

Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam

We wish to voice our objection to the proposed Aviation Transport Security Amendment (Screening) Bill 2012 (“the Bill”). The Bill primarily seeks to create a mandatory requirement for selected passengers travelling out of Australian International airports to undergo a “body scan” in the form of an L-3 Communications ProVision millimetre-wave body scanner (“Scanners”) (although the drafting does not restrict the Government’s options to this machine). Our concerns relate to the following key areas:-

1. Civil Rights

- 1.1 Freedom of choice;
- 1.2 The right to health;
- 1.3 The right to privacy; and
- 1.4 The right to freedom of movement.

2. Health & safety Issues

- 2.1 General;
- 2.2 Lack of independent testing;
- 2.3 Study by Centre for Nonlinear Studies at Los Alamos National Laboratory; and
- 2.4 Health concerns for our family.

3. Effectiveness of the Proposed Screening Procedure

- 3.1 Effectiveness; and
- 3.2 Counterproductive Security Focus.

4. Conduct of the Government in bringing the Bill

- 4.1 Procedural deficiencies;
- 4.2 Misleading statements; and
- 4.3 Lack of evidence to support Government position and statements.

5. Conduct of other Governments

- 5.1 European Union;
- 5.2 Italian Government;
- 5.3 German Government; and
- 5.4 Israeli Government.

6. Drafting of the Bill

- 6.1 Disparity between the Bill’s drafting and alleged intended use.

7. Effect On Tourism

- 7.1 Reduction in Tourism.

1. Civil Rights

1.1 Freedom of Choice

The introduction of this Bill seeks to erode the long standing concept of a human being's freedom of choice. Looking to the Bill itself, item 1 at page 6 of the Explanatory Memorandum for the Bill provides that "*A person will be taken to have consented to each screening procedure that may be conducted at a screening point where screening is necessary in order to board an aircraft or to enter an area or zone of a security controlled airport*". It goes on to provide that "*The affect of this amendment will be to **simplify the current consent requirements***". The "simplification" of consent requirements in this case manifests as the removal of a person's freedom of choice. This automatic consent provision, coupled with the lack of any legislated restriction on scanning equipment that can be used by airport security (see the section of this submission entitled "Drafting of the Bill"), means a person can be scanned with any kind of device without the individual's knowledge or consent - for example a roving high powered x-ray machine could be used on someone without their consent or knowledge with the current drafting). This is a very wide power for a Government to wield and, unbelievably, reminds us of legislative drafting by the Soviet Union decades ago, that was aimed at the protection of the so called "greater good" rather than the rights of any individual. This is a concept worthy (or even surpassing) the fictional novel "1984" by George Orwell.

1.2 The Right to Health

Article 12(1) of the International Covenant on Economic, Social and Cultural Rights provides that an individual has the right to the highest attainable standard of physical and mental health.

In the Explanatory Memorandum for the Bill the Government provides that it has "*carefully considered the technology options available in regards to potential health effects for both the general public and airport workers*". It goes on to provide that it has had extensive consultation with the Department of Health and Ageing, the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), the Therapeutic Goods Administration. We were interested to read on a frequent flyers' forum recently that, allegedly, ARPANSA's "consultation" consisted of the Government presenting ARPANSA with output data provided by the manufacturer of the Scanners, rather than ARPANSA being provided with an actual Scanner and being given the right to run independent tests. Having the manufacturer of the machines (who stands to gain a great deal of money if the tests are satisfactory) provide the output readings and data seems like a significant conflict of interest. I note that ARPANSA have released a very simple report found at http://www.arpansa.gov.au/RadiationProtection/Factsheets/is_AirportScreening.cfm which provides no basis for their conclusions, no methodology as to how these conclusions were reached, and no substantive output results or readings, capable of academic scrutiny. We question the level of analysis these machines have had prior to the Government concluding they are "safe".

We would also bring to the Committee's attention the carefully phrased assurances by the Government in the Explanatory Memorandum at page 4 paragraph 1 "*Outside the scanner, the exposure of aviation security screeners responsible for operating millimetre-wave body scanners working everyday in close proximity to these machines **can be considered** to be insignificant*". The words "can be considered" indicate this is merely an opinion rather than

fact. When it comes to public safety and health, surely the Government should be able to state with confidence that the exposure **is** insignificant based on independent testing.

1.3 The Right to Privacy

The Government has made many assurances that the Scanners only produce a generic image of the human body (as opposed to a highly detailed image of the individual's naked body). Given the Scanner is allegedly capable of picking up anomalies that are only millimetres wide, coupled with our review of the L-3 Communications website and supporting commentary, this cannot be strictly true. The detailed image of the naked human body would no doubt be created by the scanning machine and stored on the memory bank - a secondary piece of software would then convert that image to a generic human drawing. Therefore, the machine uses what is termed as "facade software", meaning the detailed image is **still produced and stored**. We do note, however, that allegedly this image is then deleted from the memory bank. We would also, however, draw the Committee's attention to recent news in the United States and the United Kingdom where naked images of individuals were released by airport staff despite similar assurances that the images were deleted after use.

