission No. 73*, pp. 408–9.

27 DoTaRS, *Submission No. 79*, p. 441.

28 DoTaRS, *Submission No. 29*, pp. 212–13.

29 Mr Warren Cochrane, *Transcript*, 4 September 2003, p. 6.

by all aviation security staff.’ At the time, DoTaRD had agreed to the recommendation.<sup>30</sup>

### Committee comment

- 8.30 The Committee notes that the Government announcement on 4 December 2003 provided additional funding to enable the expansion of the aviation security regime and that a ‘significant proportion of this funding would go towards a four-fold increase in the Department’s resources to monitor industry compliance (i.e. auditors).’<sup>31</sup>
- 8.31 **The Committee expects DoTaRS to meet its commitment in regard to training and auditing manuals.**

### Types of audit performed

- 8.32 The ANAO criticised the sophistication of the audits undertaken by DoTaRS inspectors. Witnesses told the Committee that DoTaRS employed a product based approach where ‘you take a check list and you look at what is happening’ and mark off whether standards are being met.<sup>32</sup> The ANAO’s submission added:

... airport and airline audits varied in their thoroughness and rigor due to the varying quality of inspectors’ inquiries and the lack of monitoring guidance for inspectors. ... in the face of repeating security breaches DoTaRS inspectors may need to examine airport and airline procedures and to comment on any perceived deficiencies.<sup>33</sup>

- 8.33 DoTaRS agreed to ANAO’s recommendation in the audit report that DoTaRS adopt a more systems based auditing approach.<sup>34</sup> DoTaRS advised the Committee that the new systems based auditing would commence ‘in the second half of 2004 to coincide with the introduction of the new aviation security regulatory framework.’<sup>35</sup>
- 8.34 On the other hand, Mr Smith argued that inspectors should go beyond merely verifying that procedures applied by aviation participants conformed to the procedures described in their approved security programs:

---

30 Auditor-General, *Audit Report No. 16, 1998–1999, Aviation Security in Australia, Department of Transport and Regional Services*, Canberra 1998, Recommendation 8, p. 23.

31 DoTaRS, *Submission No. 79*, p. 442.

32 Mr Michael Lewis, *Transcript*, 4 September 2003, p. 3.

33 Auditor-General, *Audit Report No. 26, 2002–2003*, p. 45.

34 Auditor-General, *Audit Report No. 26, 2002–2003*, Recommendation 2, p. 46.

35 DoTaRS, *Submission No. 29*, p. 213.

... there is folly in assuming that procedures developed during periods of low risk will be effective procedures during periods of high risk particularly when the procedures are developed by personnel with no understanding or experience of high risk. The same applies to regulatory inspection. Inspectors must be given the best training available to ensure they have the best understanding and experience of procedures for high risk situations. Some suggest inspectors should be able to assess threats and develop or analyse security procedures to counter the threat.<sup>36</sup>

- 8.35 DoTaRS responded that, contrary to Mr Smith's view, the primary role of the inspector was to focus on the compliance of procedures with the security program and that this 'role should not be blurred by seeking *ad hoc* application of additional provisions.'<sup>37</sup>

### Committee comment

- 8.36 The Committee accepts DoTaRS' view of the role of its inspectors.
- 8.37 Aviation participants are in the best position to formulate the measures applicable to their operations. They either have the expertise on their staff, for example APAM,<sup>38</sup> or are able to hire consultants with a knowledge and experience of high risk situations. Moreover, aviation participants will be in the best position to know what is practical in their operational environment.
- 8.38 In the assessment of transport security programs it is the expertise residing in DoTaRS Central Office which is critical. Security program evaluators will have the advantage of being able to compare and benchmark the security measures in the various security programs and with security programs in other countries.
- 8.39 Nevertheless, the Committee believes that transport security programs should contain contingency plans for an environment of increased threat. The Committee has noted in Chapter 6 that the use of regulations will allow a rapid response if the threat environment changes.
- 8.40 The Committee does not believe Australia's aviation participants are reluctant to devise appropriate security measures. While they are profit-making organisations, the Committee is confident that their duty-of-care, insurance liability concerns, and the potential losses arising from a 'serious security incident' are sufficient motivators. When breaches have

---

36 Mr Christopher Smith, *Submission No. 73*, pp. 408, 409.

37 DoTaRS, *Submission No. 79*, p. 441.

38 Ms Pamela Graham, *Transcript*, 21 October 2003, p. 2.



occurred, participants have demonstrated their willingness to respond quickly—such as closing down a domestic terminal—thereby incurring financial loss and inconveniencing thousands of passengers.<sup>39</sup>

