

Chapter 2

Background to Australia's aviation security regime and the introduction of the bill

Australia's aviation security regime

2.1 The Department of Infrastructure and Transport (the department) has stated that the greatest threat to Australia's security "continues to come from groups associated with, or inspired by, global terrorist movements."¹ The aviation sector is seen as a particularly attractive target for terrorists because it is easily accessible and involves large numbers of people being gathered together at regular, predictable times. A successful attack is also likely to have significant economic consequences.²

2.2 The department's 2012 Privacy Impact Assessment (PIA) noted that although Australia's aviation security regime has protected travellers and the general public from major incidents to date "the system must continue to improve and evolve to meet a growing and changing airline industry and ongoing security threats."³ The PIA also argued that Australia's aviation security must meet current international standards, but at the same time be flexible enough to meet any future challenges.⁴

2.3 Following the terrorist attacks against United States' aviation in September 2001, the Australian Government strengthened the aviation security regime. The types of measures implemented since 2001 include the:

- expansion of the regulatory regime defining security controlled airports to cover airports handling passengers, operators of freight aircraft, charter flights and private and corporate jets;
- implementation of comprehensive security programs and security measures based on individual airport risk assessments;
- requirement for hardened cockpit doors on all regular passenger and charter aircraft with a seating capacity of more than 30 passengers;
- extension of the regulatory regime for international air freight to cover domestic services;

1 Department of Infrastructure and Transport, *The use of body scanners for aviation security screening in Australia: Privacy Impact Assessment*, February 2012, p. 8.

2 Department of Infrastructure and Transport, *The use of body scanners for aviation security screening in Australia: Privacy Impact Assessment*, February 2012, p. 8.

3 Department of Infrastructure and Transport, *The use of body scanners for aviation security screening in Australia: Privacy Impact Assessment*, February 2012, p. 8.

4 Department of Infrastructure and Transport, *The use of body scanners for aviation security screening in Australia: Privacy Impact Assessment*, February 2012, p. 8.

- trialling of new freight screening technology;
- expansion of the Aviation Security Identification Card (ASIC) scheme to cover all staff at airports servicing passenger and freight aircraft;
- extension of the checking process associated with the ASIC scheme to include all pilots and trainee pilots;
- requirement for general aviation aircraft to have anti-theft measures; and
- introduction of limits to liquids, aerosols and gels that may be carried on international flights.⁵

Failed aviation terrorist attacks

The shoe bomber

2.4 On 22 December 2001, there was a failed bombing attempt on American Airlines Flight 63 from Paris to Miami. As Flight 63 was flying over the Atlantic Ocean, British-born Richard Reid attempted to detonate 100 grams of plastic explosives hidden in the hollowed-out soles of his shoes.

2.5 Mr Reid's shoes were later found to contain enough explosives to blow a substantial hole in the fuselage of the aircraft. Following the incident, security procedures at US airports were changed to include asking passengers to remove their shoes before proceeding through scanners.⁶

Underwear bomber

2.6 On 25 December 2009, Nigerian man Umar Farouk Abdulmutallab attempted to detonate a bomb on board Northwest Airlines Flight 253 from Amsterdam's Schiphol Airport to Detroit Metropolitan Airport. There were 279 passengers and 11 crew on board the flight.⁷

2.7 Approximately 20 minutes prior to the plane landing in the United States, Mr Abdulmutallab attempted to detonate a device containing high explosives which was sewn into his underwear.⁸ A syringe containing chemicals was used to ignite the explosive which failed to properly detonate. The plane made an emergency landing at Detroit Airport and no-one died in the incident.

5 Department of Infrastructure and Transport, *The use of body scanners for aviation security screening in Australia: Privacy Impact Assessment*, February 2012, pp 8–9.

6 Michael Elliott, *The Shoe Bomber's World*, TimeWorld, 16 February 2002, www.time.com/time/world/article/0,8599,203478,00.html (accessed 26 April 2012).