1.4 The Right to Freedom of Movement

In the Bill's Explanatory Memorandum it refers to Articles 12 and 13 of the ICCPR (at page 2) about protecting "*...a person's right to move freely...*". The Government then has the audacity to say in the next sentence that what they are proposing, "*...may restrict a person's right to leave Australia...*" It is not a case of "may restrict". In fact, there is no doubt that this would be restricting a person's right to leave Australia if they refuse a scan. This takes away a basic human right - the freedom of movement in and out of one's own country.

We can find no justification by the Government that it is necessary to remove alternatives to body scanning, like an enhanced "pat down" or "frisk" which is a perfectly good alternative for those who do not wish to undergo a full body scan.

We note that no other country in the world has a restriction of this magnitude. The closest example would be the United Kingdom (which also uses the no-opt out policy); however a critical difference is the fact that the United Kingdom does not have these scanners at all international airports. Secondly, it is likely the United Kingdom will remove this policy in light of the European Union's ruling that an opt out provision was essential to maintain basic human rights.

Page 3 of the Explanatory Memorandum states "*...It is unlikely that any passenger who fully understands the procedures and the technology would opt for an enhanced full body frisk in preference to a body scan...*" This is presumptuous and worse shows that the author/s of the Bill, has/have completely lost touch with the views of Australians. We, along with many of our friends and acquaintances, including a University Professor of Physics would, **without hesitation**, opt for a frisk over a scan. Further, if the Government is so sure that most people would opt for a scan, then what is the harm in providing a pat down to those who would not?

2. Health & Safety Issues

2.1 General

Page 3 of the Explanatory Memorandum quotes Article 12(1) of the International Covenant on Economic Social and Cultural Rights ("ICESC"), in that each individual has "*The right to the highest attainable standard of physical and mental health is protected*".

If this is the case, then surely people have the right whether to subject their body to this technology, especially given that no one can guarantee that these scans are safe for every individual. People are more conscious of their health than ever before. They are less willing to accept that something is "safe" or that a certain technology is only akin to "*passive exposure to a mobile phone*". The Government is expecting the public to have blind faith that to enter a machine and have their full body scanned (the machine being operated by airport staff) is completely safe. Without a doubt, people should be given the choice of the full body scan or a "pat down". The onus would then be removed from the Government and placed in the individual's hands should there be any long term effects of these scans. In some cases it would be injurious to their mental health to force a full body scan on an individual who has concerns about the safety of the scans.

2.2 Lack of Independent Testing

At first glance it is easy to dismiss any notion that the Scanners are damaging. The fact is that no long term independent studies have been done to assess this and there are experts who believe a safety study is warranted. Backscatter full body scanning machines, up until recently, were reportedly safe. Now, the European Union has decided that they are unsafe and banned their use. Some reports suggest they delivered 20 times more radiation than was advised. We are now supposed to believe that the Millimetre Wave Scanners are safe.

2.3 Study by Centre for Nonlinear Studies at Los Alamos National Laboratory

A study conducted by Boian S. Alexandrov (and colleagues) at the Center for Nonlinear Studies at Los Alamos National Laboratory in New Mexico showed that the waves emitted from the millimeter wave scanners "*...Unzip double-stranded DNA, creating bubbles in the double strand that could significantly interfere with processes such as gene expression and DNA replication.*" In layman's terms, any time you're talking about interfering with "gene expression" and "DNA replication", you're essentially talking about something that could be a risk to human health. Despite these reports, there are repeated assurances from the Australian Government that these machines are "safe" - in short, the long term effect of these machines is unknown and in dispute. In the absence of a strong, independent, peer reviewed study that concludes these scanners have no long term effects whatsoever, how can a responsible government introduce them simply because it believes they are "*not proven to be dangerous*"? - This seems remarkably irresponsible. Surely, they should only be introduced if they are proven to be safe.

In any other setting, machines which scan the entire human body in this way would be considered a medical device and would be operated by medically trained people. They would presumably be subject to some Health Authority scrutiny and auditing as well. It is quite concerning to think that the person undergoing the scan has energy emitted from the machines directed at their whole body, with the machine being operated by airport staff.

