



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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The Senate
Rural and Regional Affairs and Transport Legislation Committee

By Email: rrat.sen@aph.gov.au

Dear Sir/Madam

Proposed introduction of body scanners at airports

We thank you for the opportunity to make a submission in relation to the *Aviation Transport Security Amendment (Screening) Bill 2012*.

This submission is substantially a reproduction of our submission to the House of Representatives Standing Committee on Infrastructure and Communications.

About the Council

The Council for Civil Liberties was established in 1967 and has as its principle purpose the implementation of the Universal Declaration of Human Rights.

Article 12 of the Universal Declaration of Human Rights reads:

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his reputation and honour.”

Privacy

The starting point of this submission is that body scanners are in effect a virtual strip search. We are aware that the government is proposing to introduce a system which has various safe guards for the purposes of protecting privacy. We acknowledge those moves and will address them further later in this submission. However, the fact remains that in effect people are being asked to undergo the equivalent of a strip search with a bag over their head.

It will of course be argued that these measures are necessary for national security and the protection and safety of passengers on aircraft.

The first answer to that proposition, which will be discussed in more detail later on in this submission, is that we do not accept that these scanners are going to make any significant difference to the safety of passengers.

Watching them while they are watching you!

Secondly, whilst we accept that privacy is a value to be weighed against other interests including the safety of individuals, in the context of the terrorism debate in particular, there has been a tendency to set the value of privacy at nil before the balancing process has even commenced.

It is our view that even if these devices can be effective there are other more effective measures which are far less invasive of privacy upon which the government should be concentrating its efforts.

The fundamental question is whether the risk of being killed on in a terrorist attack, which is considerably less than that of dying crossing a road or falling off a ladder, justifies strip searching every person who gets on a plane.

That privacy issues are not just a concern of middle class Westerners is demonstrated by the debate over this technology in India. In 2006 the Indian Central Industrial Security Force (CISF) rejected the machines on the basis that they were too revealing and would offend passengers as well as embarrass security officials. Late last year it was reported that the CISF had recommended the introduction of the machines but had referred the matter for final decision to the relevant ministry having regard to issues of "Indian Cultural Sensitivity"¹

Effectiveness

The background of the introduction of these measures is of course the incident in Detroit at Christmas 2009. It appears that that incident was caused by a bureaucratic failure, that is, allowing the suspect on to the plane when a warning had been issued about him. As is usual an incident has led to a proposal which does not address the actual issue caused by the incident of concern.

It is clear that the devices cannot detect low density materials hidden under clothing such as liquid, powder or thin plastics. Nor can they detect fuels of any density hidden in a body cavity². In other words, it is highly unlikely that these scanners would have detected the individual who committed the offence in December 2009. This was demonstrated on German TV³

In addition, the aviation policy white paper issued in 2009 made it clear that there were a number of areas of airline security that need to be addressed including the lack of screening at regional airports, poor security near pilot doors, no screening of some luggage, almost zero screening of baggage handlers.

We query whether these matters have been addressed as yet. If they have not they certainly should be addressed before we move to this type of expensive technological fix. As one security expert put it if you are trying to stop bombers at the airport it's probably too late.

If airport measures are to be pursued, the Council would take the view that greater use of explosive particle detectors would be in order seeing as they might in fact

¹ Ann Cavoukian, Information Privacy Commissioner, Ontario, Canada – Whole Body Imaging in Airport Scanners, March 2009, found on www.ipc.on.ca and a report on the Stockwatch website dated 3 August 2011 entitled *Airport full body scanners are put on hold*

² Victoria's Deputy Privacy Commissioner, Anthony Bendall, quoted in the Australian on 26 October 2010 – *Sacrificing Privacy Without Ensuring Airport Security* by Karen Dearne

³ <http://www.aclu.org/blog/technology-and-liberty/yet-more-proof-body-scanners-dont-work>

detect some of the explosives which these scanner machines are in fact incapable of detecting.

Finally, you might also consider the question of delays at airports. The writer saw one of these machines in operation at the Dallas Fort Worth Airport in the United States in January, 2011. It was quite clear that the use of the apparatus was resulting in significant delays in comparison with persons who were passing through the standard scanner.