## Audits of airports and airlines

- 8.41 The ANAO audit concluded that the audits of airports and airlines were sufficiently frequent, well timed, and conducted according to schedule. It was noted that DoTaRS modified the timing of audits to ensure that a major airport was audited before any significant event, such as Sydney airport before the Olympics.<sup>40</sup>
- 8.42 Witnesses also commented on the frequency of visits by DoTaRS. Brisbane Airport Corporation commented:
- Our friends ... from the department are, to praise them, a bit like the plague. They are out at the airport virtually every day of the week doing some sort of inspection systems testing.<sup>41</sup>
- 8.43 APAM added that if department inspectors were at the airport, they would bring to APAM's attention anything which they observed to be incorrect, and would undertake random checks of screening.<sup>42</sup>
- 8.44 While airport operators appeared satisfied with DoTaRS' audit process, Qantas considered the results should be disseminated to stakeholders. The airline argued that if there were audits of processes which affected the operations of carriers, those carriers should be advised of the outcome. Providing such advice, Qantas stated, would enable it to work with the government agency, the airport or terminal operator to improve the process.<sup>43</sup>
- 8.45 As noted in Chapter 5, DoTaRS has responded to this issue. The department advised that at ASC meetings, airport audit findings were generally discussed and DoTaRS' formal advice of the outcome of its airports audits were usually tabled.<sup>44</sup>

---

39 Mr Geoffrey Askew, *Transcript*, 12 November 2003, p. 17.

40 Auditor-General, *Audit Report No. 26, 2002–2003*, p. 34.

41 Mr Edward McPheat, *Transcript*, 12 November 2003, p. 59.

42 Ms Pamela Graham, *Transcript*, 21 October 2003, p. 11.

43 Mr Geoffrey Askew, *Transcript*, 12 November 2003, p. 11.

44 DoTaRS, *Submission No. 87*, p. 538.

## Audits of air cargo operations

- 8.46 International air cargo is managed through a regulated agents scheme. Regulated agents handle the air cargo under an approved security program. The agents have to screen cargo from unfamiliar consignors.
- 8.47 The ANAO found that DoTaRS' auditing of regulated agents was guided by an 'identified set of risk factors', but only a small number of agents had been audited. Instead DoTaRS relied on intelligence from within the industry to identify concerns about particular agents. DoTaRS had advised the ANAO that a lack of resources had prevented greater monitoring.<sup>45</sup>
- 8.48 The ANAO recommended that DoTaRS 're-examine the resources applied to, and the frequency of, auditing regulated agents' compliance with their International Cargo Security Program.<sup>46</sup> The ANAO subsequently advised the Committee that DoTaRS had recruited additional staff, but that this was insufficient for the department to commence audits.<sup>47</sup>
- 8.49 Similar criticisms were also levelled in the submission from Mr Smith. The submission reiterated the lack of DoTaRS personnel, but added that the department had not taken advantage of regional aviation inspectors to audit regulated agents. Mr Smith cited an example where he was aware that a regulated agent was not following procedures and commented:
- Companies continually complain about competitors who disregard the regulations and see no improvement in either the level of regulation or the application of security procedures. ... Regulated agents, who support the security program, need to be assured that their efforts are necessary or they will lose interest and redirect funding to other areas.<sup>48</sup>
- 8.50 The Committee asked DoTaRS to respond to Mr Smith's submission. The department advised that regional aviation inspectors had been used in cargo auditing functions, but 'given available resources and other aviation security priorities' their work had become focused on other areas. The regulated agents scheme was subsequently administered from Central Office using a systems-based approach.<sup>49</sup>
- 8.51 DoTaRS also noted that the creation of its Transport Security Division on 1 July 2003 involved:

---

45 Auditor-General, *Audit Report No. 26, 2002-2003*, p. 35.

46 Auditor-General, *Audit Report No. 26, 2002-2003*, Recommendation 1, p. 36.

47 ANAO, *Submission No. 22*, p. 152.

48 Mr Christopher Smith, *Submission No. 73*, p. 410.

49 DoTaRS, *Submission No. 79*, pp. 441-2.

- reorganising to allocate increased resources to cargo security integrated across all transport modes; and
  - redesigning work processes to incorporate the auditing of cargo related agents into the work programmes of regional offices.<sup>50</sup>
- 8.52 The Committee notes that the government announcement on 4 December 2003 included the provision of ‘a four-fold increase in [DoTaRS] resources to monitor industry compliance (ie auditors), including that of Regulated Agents.’<sup>51</sup>
- 8.53 While the discussion above applies to international cargo, the government announcement also indicated that the Regulated Agents Scheme would be extended to domestic air freight.<sup>52</sup> The Committee sought an update on progress from DoTaRS.
- 8.54 DoTaRS advised that is was:
- ... finalising details of an audit program that will commence in March 2004 and result in 70 regulated agents being audited by [departmental] officers between March and June 2004. In the light of these audits the program will be fine tuned to form the basis of a continuous audit program. After July 2004 the audit program will be expanded to cover regulated agents handling domestic airfreight ...
- The strategy to expand the regulated agents scheme will ... include a targeted communications component designed to inform domestic air freight forwarders of the requirement for them to comply with the scheme.<sup>53</sup>

