



Mr Stephen Palethorpe  
Committee Secretary  
Senate Rural and Regional Affairs and Transport Legislation Committee  
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By email: [rrat.sen@aph.gov.au](mailto:rrat.sen@aph.gov.au)

Dear Mr Palethorpe

## **Inquiry into the Aviation Transport Security Amendment (Screening) Bill 2012**

### **Introduction**

The Office of the Australian Information Commissioner (the OAIC) refers to the Inquiry of the Senate Committee on Rural and Regional Affairs and Transport Legislation (the Committee) into the Aviation Transport Security Amendment (Screening) Bill 2012 (the Bill).<sup>1</sup>

The OAIC makes the following comments.

### **The Office of the Australian Information Commissioner**

The OAIC was established by the *Australian Information Commissioner Act 2010* (Cth) and commenced operation on 1 November 2010.

The OAIC is an independent statutory agency headed by the Australian Information Commissioner. The Information Commissioner is supported by two other statutory officers: the Freedom of Information Commissioner and the Privacy Commissioner.

The former Office of the Privacy Commissioner (the OPC) was integrated into the OAIC on 1 November 2010.

The OAIC brings together the functions of information policy and independent oversight of privacy protection and freedom of information in one agency, to advance the development of consistent workable information policy across all Australian government agencies.

### **History of the OAIC's engagement in this matter**

On 9 June 2010, the former OPC entered into a Memorandum of Understanding (the MOU) with the Department of Infrastructure, Transport, Regional Development and Local Government (the Department: now the Department of Infrastructure and Transport) regarding the implementation of body scanners in Australian international airports (the body scanning project). Specifically, the Department agreed to fund the OAIC to assist the Department by providing advice on privacy matters and facilitating stakeholder consultation.

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[www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=ic/aviation/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ic/aviation/index.htm)

The initial term of the MOU was 9 June 2010 to 9 June 2011. The term was extended by agreement between the parties and concluded on 31 December 2011.

Under the MOU, the OAIC relevantly carried out the following tasks:

- The OAIC provided information and advice to the Department on privacy matters relating to the body scanning project.
- The OAIC facilitated two privacy roundtables (held on 22 September 2010 and 21 September 2011) between the Department and a selection of affected stakeholder groups, including privacy, civil liberties, children's, religious, transgender, intersex, and disability advocacy groups. The roundtable held on 21 September 2011 considered the consultation draft of the *'Implementation of Body Scanners: Privacy Impact Assessment'* (the draft PIA) released by the Department in August 2011.
- The OAIC provided advice and comments to the Department on the draft PIA at several points during the preparation of the draft, including advice on structure and content. The OAIC made a submission to the Department regarding the consultation draft PIA. A copy of this submission is available on the OAIC's website.<sup>2</sup>

### **Balancing the right to privacy against other interests**

The *Privacy Act 1988* (Cwth) (the Privacy Act) recognises that an individual's right to privacy is not an absolute right and that, in some circumstances, it must be weighed against other imperatives, such as, in this case, ensuring aviation security objectives are met. For this reason, careful analysis is needed in the development of new policies and programs to ensure that the proposed measure is necessary, effective, proportional, the least privacy invasive option and consistent with community expectations.

The repeal of s 95A of the *Aviation Transport Security Act 2004* would remove the right of passengers to choose a frisk search as an alternative to another screening procedure. The MOU between the Department and the OAIC concluded prior to the policy change that removed the option for passengers to elect to undergo a frisk. The advice provided by the OAIC during the period of the MOU was in the context of there being a choice.

The OAIC considers that, providing that aviation security outcomes are able to be met, allowing passengers to choose a frisk search in a private room rather than undergo a body scan in a public space, may better address the privacy concerns of some members of the community. I note these concerns were raised by stakeholders during the roundtables mentioned above and also in submissions to the department on its draft PIA.

I hope these comments are of assistance to the Committee.

Yours sincerely

Timothy Pilgrim  
Australian Privacy Commissioner

30 March 2012

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<sup>2</sup> [http://www.oaic.gov.au/publications/submissions/2011\\_09\\_consult\\_body\\_scanners.html](http://www.oaic.gov.au/publications/submissions/2011_09_consult_body_scanners.html)