Health

We welcome the fact that the government has chosen to introduce the millimetre wave type of technology as opposed to the back scanner technology which uses x-rays. From our review of the evidence it appears that most support the view that the millimetre wave type technology involves no risk of cancer or other health issues⁴. However, we note that a recent article on the Australian Business Traveller Website⁵ questions the existence of a scientific consensus over the safety of the scanners, even of the millimetre wave type, by reference to a study by the U.S. Los Alamos National Labs. In the circumstances we would recommend that the government should undertake to have research carried out into this issue to allay the concerns that do exist in the community on this topic. The use of backscatter wave scanners should be banned by legislation.

Safeguards

If the government intends to proceed with this measure then the Council argues that the following privacy safeguards should be applied:-

1. The machines should be fitted with programs which blur the face and convert the image into a diagram or stick figure.
2. They should be optional, that is, passengers should be free to choose a pat down instead.
3. They should be secondary only, that is, not for every passenger. Only passengers assessed as posing some potential threat should be the subject of these searches.
4. The image examiner should not see the person being scanned and the supervising guard should not see the image.
5. The system is incapable of storing images.
6. The screen is incapable of having a photograph taken of the screen, or alternatively, staff are prohibited from having a camera with them in the area.
7. Those viewing the scanners are of the same gender as the person being scanned.

We welcome the fact that the government has adopted items 1, 4, 5 and 7.

The committee should enquire as to whether item 6 has been adopted.

⁴ *The Economist* Health Concerns That Just Won't Go Away, 4 November 2011

⁵ *Melbourne Airport Gets Controversial Body scanners*, 27 February 2012

We are concerned by the fact that the government has not adopted items 2 and 3. We note that in Canada⁶ that following negotiations with the Canadian Privacy Commissioner the Canadian government has agreed that full body imaging will serve as a secondary screening tool. It will be used for passengers who have already been through a medical detector and who, either for cause (based on suspicion) or at random, are asked to go through a second security screen. At that point passengers will be given the choice to pass through the scanner or submit to a pat down.

Our preference would be that in fact the machine is only used on suspicion. But the Canadian model certainly represents an improvement over the proposed Australian model.

We note that item 2 is the policy which is applied in the United States.

In the circumstances where two comparable countries have adopted a policy of allowing a pat down as an alternative, we fail to see how the Australian government can justify not proceeding with a similar policy.

However, we should make it clear that we remain concerned even if these safe guards are adopted for these reasons:-

1. Privacy concerns must remain for those who have “anomalies” for investigation such as people with adult nappies, colostomy appliances and catheter tubes;
2. The fact as we understand it the machines are designed to store images even if that function is to be disabled. It would be our view that machines should be purchased which are incapable of storing images because the likelihood is that at some time in the future pressure will come on to store the images;
3. The choice between a full body scan and a physical search purely amounts to a Hobson’s choice particularly if the search is going to be of the type which is employed in the United States of America;
4. Obscuring faces is yet again a technological fix that can be turned off.

Legislative Protections

Turning to the legislation itself we observe that it in fact contains none of the safeguards to which the government has in fact agreed. Once again if the government intends to proceed with this proposal then if they are to provide the maximum level of assurance of the government’s intention to protect the right of privacy then the legislation should specify the conditions that the government has agreed to. At the very least the protections that the government has agreed to should be made in the form of a disallowable instrument so that any change to them would have to be approved by the parliament.

Summary

⁶ Op-ed Article by Jennifer Stottard, Privacy Commissioner of Canada, January 2010 found on the website of the Privacy Commissioner of Canada, www.priv.gc.ca/media

In conclusion the Council opposes the legislation on the basis that it is at best a gross invasion of privacy and at worst an unnecessary diversion from more effective measures for the protection of the flying public.

If the government is to proceed with its proposal then as well as introducing the privacy safeguards it has agreed to, it should also provide that:-

1. The machines are only to be used in relation to people about whom there is some reasonable suspicion; and
2. A pat-down search should be optional; or
3. The Canadian model should be adopted.

In its submission to the House of Representatives Committee the Department indicated that an alternative physical search which would be the equivalent of body scan would be significantly more intrusive than a pat-down search and argued no one would submit to such a search. Our view is that decision should be made by Australians. The legislation should provide for an optional physical search.

Finally, all of the safety and health measures should be included in the legislation or at the very least should be contained in a disallowable instrument.

We trust that this is of assistance to you in your deliberations.

Yours faithfully

Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
30 March 2012