2.4 Health Concerns for Our Family

In our immediate family there is a history of a rare type of Lymphoma which presents as lesions within the skin. It is a high grade malignant Lymphoma and systemic spread is rapidly fatal. The etiology of this type of Lymphoma is unknown, so no one, not medical practitioners, scientists and certainly not government officials, would be able to guarantee us that undergoing a body scan such as those at airports would not trigger the development of these Lymphoma lesions. We would therefore be unable to travel out of Australia, because we would not be prepared, nor should we be expected to, risk such a situation. If it was for a medical reason, we would weigh the risk/benefit ratio and decide from there. However, the airport scan is of no benefit to us. We know we are not criminals and would not be carrying anything illegal. However, we would be quite happy to submit to a manual pat down in order to reassure airport staff that we are clear. In fact, why should any member of the public be expected to submit themselves to these scanners when the machines have not been adequately tested regarding possible health implications in the long term?

3. Effectiveness of Proposed Screening Procedure

3.1 Effectiveness

As we understand it, the introduction of these scanners is as a result of the 2009 "underwear bomber" (Umar Farouk Abdulmutallab) who boarded a US bound flight at Amsterdam airport. Why is the Government saying that the explosives he had hidden in his underwear were not picked up with a frisk search, when he did not undergo such a search in the first place? It is our understanding that Mr Abdulmutallab was actually escorted onto the plane by United States officials and had not undergone any such screening. Mr Kurt Haskell (a witness to the attempted "underwear" bombing) made the following sworn statement to the Michigan State Court:-

"I witnessed Umar dressed in jeans and a white t-shirt, being escorted around security by a man in a tan suit who spoke perfect American English and who aided Umar in boarding without a passport..... The Dutch police, meanwhile, in this article (refer to hyperlink below), also confirmed that Umar did not show his passport in Amsterdam which also meant that he didn't go through security as both are in the same line in Amsterdam."

For the full article please see:- <http://www.infowars.com/breaking-kurt-haskell-exposes-government-false-flag-operation-during-underwear-bomber-sentencing/> Further, following the underwear bomber incident, the manufacturer of the machines admitted that the scanners would be unlikely to have detected the bomb even if they had been used. Please see: http://news.bbc.co.uk/2/hi/uk_news/8439285.stm.

Therefore the statement that these scanners are needed to prevent such an event happening here in Australia is utter nonsense.

It has also been said that "any alternative would be less effective and more intrusive". We do not agree that a "pat down" would be "less effective". In fact, there is evidence that the scanners can be "fooled" and are thus ineffectual. Please see:- <http://www.opposingviews.com/i/technology/gadgets/video-engineer-jonathan-corbett-shows-how-beat-tsa-body-scanners>.

As to the statement that a "pat down" is "more intrusive" again we disagree. One would presume with appropriate training, airport security would be able to "pat down" passengers in an appropriate manner. Presently, selected passengers receive a "pat down" and as far as we are aware, there have been no substantial complaints in this regard. Similarly law

enforcement agencies around the world use a “pat down” technique that is effectual in detecting hidden weapons and explosives.

We also note that the Scanners are merely a tool to detect irregularities on a person. That person is subjected to a pat down in the area detected by the Scanners. We therefore find it very difficult to believe that a pat down in the first instance will somehow be ineffectual, yet a scan then a selected pat down will somehow work.

3.2 Counterproductive Security Focus

We would draw the Committee’s attention to the submission made by Dr. Justin Hastings a Lecturer in International Relations and Comparative Politics. The submission was made to the sister Committee assigned by the House of Representatives investigating this Bill (found here

http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ic/aviation/subs.htm. Dr Hastings makes some astute observations about the counterproductive focus on physical security drawing attention and resources away from measures that will actually mitigate the terrorist threat to Australia.

4. Conduct of the Government in Bringing The Bill

4.1 Procedural Deficiencies

In a submission to the Standing Committee on Infrastructure and Communications (see http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ic/aviation/subs.htm) the Australian Privacy Foundation provided a number of very alarming procedural deficiencies including:-

- Absence of Clarity about the Proposal;
- Changes in the Proposal, Without Notice;
- Absence of Justification for the Proposal;
- Incomplete Privacy Impact Assessment (PIA);
- The compromised position of the Privacy Commissioner;
- Misrepresentations by the Minister in the Second Reading Speech;
- Inadequate Information Provided to the Parliamentary Committee;
- Failure to Provide Notice to Relevant Parties; and
- Inadequate Time Allowed.

We applaud the Australian Privacy Foundation for its strength in bringing these facts to light and would encourage the Senate Committee to review their submission.

4.2 Misleading Statements

We would like to focus on the comments of the Australian Privacy Foundation in respect to the Minister’s misleading statements. At the bottom of page 2 in the Australian Privacy Foundation’s submission it states:-

“That is (the statements by the Minister) a constructive misrepresentation by the Minister. The PIA was not completed, the measures introduced are very different from those that were the subject of the incomplete PIA process, and no privacy protections are contained in the Bill”

This is deeply troubling and begs the question, what else has the Minister or the Government (as the case may be) misrepresented?

