

To :

Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport

29th March 2012

RE:

Submission to Senate enquiry :

Aviation Transport Security Amendment (Screening) Bill 2012 [Provisions]

Firstly I would like to thank the committee for the opportunity the public has been given to express their concerns regarding the proposed amendments to the act. The existing act was a kneejerk reaction to world events at the time and while terrorism is still a real and serious threat the current security screening regime has created significant problems without substantially reducing the risk of aviation terrorism. The present law has facilitated a culture of bastardization by screening staff and the office of transport security who have failed to operate in the public interest. The proposed amendment will make this problem worse. Instead of defeating this bill I would like to encourage senators to take the time to develop laws which strike a better balance between national security and social or economic factors.

Both the present act [1] and the proposed amendments are seriously flawed and fail to provide sufficient protection to the travelling public from an overzealous screening industry. The existing section 44 allows the department of transport to introduce whatever screening methods it so happens to feel like without any sort of limitation. To make this worse subsection (3) allows screening methods to be concealed from the public. A law which allows an authority to do whatever it wants without any sort of accountability is something one would expect in a totalitarian state not a western democracy. Terrorism may be a real and serious threat but there is no excuse for such a substantial departure from the rule of law. The reality is by preserving our democratic culture we defeat terrorist ideology.

"The Government is also conscious of the importance of the aviation sector to the Australian economy. In this context, aviation security should not be a barrier to travel, or prevent the movement of goods either domestically or internationally. Regulation of aviation security should continue to be developed and implemented in full consultation with industry and the broader community to ensure its impacts are well understood and do not make air travel unnecessarily less convenient or affordable."

Aviation White paper [2]

I previously held a position which required a significant amount of air travel. After being assaulted on more than one occasion and harassed by screening staff more times than I can count, I became so fed up I resigned from a perfectly good job to take up one less fulfilling with reduced remuneration just to avoid flying. The aviation whitepaper suggests that airport security should not deter air travel. Clearly this is not the case. Airport security not only deters me from air travel but has also had a severely negative impact on my life. I know I am not the only one. My experiences and research into airport security has uncovered some issues which I believe are seriously disturbing.

I would estimate I have witnessed several hundred unlawful acts committed by screening staff in the last few years. During one altercation I had with a screening officer, I highlighted the regulations and the officer replied that he was not familiar with the regulations and was just doing his job. There is an irony in this because as a member of the traveling public I am forced to have strong knowledge of aviation security law yet the screeners don't know the law and don't appear to care. The sheer number of unlawful incidents I have witnessed is a clear indication that there is a culture of ignorance and contempt for the law within the airport screening industry.

The culture of contempt for the law appears to have developed from the screening authorities and the office of transport security. I have contacted the office of transport security to find out what the procedures are for explosive trace detection but they refused to supply these. I lodged a freedom of information request for the same which was declined. I contacted my local MP who contacted the minister for transport. While I thank the minister for his sincerity of his reply I note he did not address any of my concerns. I complained to the screening authority who gave a well rehearsed apology but also failed to address my concerns. Overall the attitude of the screening authorities and the office of transport security are no better than the thugs they employ to do their dirty work. The OTS behaves as if the Australian people are its enemy.

While noting the unlawful behavior of screening staff my greatest concern is the way in which passengers are treated. Apart from being assaulted, I have witnessed other passengers being bullied, abused, insulted, and generally harassed. This behavior appears to be the normal culture of screeners. It is a behavior which I find offensive, unnecessary and not an appropriate way to treat people. A well documented example of their behavior can be found in *Korten v Chubb* [3]. In this example the antics of screeners included forcing people to crawl through the baggage x-ray machine as well as general harassment. While this case was severe I do not believe it is isolated. It is only slightly worse than some of the behavior I have seen in the three airports I frequent.

At Perth airport the screening authority became so concerned about altercations between passengers and staff they issued duress alarms [4]. While mining workers were blamed in the article for the problem I would strongly disagree with this comment. I have witnessed several altercations between mine workers and airline or screening staff and none were a result of drunken behavior. The mine workers were simply retaliating for the way they were treated. They fly regularly and I would speculate they have most likely lost patience with being constantly harassed. They are usually quite confident people and have no hesitation in challenging such aggressive behavior.

My argument is that the behavior of screeners is a direct result of a bad law. The current section 44 [1] allows the department to introduce whatever procedure it feels like and reserves the right of conceal that procedure from the public in subsection 3. The result is that the public have absolutely no idea what their rights or obligations are. The public simply do not know if what they experience is lawful or not. In my own experience it took extensive research to determine that I was in fact unlawfully assaulted. Screeners have effectively become a class of people above the law.