7 Melissa Preddy, *Nigerian charged with trying to blow up US airliner*, Sydney Morning Herald, 27 December 2009, <http://news.smh.com.au/breaking-news-world/nigerian-charged-with-trying-to-blow-up-us-airliner-20091227-1g4i.html> (accessed 22 March 2012).

8 Melissa Preddy, *Nigerian charged with trying to blow up US airliner*, Sydney Morning Herald, 27 December 2009 (accessed 22 March 2012).

2.8 The explosive device which was sewn into Mr Abdulmutallab's underwear, contained no metallic components and was therefore able to be carried through a walk through metal detector without triggering any alarm. The 2009 incident followed an incident in 2006 which involved a failed terrorist plot to bomb transatlantic airliners departing the United Kingdom using liquid explosives.⁹

2.9 Following the 2009 incident President Barack Obama ordered a review of the United States' aviation security system and the use of detection equipment at airport checkpoints.¹⁰

Australian Government's response to security incidents

2.10 Aviation security incidents such as the ones described above revealed areas of weakness in aviation security screening systems – including the limitations of the screening processes currently in place. Australia's passenger screening processes were developed in the 1970's, with the intention of countering the threat of hijacking, and have changed little since that time. The current screening processes are primarily designed to detect metallic weapons – either on individual passengers or in carry-on luggage. Current processes are less effective in detecting non-metallic weapons concealed on passengers and it is increasingly argued that, given the evolving techniques used by terrorists to target the aviation sector, new measures are required to mitigate the threat.¹¹

2.11 On 9 February 2010, in response to the Christmas Day incident on Northwest Airlines Flight 253, the Australian Government announced a "comprehensive package of measures to strengthen Australia's international and domestic aviation security regime against emerging threats."¹²

2.12 Under the Strengthening Aviation Security Initiative, the Government will invest \$200 million over four years on "new and improved security technologies,

9 Melissa Preddy, *Nigerian charged with trying to blow up US airliner*, Sydney Morning Herald, 27 December 2009 and Office of Transport Security, Department of Infrastructure and Transport, *Submission 5*, p. 1.

10 President Barack Obama, President of the United States, *Statement by the President on the attempted attack on Christmas Day and recent violence in Iran*, Press Statement, 28 December 2009, www.whitehouse.gov/the-press-office/statement-president-attempted-attack-christmas-day-and-recent-violence-iran (accessed 22 March 2012).

11 Department of Infrastructure and Transport, *The use of body scanners for aviation security screening in Australia: Privacy Impact Assessment*, February 2012, p. 9.

12 The Hon. Anthony Albanese, Minister for Infrastructure and Transport, *Strengthening aviation security*, Media Release AA024/2010 Joint, 9 February 2010, [p. 1].

increased policing at airports, enhanced security procedures, as well as strengthened international cooperation."¹³

2.13 In announcing the Government's \$200 million initiative, the Minister noted that the measures are consistent with the security strategy set out in the Government's Aviation White Paper released in December 2009, as well as the National Security Adviser's review of aviation security (following the attempted terrorist attack on Northwest Airlines Flight 253).¹⁴

2.14 The Government's package includes \$28.5 million to assist the aviation industry to introduce a range of optimal screening technologies at international passenger screening points, including next-generation multi-view X-ray machines, bottled liquid scanners and additional explosive trace detection units.¹⁵

2.15 The package also includes funding for the progressive implementation of body scanners at international departure and transit points at Australia's eight international gateway airports.

