



Appendix A – Aviation Transport Security
Amendment (Screening) Bill 2012 and
Explanatory Memorandum

2010-2011-2012

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Aviation Transport Security Amendment
(Screening) Bill 2012**

No. , 2012

(Infrastructure and Transport)

**A Bill for an Act to amend the *Aviation Transport
Security Act 2004*, and for related purposes**

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1 **A Bill for an Act to amend the *Aviation Transport***
2 ***Security Act 2004*, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Aviation Transport Security*
6 *Amendment (Screening) Act 2012*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

Schedule 1—Amendments

Aviation Transport Security Act 2004

1 After section 41

Insert:

41A Consent to screening procedures

(1) If:

- (a) a person is at a screening point; and
- (b) the person must receive clearance in order:
 - (i) to board an aircraft; or
 - (ii) to enter an area or zone of a security controlled airport that is referred to in Division 2 of Part 3;

the person is taken, for all purposes, to consent to each screening procedure that may be conducted at the screening point in accordance with regulations made under section 44.

(2) Subsection (1) does not apply to a screening procedure if:

- (a) the procedure is a frisk search; or
- (b) the person refuses to undergo the procedure.

2 Paragraph 44(2)(aa)

Omit “things”, substitute “the persons or things”.

3 After subsection 44(3)

Insert:

(3A) Without limiting paragraph (2)(j), the equipment to be used for screening may include the following:

- (a) metal detection equipment;
- (b) explosive trace detection equipment;
- (c) body scanning equipment such as an active millimetre wave body scanner.

(3B) If:

- (a) body scanning equipment is to be used for the screening of a person; and

Schedule 1 Amendments

1 (b) the equipment produces an image of the person;
2 the image must only be a generic body image that is gender-neutral
3 and from which the person cannot be identified.

4 **4 Section 95A**

5 Repeal the section.

2010-2011-2012

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AVIATION TRANSPORT SECURITY AMENDMENT (SCREENING) BILL 2012

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Infrastructure and Transport,
the Hon Anthony Albanese, MP)

AVIATION TRANSPORT SECURITY AMENDMENT (SCREENING) BILL 2012

OUTLINE

The Aviation Transport Security Amendment (Screening) Bill 2012 will amend the *Aviation Transport Security Act 2004* (the Act).

The Bill:

1. States that a person is taken to consent to any screening procedure when that person is at a screening point and must receive clearance in order to board an aircraft or to enter an area or zone of a security controlled airport.
2. Makes provision for the Aviation Transport Security Regulations 2005 to deal with persons that must not pass through a screening point.
3. Lists, but does not limit, the types of equipment that may be used for aviation security screening purposes, including metal detection, explosive trace detection and active millimetre wave body scanning equipment. Where a body scanner is used for the screening of a person, the image produced of that person must only be a generic body image that is gender-neutral and from which the person cannot be identified.
4. Repeals Section 95A of the Act.

FINANCIAL IMPACT STATEMENT

Nil.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Aviation Transport Security Amendment (Screening) Bill 2012

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The amendments contained in the Bill will support the upcoming introduction of body scanners at Australian international airports. This will ensure that Australian travellers are afforded the highest level of protection against aviation terrorism, bringing Australia into line with countries such as the United States of America, Canada, the United Kingdom and the Netherlands. The Bill will provide flexibility in the future for the Government to introduce new screening tools as improvements are made to existing technologies. It will also ensure that these technologies are used in such a way that achieves both a maximum security outcome and minimal impact on passenger facilitation.

Human rights implications

The Bill engages the following human rights:

Right to freedom of movement

The right to freedom of movement is protected by Articles 12 and 13 of the International Covenant on Civil and Political Rights (ICCPR). These articles protect a person's right to move freely within a country for those who are lawfully within the country, the right to leave any country and the right to enter a country of which they are a citizen. The ability of a screening officer to refuse an individual clearance if they refuse to undergo a body scan may restrict a person's right to leave Australia. The requirement to undergo screening in order to be cleared and board an aircraft is already established in the Act, however, the removal of Section 95A of the Act will mean that an individual will no longer be able to choose a frisk search over another screening procedure.

