

Chapter 3

Issues raised

3.1 The submissions received by the committee in relation to the inquiry generally indicated support for initiatives designed to improve airport security and to strengthen Australia's aviation security regime.¹ At the same time however, submitters raised questions regarding the specific use of body scanning technologies and sought clarification on a number of aspects of the proposed legislation.

No opt-out policy

3.2 The bill proposes the repeal of Section 95A of the *Aviation Transport Security Act 2004* (the Act). Section 95A currently allows a person to choose a frisk search over another screening procedure:

If a person chooses to undergo a frisk search as an alternative to another screening procedure, a screening officer may frisk search the person to the extent necessary to screen the person properly.²

3.3 The Explanatory Memorandum indicates that it is proposed to repeal this section 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.³

3.4 Whilst the bill's Explanatory Memorandum notes that allowances will be made "where there is a physical or medical reason that would prevent a person being screened by a body scanner", it also states that it is intended that the new policy "will ensure that the strongest security outcome is achieved from the technology."⁴

3.5 The bill's second reading speech outlines the Government's intention for a subsequent change to the *Aviation Transport Security Regulations 2005* (the regulations) "whereby a person who refuses to undergo a screening procedure they have been randomly selected for will not be granted clearance and will be unable to pass through the screening point."⁵ The consequence of refusing to undergo a body

1 See, for example Homeland Security Asia/Pacific Pty Ltd, *Submission 1*, p. 1, VIPA, *Submission 8*, p. 9 and Australian Airports Association, [p. 1].

2 Section 95A, *Aviation Transport Security Act 2004*.

3 Explanatory Memorandum, *Aviation Transport Security Amendment (Screening) Bill 2012*, p. 7.

4 Explanatory Memorandum, *Aviation Transport Security Amendment (Screening) Bill 2012*, p. 7.

5 The Hon. Anthony Albanese MP, Minister for Infrastructure and Transport, Second Reading Speech, *House of Representatives Hansard*, 16 February 2012, p. 1572.

scan would result in the passenger missing their flight. The NSW Council for Civil Liberties (CCL) described this as "the Government is introducing a 'No body scan, No fly' policy."⁶

3.6 Several submitters raised concerns that during the consultation process the Government was not considering the no opt-out policy.⁷ The Privacy Impact Statement (PIA) released by the Department of Infrastructure and Transport (the department) explained that during the consultation process in September 2011:

... it was stated that passengers would be offered alternative screening if they did not wish to undergo a body scan. The Government has since reassessed this decision based, in part, on the experience of overseas transport security regulators.⁸

3.7 The committee sought further explanation from the department on the rationale for withdrawing an alternative screening option. In response to a question on notice the department stated that there were three main reasons:

a) **Technology type:** ...It was felt that limiting the technology options [to millimetre-wave body scanners that are equipped with automatic threat recognition technology which eliminates health concerns over the use of ionising radiation and also privacy concerns over the use of raw body images] alleviates the requirement for alternative screening arrangements to be offered.

b) **Security outcome:** The objective of introducing body scanners is to detect items that are either difficult or impossible to detect by other means. Even where a passenger is frisk searched, the search would need to be highly intrusive to detect the type of items that a body scanner is designed to detect, but would be unlikely to be as effective. There has been extensive negative publicity in the United States about intrusive frisk searches. It is unlikely that frisk searches of the type used in the United States would be acceptable to the Australian public.

c) **Cost effectiveness:** The Government and industry have made a considerable investment in this technology. This investment will only be justified if passengers who are selected to undergo a body scan have no general option to opt for an alternative means of screening.⁹

3.8 The department went on to explain that the "United Kingdom has a no-opt out policy applying to the use of body scanners" whereas "the United States, Canada, and

6 NSW Council for Civil Liberties, *Submission 11*, [p. 2].

7 For example see NSW Council for Civil Liberties, *Submission 11*, [p. 2].

8 Department of Infrastructure and Transport, *The use of body scanners for aviation security screening in Australia: Privacy Impact Statement*, February 2012, p. 28.