2.16 A trial of the new body scanning equipment was conducted at Sydney (Kingsford Smith) Airport from 2–9 August 2011 and Melbourne International Airport from 5–30 September 2011. The main objective of the trial was to "measure the impact that the introduction of body scanners and multi-view x-ray equipment might have on passenger facilitation and to assist the eight international gateway airports to prepare for their introduction."¹⁶

2.17 The key findings of the trial were reported as follows:

- The average time taken to process a passenger in the trial lane was several seconds longer than in the regular screening lanes. This was due to a body scan taking slightly longer than walk through metal detector screening and the higher alarm rate.
- Alarm resolution following a body scan was often quicker than alarm resolution for the walk through metal detector due to the fact that the body scanner indicates the area that has alarmed, making it easier for screeners and passengers to identify what has caused the alarm.
- The most common removable items that alarmed in the body scanner included high boots with buckles, currency, hairclips, watches and jewellery. There were also some non-removable items that caused

13 The Hon. Anthony Albanese, Minister for Infrastructure and Transport, *Strengthening aviation security*, Media Release AA024/2010 Joint, 9 February 2010, [p. 1].

14 The Hon. Anthony Albanese, Minister for Infrastructure and Transport, *Strengthening aviation security*, Media Release AA024/2010 Joint, 9 February 2010, [p. 1].

15 The Hon. Anthony Albanese, Minister for Infrastructure and Transport, Second Reading Speech, *House of Representatives Hansard*, 16 February 2012, p. 1571.

16 Department of Infrastructure and Transport, *Optimal Technologies Proof of Concept Trial*, p. 3.

alarms, these included pockets on cargo pants and studs and additional zips on jeans and pants.

- Human factors will play a significant part in ensuring the successful rollout of the technology. Particular focus on customer service is required to ensure that screening officers are prepared for the increased level of passenger interaction. Effective and clear communications to inform passengers about the process will also be essential.
- The trial found that most volunteers were happy with the body scanning experience and very few had difficulty with the body scan process.¹⁷

2.18 Starting in the second half of 2012, it is proposed that body scanners will be introduced in Adelaide, Brisbane, Cairns, Darwin, Gold Coast, Melbourne, Sydney and Perth.¹⁸

2.19 The department engaged the Office of the Australian Information Commissioner (OAIC) to provide advice on the introduction of body scanners and to assist the department to engage interested stakeholder groups. As part of this process, the OAIC facilitated two roundtable discussions – on 22 September 2010 and 21 September 2011 – and invited stakeholders to consider privacy issues arising from the introduction of body scanners. Stakeholders involved in the consultation process included representatives from privacy, disability, religious and civil liberties organisations.¹⁹

Purpose of the bill

2.20 In his second reading speech, the Minister for Infrastructure and Transport stated that the new technologies proposed in the Government's Strengthening Aviation Security Initiative will "mitigate current vulnerabilities in the aviation security screening regime."²⁰ The Minister also noted that the bill would underpin the introduction of body scanners at Australian international airports and that these scanners would:

- ensure that Australian travellers are afforded the highest level of protection against aviation terrorism, bringing Australia into line with countries such as the US, Canada, the UK and the Netherlands;
- provide flexibility in the future for the Government to introduce new screening tools where improvements are made to existing technologies; and

17 Department of Infrastructure and Transport, *Optimal Technologies Proof of Concept Trial*, p. 3.

18 Office of Transport Security, Department of Infrastructure and Transport, *Submission 5*, p. 2.

19 Office of Transport Security, Department of Infrastructure and Transport, *Submission 5*, p. 3.

20 The Hon. Anthony Albanese, Minister for Infrastructure and Transport, Second Reading Speech, *House of Representatives Hansard*, 16 February 2012, p. 1571.

- ensure that these technologies are used in such a way that achieves both a maximum security outcome and minimal impact on passenger facilitation.²¹

Overview of the bill

2.21 Schedule 1 of the bill amends the *Aviation Transport Security Act 2004* (the Act).

*Provisions of the bill*²²

2.22 **Item 1 – Section 41A – Consent to screening procedures** – this amendment proposes 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. This section does not apply to a frisk search or where a person expressly refuses to undergo a procedure.

2.23 According to the Explanatory Memorandum, the effect of this amendment would 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 would mean that screening officers would not be required to obtain express consent from a passenger before they undergo a body scan. This provision would also apply to the use of hand held metal detectors and explosive detection equipment.

2.24 **Item 2 – Section 44(2)(aa)** – this amendment would allow the Aviation Transport Security Regulations 2005 to prescribe the persons that must not pass through a screening point.