This same principal also applies of the office of transport security itself. If they have the right to conceal the procedures then there is no way for anyone to determine if there procedures are lawful. While I was denied the procedures themselves, over time I have developed a reasonable good idea what they are. While my evidence is hearsay and circumstantial I do believe the procedures themselves as best as I can determine are not lawful. I can appreciate the seriousness of this point. I would ask the committee not to take this from my word but to investigate this comment for themselves using their privileges. Again I stress this problem is caused by the fact that procedures are concealed from the public. Ultimately I see a substantial difference between what the act [1] allows and what actually goes on in airports.

In section 97 of the act [1] screeners must not subject a person to unnecessary indignity. This is another law which is treated as a joke by screeners. Their behavior is clearly in breach of this law but there is no penalty so is it really a crime? And what are screeners meant to do in the case where screening methods like pat down's, ETD testing or body scanners are used ? These methods most definitely subject people to indignity and there is a strong argument to suggest these are unnecessary. Has the office of transport security committed a crime or are they above the law too?

Another aspect of the impacts of airport security is economic. While the economic impact of screening procedures is difficult to model, I have no doubt that the present screening regime has shaved billions of dollars off the national economy due to people choosing not to fly. The right of free travel may not have been explicitly denied, but for people like me the right of free travel has effectively been denied. I also believe from airline staff comments that the number of people who refuse to consent to invasive screening has been increasing. Again please treat this information as hearsay. I would suggest the committee determine how often this does occur. If nothing else passengers who fail to get through screening causes airlines significant disruption because the passengers' baggage has to be removed from the plane before flying.

The present law also makes a mockery of the idea of consent. Australian civil and criminal law have well established that consent must be without reservation, duress or threat. The present act makes a mockery of this and contradicts itself. People must consent to testing under the threat of being prevented from boarding a plane. That scenario is not consent by definition regardless of how the individual may feel about the test. This places both the screener and the passenger in some sort of legal limbo [6]. Consent could be changed to volunteer. If we are going to treat the Australian legal system like some sort of joke then we may as well do a good job of it.

The proposed amendment has been prompted by the implementation of body scanners which are a four layered insult to the Australian people. They don't work, they are expensive, they are a harassment tool and now they are used to deny choice. The body scanners have a high rate of false positives [5] which itself is a joke considering the money which has been spent on them. If the rate of false positives is high, the rate of false negatives is likely to also be high. The implication of using such unreliable technology is that it will simply become another instrument for public harassment. If people fail to pass the test they will be unjustifiably subjected to further harassment on the grounds of false information derived from a known unreliable source. The final insult comes from the removal of section 95A. People not comfortable with the technology will now be denied the choice to opt for a pat down.

While the aviation transport security act does need to change, the bill before parliament now is a giant step backward. While terrorism is still a serious threat the risks are now far better understood. I believe the risks of terrorism could be substantially reduced by other means and such invasive checkpoint screening is unnecessary and has substantially negative social and economic impacts. Invasive screening methods such as pat down testing, body scanners and explosive trace testing should be strictly reserved for genuine cases of reasonable suspicion only. There also needs to be penalties for screeners and a mechanism to prosecute them.

The act needs a substantial rewrite to better reflect the rule of law. My belief is the present culture of behavior is a direct result of a vague and badly written law. The act needs to be clearer and concise. There needs to be strict limits to what screening methods can be used both in cases of reasonable suspicion or not. Most importantly the public should be able to find out what their rights and responsibilities are. If the office of transport security cannot act responsibly, lawfully and in the national interest then its power should be revoked.

- [1] Aviation Transport Security Act 2004; <http://www.comlaw.gov.au/Details/C2012C00104>
- [2] National Aviation Policy White Paper: Flight Path to the Future ;
<http://www.infrastructure.gov.au/aviation/nap/>
- [3] KORTEN -v- CHUBB SECURITY AUSTRALIA LTD [2008] WASC 285 (8 December 2008) ;
<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/wa/WASC/2008/285.html?stem=0&synonyms=0&query=korten%20chubb>
- [4] Airline staff given rage alarms - The West Australian
<http://au.news.yahoo.com/thewest/a/-/latest/8926611/airline-staff-given-rage-alarms/>
- [5] Sweating over scan - new airport body scanner doesn't like perspiration – news.com.au
<http://www.news.com.au/sweating-over-scan-new-airport-body-scanner-doesnt-like-perspiration/story-e6freuzi-1226106263800>
- [6] N, Gary --- "Screening and `frisk searches' as part of airport security: Matters of choice? The need for `checks and balances' in aviation security legislation" [2007] QUTLawJl 14; (2007) 7(2) Queensland University of Technology Law and Justice Journal 209
<http://www.austlii.edu.au/au/journals/QUTLawJl/2007/14.html>