4.3 Lack of Evidence to Support Government Position and Statements

In short, the arguments **against** the Bill, presented to the Standing Committee on Infrastructure and Communications, were backed up by empirical evidence. We note that the Government has, quite literally, no evidence whatsoever to support their arguments – merely vague, unsupported assertions that it is “necessary” or “safe” etc.

5. Conduct of Other Governments

5.1 European Union

The European Union legislated that passengers be allowed the choice of a body scan or an enhanced "pat down" or "frisk" (see <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1343&format=HTML&aged=0&language=EN&guiLanguage=en>). At present there is also an "opt out" provision in the United States. It is concerning that the Australian Government is intending to withdraw this option for travellers out of Australian international airports. Why are we denied the right to alternative means of screening, such as a "pat down?" There is simply no justification whatsoever.

5.3 Italian Government

The Italian Government has removed these machines, saying they are ineffective and time-consuming (<http://www.smh.com.au/travel/travel-news/italy-to-abandon-airport-body-scanners-20100924-15pgu.html>). This would support the view that scanners would add no value to the overall national security regime. In fact, they were found to cause many false positive readings and that a "pat down" or "frisk" was more effective.

5.4 German Government

We believe the German Government is of the same opinion. A German television program was televised showing how these scanners simply don't work (see <http://www.aclu.org/blog/technology-and-liberty/yet-more-proof-body-scanners-dont-work>.)

5.5 Israeli Government

The Israeli Government has had a long standing reputation of hosting highly effective security measures. In fact Mr Steven Grossman, Director of Aviation at the Port of Oakland, United States of America stated "*the Israelis are legendary for their security, and this is an opportunity to see firsthand what they do, how they do it and, as importantly, the theory behind it.*". The Israeli Government, however, does not use airport body scanners in its screening process. In fact defence officials in Israeli provide that profiling and intelligence is the best defence against terrorist threats. As one public commentator provided, "*if a terrorist is at the airport terminal with a bomb, the system has already failed*".

6. Drafting of the Bill

6.1 Disparities

The drafting of the Bill presented in the relevant Explanatory Memorandum provides a number of concerning statements. At paragraph 3 on page 1 of the Memorandum, it provides that the Bill “*Lists, but does not limit, the types of equipment that may be used for aviation security screening purposes*”. There is therefore no legislative protection against the Government revoking its promises to only use millimetre wave scanners meaning it would be at liberty to use the more controversial backscatter x-ray machines or larger versions of the technology intended for “group screening”. This is further supported by the statement under title “Overview of the Bill” at page 3, “*The Bill will provide flexibility in the future for the Government to introduce new screening tools as improvements are made to existing technologies*”.

It therefore appears that the promises and guarantees by the Government to use certain scanning machines in a certain way are empty and meaningless.

We therefore take the position that the drafting of the Bill should be in line with the guarantees and assurances provided by the Government to its people (in respect to use of the millimetre wave scanner, “opt out” provisions etc).

7. Effect On Tourism

7.1 Reduction in Tourism

One only has to read the travel forums, where overseas travellers are stating that they will take Australia off the list of travel destinations if this Bill is introduced as they do not want to be forced into a body scanner, to become concerned about the effect this would have on our tourism industry.

8. Conclusions & Recommendations

In summary, these Scanners are not proven to be safe. The concern over radio waves potentially being a carcinogen is not new. The technology exists in mobile phones, wireless routers etc. However, in every other example of this kind of technology, people have a right to say "no". That is, we can choose not to use a wireless router or we can choose not to use mobile phones. The World Health Organization has listed mobile phone radiation as a possible carcinogen. All citizens should have a right to an alternative screening process as is mandated by the European Union. In the absence of this, we feel a fundamental human right of choice has been denied.

The Government is attempting to enact legislation with no justification, rationale or cost benefit analyses, riding off the back of misleading / false statements, with a disparity between what is being promised compared with what is actually being proposed by the wording of the Bill (i.e. no restrictions on Government action).

Australia has always been the “lucky country”. We have enjoyed this title due to a combination of good weather, minimal violence and typically, good procedural fairness in the presentation and enactment of legislation. In light of the conduct of the Government we feel that if this Bill was to be ratified as it stands, an almost historic breach of human rights would have occurred.

We implore the Senate to stop this Bill either in its entirety or to enact protections in the legislation instilling restricts on screening technology that can be used, and protecting the ability of a person to choose between a full body scan or a "pat down" or "frisk". We support the statement by the Australian Privacy Foundation that *"The process has been appalling, and the product is an insult to the Australian people and to the Parliament. If ever there was a time for the members of a Parliamentary Committee to stand up and be counted, and recommend outright rejection of a Bill, this is it"*.

Andrea and Michael Schafer

Concerned Citizens