The National Terrorism Public Alert Level is currently at MEDIUM which means that the Government's security agencies have assessed that a terrorist attack could occur in Australia. It has been at this level since September 2001 and is expected to remain so for the foreseeable future. The aviation security environment has significantly evolved over this period and it will continue to do so. The aviation screening regime in Australia is primarily designed to detect metallic weapons; however the risk to aviation security is no longer derived primarily from this type of threat. The sector now faces a range of sophisticated threats that our screening regime must be capable of detecting in order to ensure the safety of the travelling public. Existing screening technologies used in Australia are incapable of detecting many of these new generation threats. Body scanners offer the greatest chance of detection, owing to their ability to detect and pinpoint the location of both metallic and non-metallic items concealed within or underneath a person's clothing. There is no alternative method of passenger screening available today that can deliver an equivalent security outcome to a body scanner.

An enhanced full body frisk search may achieve a similar outcome but such a procedure would necessarily involve a thorough frisk of the entire body, including sensitive areas, as well as the possible loosening and/or removing of some clothing. 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. Therefore, the Government's policy intention is that a passenger who is randomly selected to undergo a body scan will not be allowed to choose or be offered an alternative method of screening. If the passenger refuses to submit to a body scan they will not be allowed to pass through the screening point. Where a foreign national refuses a body scan and is subsequently denied clearance through the screening point, the Department of Infrastructure and Transport will work closely with the Department of Immigration and Citizenship to facilitate legitimate travel.

Privacy and reputation

The protection of an individual's privacy engages Article 17 of the International Covenant on Civil and Political Rights. The Government has carefully considered the introduction of body scanners and how it will impact on the privacy of the travelling public and hence, is committed to only introducing body scanners that have a range of privacy enhancements. The most important of these is automatic threat recognition technology which displays areas of concern on a generic human representation that is the same for all passengers. This technology removes the need for a human operator to look at raw or detailed images, and therefore maintains the privacy and modesty of all individuals.

The Department of Infrastructure and Transport has worked closely with the Office of the Australian Information Commissioner (OAIC) in order to ensure that the introduction of body scanning technology does not infringe upon a traveller's right to privacy. Consultation with the OAIC has also involved the development of a comprehensive privacy impact assessment about the introduction of body scanners. As discussed, body scanners are less intrusive than the only alternative that could provide a similar outcome – the full body frisk search. Furthermore, the introduction of body scanners will reduce the number of frisk searches that currently occur at aviation screening points, further protecting the privacy and modesty of individuals. In addition, body scanners that are introduced in Australia will not be capable of storing or transmitting any information or data.

Right to Health

The right to the highest attainable standard of physical and mental health is protected by Article 12(1) of the International Covenant on Economic, Social and Cultural Rights. The Government has carefully considered the technology options available in regards to potential health effects for both the general public and airport workers. This has involved extensive consultation with the Department of Health and Ageing, the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), the Therapeutic Goods Administration and overseas authorities to ensure that body scanners meet health and safety requirements. Subsequent to this consultation the Government has decided that millimetre-wave body scanners will be introduced.

The power density that a person could be exposed to within the L-3 Communications ProVision millimetre-wave body scanner, the only body scanner that currently meets the Government's requirements, is thousands of times less than the maximum permissible exposure levels for the public specified in ARPANSA's Radiation Protection Standard: *Maximum Exposure Levels to Radiofrequency Fields – 3 kHz – 300 GHz*. The waves emitted

during a scan are directed towards the interior of the body scanner. 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. Information on health and safety will be made available to the public on the Department of Infrastructure and Transport's website before body scanners are implemented at Australia's international airports.

Right to enjoy and benefit from Culture

The right to enjoy and benefit from culture engages both Article 27 of the International Covenant on Civil and Political Rights and Article 15 of International Covenant on Economic, Social and Cultural Rights. The introduction of body scanners will not interfere with the rights of persons to wear traditional religious or cultural attire, as with current procedures, passengers will not be required to remove any religious items or clothing. The Department of Infrastructure and Transport has engaged with religious groups through the Office of the Australian Information Commissioner to ensure that the processes and procedures are culturally sensitive.

Body scanners will not limit the observance of religious practices such as maintaining modesty as the technology has a range of privacy enhancements, including automatic threat recognition, to maintain the modesty of travellers. The body scanner technology is less intrusive than a frisk search and will reduce the number of full body frisk searches that occur at aviation security screening points. In cases where a frisk search is necessary, for example to resolve an alarm, the individual may request that procedure to occur in a private room. A frisk search will always be undertaken by someone of the same gender as the person being searched.