## Penalties for breaches

- 8.55 *Audit Report No. 26, 2002–2003* discussed various methods by which DoTaRS could encourage compliance of aviation stakeholders following audit. The ANAO noted that there was little difference in letters to airports and airlines ‘regardless of whether they had committed (i) a serious breach or less-serious breach or (ii) a one-off breach or a series of repeat breaches’ and did not aggregate breaches to apply increased pressure to comply.<sup>54</sup>

---

50 DoTaRS, *Submission No. 79*, p. 442.

51 DoTaRS, *Submission No. 79*, p. 442.

52 DoTaRS, *Submission No. 79*, p. 447.

53 DoTaRS, *Submission No. 87*, p. 537.

54 Auditor-General, *Audit Report No. 26, 2002–2003*, p. 52.

- 8.56 The ANAO added in its submission that this ‘standard letter’ approach had ‘the potential to be interpreted by industry as a tacit acceptance that a certain level of breaches would be tolerated.’<sup>55</sup>
- 8.57 As well, while the legislation and regulations provided for civil monetary penalties for breaches, such penalties had ‘never been applied’. The ANAO concluded there was no graded system of penalties because the requisite administrative procedures were absent. There were also ‘no practical enforcement mechanisms in between a warning letter and the cancellation of the security program of an airport or airline.’ Cancellation would prevent an airport or airline from operating in Australia and so would in effect only occur in extreme circumstances. It was therefore not a good enforcement tool.<sup>56</sup>
- 8.58 The ANAO recommended that ‘DoTaRS take a more strategic and coordinated approach to ensuring compliance’ and incorporate:
- ... administrative policies and procedures for introducing a pyramid of enforcement to correct non-compliance at the appropriate level in the chain of authority.<sup>57</sup>
- 8.59 In response to the ANAO’s recommendation, the *Aviation Transport Security Act 2004* provided, by way of the regulations, for the introduction of a demerits points system. DoTaRS commented:
- A demerit point system defers the imposition of serious punitive measures. A clear warning system is set up so that industry and the regulator have an ongoing ‘health-check’ on the delivery of security outcomes, prior to resorting to punitive enforcement measures.<sup>58</sup>
- 8.60 The proposed demerits system received a less than enthusiastic response from the aviation industry, ranging from in-principle acceptance to strident criticism.
- 8.61 Chubb told the Committee that demerits was one way to construct key performance indicators. It was how they were used and the resulting corrective action which was the key:
- You need to make sure it is properly constructed in the first place and that accountability rests predominantly where the responsible person is. That may be the airline operator, it may be us as the

---

55 ANAO, *Submission No. 22*, p. 153.

56 Auditor-General, *Audit Report No. 26, 2002–2003*, p. 54.

57 Auditor-General, *Audit Report No. 26, 2002–2003*, Recommendation 4, p. 56.

58 DoTaRS, *Submission No. 70*, p. 393.

employer, it may be the individual employee or it could be a combination of all of them.<sup>59</sup>

- 8.62 APAM expressed a similar view. While it did not have an issue with the concept, the concern was how it would be applied:

For example, would the regulator issue demerit points at one airport, if they went air side and saw that somebody was not displaying an ASIC, and not do it at another airport? ... Would it be applied against the security program holder or would it be applied against the individual who was infringing the system?<sup>60</sup>

- 8.63 APAM also noted that the regulations under the *Air Navigation Act 1920* allowed the department to prosecute, but this had to APAM's knowledge never happened.<sup>61</sup>

- 8.64 SACL also questioned whether a standardised approach could be established nationally. It added that a demerit points system had 'the potential to impact unfavourably on the insurance costs, share price and credit status of airports and airlines.'<sup>62</sup>

- 8.65 Qantas supported the use of penalties against organisations and individuals to promote an accountability-based security culture and improving compliance, but noted there were a 'myriad of practical problems' with such a system. It was concerned that the introduction of a demerit system was in response to ANAO recommendations. If so, it could be 'a case in which issues of public perception were driving regulatory processes, rather than achieving enhanced security outcomes.'<sup>63</sup>

- 8.66 Like Qantas, Perth Airport and BARA suggested the demerits system did not link to improving security outcomes.<sup>64</sup> BARA went further and suggested that a demerit system denied natural justice. It supported this view with the example of breaches involving ASICs issued by an airport operator to employees of **another** business at the airport:

It is entirely unreasonable to expect airport operators to be responsible for the actions of other employers in policing their employees in relation to ASIC requirements. Yet if the employees ... repeatedly breach the ASIC requirements, under the demerit points system, it is the airport operator which incurs the demerit

---

59 Mr Michael McKinnon, *Transcript*, 24 November 2003, p. 19.

60 Ms Pamela Graham, *Transcript*, 21 October 2003, p. 9.

61 Ms Pamela Graham, *Transcript*, 21 October 2003, p. 9.

62 SACL, *Submission No. 15*, p. 90.

63 Qantas, *Submission No. 17*, p. 113.

64 Perth Airport, *Submission No. 28*, p. 188; Mr Warren Bennett, *Transcript*, 2 October 2003, p. 55.

points against its security program. No penalty will attach to the actual employer of the infringing employee.<sup>65</sup>

8.67 The Committee asked the LHMU whether individual employees should be penalised under a demerits system. The LHMU responded:

It is the employer's responsibility to ensure that there is an appropriate system in operation, ... Obviously there can always be human failings, but the major issue to address is the system of work. To the extent to which people are not trained well enough or they are not paid well enough or they have rostering systems that put onerous burdens on them, that is going to detract from security.<sup>66</sup>

8.68 The Committee sought comment from DoTaRS. At the Committee's first hearing in September 2003, the witness speculated on the reasons for the adverse reaction to the proposed demerits system:

... demerit points provide, if you like, a running tab of how people are going. One of the concerns in the industry is that once we had a running tab it might be taken out of perspective, and I agree it could be taken out of perspective. There would not be that sense of proportion between minor incidents and larger incidents, people would just look at the number.<sup>67</sup>

8.69 At the Committee's final hearing in November 2003, DoTaRS acknowledged that industry had 'some legitimate concerns' about the proposed demerits system. The witness added that in the interests of completing the legislation and introducing the regulations, the demerits system had been 'taken off the table'. It remained, however, in the proposed legislation and the department was continuing to work with the industry on the issue.<sup>68</sup>

## Committee comment

8.70 The Committee agrees with the ANAO's view that DoTaRS 'should properly hold airports and airlines accountable and ensure that they in turn hold their contractors and employees accountable for security breaches.'<sup>69</sup>

---

65 BARA, *Submission No. 3*, p. 18.

66 Mr Jeff Lawrence, *Transcript*, 21 October 2003, p. 66.

67 Mr Andrew Tongue, *Transcript*, 4 September 2003, p. 28.

68 Mr Andrew Tongue, *Transcript*, 24 November 2003, p. 29.

69 Auditor-General, *Audit Report No. 26, 2002-2003*, p. 49.

- 8.71 Taking as an example the actions of a security screener which leads to a security breach, the Committee notes the evidence that:
- the screener can be disciplined by the screening contractor;<sup>70</sup>
  - the screening contractor can be financially penalised by the airport;<sup>71</sup> but
  - while DoTaRS can penalise the airport, this has not occurred.<sup>72</sup>
- 8.72 In practice therefore, there is a break in the chain of accountability.
- 8.73 The Committee has considered BARA's argument that the absence of an accountability link between an airport and employees of a separate company can lead to a denial of natural justice. The Committee believes there is a link because:
- the airport has leverage over the separate company because it can review the issuing of ASICs to employees of the separate company; and
  - in the last resort has recourse to Part 2, Division 3, Section 15 of the *Aviation Transport Security Act 2004* which makes it an offence to hinder or obstruct compliance with the transport security program of another aviation industry participant.
- 8.74 In conclusion, the Committee, like some witnesses, supports a demerits system in principle. This is because demerits can provide a graded response and engage the chain of security responsibility. It therefore can promote positive security outcomes. The system, however, needs to be properly constructed and administered. The Committee agrees with APAM that it is the application which is the key.
- 8.75 If a demerits system is to be credible and provide a compliance incentive for all in the aviation industry, it must be rigorously and consistently applied, and must provide a real penalty. Also, aviation participants subject to demerit must be capable and prepared to apply penalties 'down the chain of accountability.'
- 8.76 The Committee welcomes the advice from DoTaRS that it is consulting further with the aviation industry before a demerits system is introduced.

---

70 For example, Chubb Security Personnel told the Committee it would reassign or retrain screeners who failed a test.

71 For example, APAM told the Committee that financial penalties were applied to its screening contractors for under-performance.

72 APAM told the Committee that it was unaware of any DoTaRS prosecutions arising from security breaches.

The Committee notes that alternative models have been suggested,<sup>73</sup> but has no view as to their value as alternatives.

---

73 SACL suggested the NSW WorkCover system—Mr Ronald Elliot, *Transcript*, 2 October 2003, p. 15; Cairns Port Authority suggested a Civil Aviation Safety Authority system—Mr Ian Robinson, *Transcript*, 12 November 2003, p. 70.