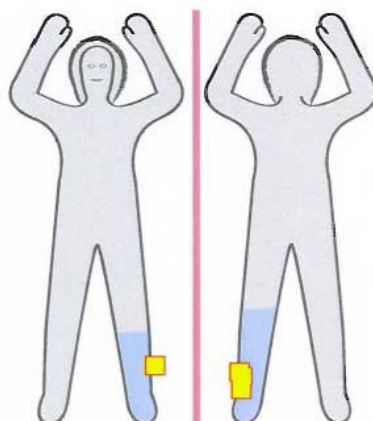
2.25 **Item 3 – Sections 44(3A) and 44(3B)** – the first part of this clause proposes to list, but not limit, the types of equipment that can be used for screening, including metal detection and active millimetre wave body scanning equipment. This clause would make it clear that body scanning technology can be used for aviation security screening at Australia's airports.

2.26 The second part of this clause proposes that where a body scanner is used for the screening of a person, any image produced by the equipment 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. Figure 1 provides an example of the type of generic image that may be produced.

21 The Hon. Anthony Albanese MP, Minister for Infrastructure and Transport, Second Reading Speech, 16 February 2012, p. 2.

22 The following section of the report is based on information contained in Explanatory Memorandum, Aviation Transport Security Amendment (Screening) Bill 2012, pp 6–7.

Figure 1—Example of a gender-neutral generic body scanned image



Source: Department of Infrastructure and Transport, *Millimetre-wave Body Scanner*, February 2012.

2.27 **Item 4 – Section 95A** – this clause proposes to repeal 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. It is argued that this policy will ensure that the strongest security outcome is achieved from the technology.

Comment of Scrutiny of Bills Committee²³

2.28 The Senate Standing Committee for the Scrutiny of Bills has a brief to consider all bills as to whether they trespass unduly on personal rights and liberties and related matters. The Scrutiny of Bills Committee's Alert Digest noted that the Explanatory Memorandum to the bill contains a Statement of Compatibility with Human Rights. The Scrutiny of Bills Committee had the following concerns about the bill:

- **Insufficiently defined legislative powers, repeal existing section 95A** – it is unclear exactly how alternative screening procedures and compassionate treatment for persons with disabilities or medical conditions will be guaranteed in appropriate circumstances. It is not clear to the [Scrutiny of Bills] Committee whether the appropriateness of alternative procedures will be left to the discretion of security screening officers or whether the legislation can provide for guidelines to be developed. **The [Scrutiny of Bills]**

23 The following section of the report is based on information contained in Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 2 of 2012*, 29 February 2012, pp 3–6, www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=scrutiny/alerts/2012/index.htm (accessed 15 May 2012).

Committee therefore seeks a further explanation of how the application of alternative screening procedures in appropriate circumstances will be administered and regulated, and whether consideration has been given to providing in the legislation for the development of appropriate guidelines.

- **Trespass on personal rights and liberties, proposed section 41A and proposed paragraph 4(3)(3B)** – the [Scrutiny of Bills] Committee is concerned that the important safeguard mentioned in the explanatory memorandum that the machines introduced into Australia won't be able to store or transmit data is not a legislative requirement. It is unclear why the legislation (properly) prohibits the use of images that are not generic, but does not take a similar approach to the use of equipment that may store or transmit data. **The [Scrutiny of Bills] Committee therefore seeks the Minister's advice as to whether the legislation can be amended to require that scanners not be capable of storing or transmitting data or that these functions are disabled or removed.**

2.29 The full extract from the Scrutiny of Bills Committee's Alert Digest is reproduced in Appendix 3.

2.30 The committee notes that the Minister for Infrastructure and Transport, the Hon. Anthony Albanese MP, responded to the issues raised by the Scrutiny of Bills Committee in a letter dated 22 May 2012. A copy of the Minister's response is provided at Appendix 4. The committee also notes the Scrutiny of Bills Committee's response to the Minister's letter.