Rights to freedom of thought, conscience and religion or belief

The rights to freedom of religion or belief are protected by Article 18 of the International Covenant on Civil and Political Rights. As mentioned previously, the introduction of body scanners will not affect a person's ability to adhere to his or her religion or belief. As per current circumstances, passengers will not be required to remove religious dress when undertaking screening. In addition, a passenger's modesty will be protected through the requirement for body scanners to be equipped with automatic threat recognition. The Department has worked with stakeholders through the Office of the Australian Information Commissioner to ensure that security screening is undertaken in a culturally appropriate and sensitive manner.

Rights of people with disability

The rights of people with disability are protected by the Convention on the Rights of Persons with Disabilities. The Government understands that some screening technologies, including body scanners, may not be suitable for all individuals due to special circumstances, including disabilities or other medical conditions. These circumstances may prevent an individual from undertaking a screening procedure including a body scan, and as such, the Government is making appropriate modifications to ensure that individuals who cannot undergo a certain screening procedure due to a physical or medical condition will be screened by alternative methods that are more suitable to their circumstances.

The Department of Infrastructure and Transport, through the Aviation Access Working Group, works closely with representatives from the aviation industry, disability stakeholders and the Australian Human Rights Commission to ensure that people with a disability can access and utilise aviation services. In the context of aviation security, this forum focuses on ensuring that people with a disability are catered for and where they are unable to undergo a screening procedure, appropriate alternatives are put in place. Preparation for the introduction of body scanners has led to an increased focus on the training of aviation security screening officers to ensure that people with a disability are treated in a compassionate manner.

Rights of Equality and Non-discrimination

The right of equality and non-discrimination is protected by Articles 2, 16, 26 International Covenant on Civil and Political Rights. All people have the right to be treated equally and in keeping with Australia's egalitarian screening regime, selection of individuals to undertake a body scan will be conducted on a purely random basis. Individuals will not be selected on the basis of their race, religion or gender.

Conclusion

The Bill is compatible with human rights because it provides measures to further strengthen Australia's aviation security and where they may be limits to human rights, those limitations are reasonable, necessary and proportionate.

Minister for Infrastructure and Transport, the Hon Anthony Albanese

NOTES ON CLAUSES

Clause 1: Short Title

This clause provides that the Bill will be called the Aviation Transport Security Amendment (Screening) Act 2012 once enacted.

Clause 2: Commencement

This clause provides that Sections 1 – 3 of the Bill will commence on the day after Royal Assent.

Schedule 1 will commence on a single day to be fixed by Proclamation or six months from the date of Royal Assent.

Clause 3: Schedule(s)

This clause provides that each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to this Act has effect according to its terms.

SCHEDULE 1 – AMENDMENTS

Schedule 1 amends the *Aviation Transport Security Act 2012* (the Act)

Item 1 - Section 41A Consent to screening procedures

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. This section does not apply to a frisk search or where a person expressly refuses to undergo a procedure.

The affect of this amendment will be to simplify the current consent requirements, and expedite the screening process for passengers, thereby minimising the potential impact the introduction of body scanners and other future technology may have on passenger facilitation. In practice this will mean that screening officers will not be required to obtain express consent from a passenger before they undergo a body scan. This provision will also apply to the use of hand held metal detectors and explosive trace detection equipment.

Item 2 - Section 44(2AA)

This amendment omits “things” and replaces it with “persons or things”. This amendment will allow the Aviation Transport Security Regulations 2005 to prescribe the persons that must not pass through a screening point in addition to things that must not pass through a screening point.

Item 3 - Sections 44(3A) and 44(3B)

The first part of this clause lists, but does not limit, the types of equipment that can be used for screening, including metal detection, explosive trace detection and active millimetre wave body scanning equipment. This clause makes it clear that body scanning technology can be used for aviation security screening at Australia's airports.

The second part of this clause stipulates that where a body scanner is used for the screening of a person, any image produced by the equipment of that person must be a gender-neutral, generic image such that the person is not identifiable and no anatomical or physical attributes of that person are revealed.

Item 4 –Section 95A

The clause repeals Section 95A of the Act. Section 95A allows a person to choose a frisk search over another screening procedure. This section has been repealed to enable the introduction of a policy whereby a person who is selected to pass through a body scanner at an aviation screening point may not choose, or be offered, an alternative method of screening. Allowances will be made where there is a physical or medical reason that would prevent a person being screened by a body scanner. This policy will ensure that the strongest security outcome is achieved from the technology.