9 Department of Infrastructure and Transport, answer to question on notice, 18 April 2012 (received 30 April 2012), [p. 1], www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=rrat_ctte/aviation_screening_2012/submissions.htm, (accessed 4 May 2012).

the Netherlands use body scanners for security screening and allow passengers to opt-out in favour of an enhanced pat-down."¹⁰

3.9 The department also provided evidence which demonstrates that approximately 10 per cent of passengers who were approached to take part in the trial of the technology at Sydney international airport, declined to participate. Although the majority of those who refused (67 per cent) indicated that they were in a hurry and did not have time to participate in the trial, approximately one-third of those who declined cited health, privacy or language difficulty as the primary reason.¹¹

3.10 A number of the submissions argued that the option to choose a frisk search over another screening procedure should be maintained.¹²

3.11 Ms and Mr Schafer argued, for example, that they had been unable to find any 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.¹³

3.12 The Schafer's submission also argued that they (along with many of their friends and acquaintances) would, without hesitation, prefer to be subject to a frisk search rather than a body scan. The submission also raised the question of whether there is any harm in providing a pat down option – particularly if the "Government is so sure that most people would opt for a scan".¹⁴

3.13 The submission provided by the Office of the Australian Information Commissioner (OAIC) outlined the background to its engagement with the department. The OAIC stated that in June 2010, it had entered into a Memorandum of Understanding (MOU) with the department regarding the implementation of body scanners in Australian international airports. Specifically, the OAIC was funded to provide advice on privacy matters and facilitate stakeholder consultation.¹⁵

10 Department of Infrastructure and Transport, answer to question on notice, 18 April 2012 (received 30 April 2012), [pp 1–2].

11 Department of Infrastructure and Transport, answer to question on notice, 18 April 2012 (received 30 April 2012), [p. 4]. 11 per cent cited health related concerns, 8 per cent cited privacy concerns and 11 per cent were unable to participate due to language difficulty.

12 See, for example Homeland Security Asia/Pacific Pty Ltd, *Submission 1*, p. 1; Ms Andrea and Mr Michael Schafer, *Submission 2*, p. 2, Civil Liberties Australia Inc., *Submission 3*, [p. 2]; Dr Justin Hastings, *Submission 6*, p. 4; Office of the Australian Information Commissioner, *Submission 9*, p. 2; and Queensland Council for Civil Liberties, *Submission 12*, p. 5.

13 Ms Andrea and Mr Michael Schafer, *Submission 2*, p. 3.

14 Ms Andrea and Mr Michael Schafer, *Submission 2*, p. 3.

15 Office of the Australian Information Commissioner, *Submission 9*, p. 1.

3.14 The OAIC acknowledged that under the *Privacy Act 1988* (the Privacy Act) an individual's right to privacy is not an absolute right. It was noted that the Privacy Act recognises that in some circumstances the rights of the individual must be weighed against other imperatives – in this case, ensuring aviation security objectives are able to be met.¹⁶ The OAIC also stated that its MOU with the department concluded prior to the policy change (which removed the option for passengers to elect to undergo a frisk search).

3.15 The OAIC's submission noted specifically that the "advice provided by the OAIC during the period of the MOU was in the context of there being a choice"¹⁷ and concluded by indicating 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.¹⁸

3.16 Dr Justin Hastings, a Lecturer in International Relations and Comparative Politics at the University of Sydney, also argued that being subject to a frisk search is ultimately a decision to be made by the individual:

If the passenger feels that the 'intrusive' frisk would be less intrusive than a scan and would not violate his or her privacy, it is unclear on what grounds the Government would deny the passenger this option, since unwarranted intrusiveness in this situation is ultimately a judgement of the passenger receiving the pat down.¹⁹

3.17 The CCL indicated that it was both "surprised and concerned by the proposed repeal of Section 95A",²⁰ particularly as it had been told during the consultations that the Australian Government would not be mandating a 'no body-scan no fly' policy.²¹

3.18 Civil Liberties Australia (CLA) also argued that where freedom of choice is practical, it should be offered to Australians in all possible circumstances.²²

Committee comment

3.19 The committee notes that the submission provided by the department acknowledged that a "major stakeholder concern was the question of whether or not people will be allowed to refuse a body scan and instead be cleared by alternative

16 Office of the Australian Information Commissioner, *Submission 9*, p. 2.

17 Office of the Australian Information Commissioner, *Submission 9*, p. 2.

18 Office of the Australian Information Commissioner, *Submission 9*, p. 2.

19 Dr Justin Hastings, *Submission 6*, p. 4.

20 NSW Council for Civil Liberties Inc., *Submission 11*, [p. 1].

21 NSW Council for Civil Liberties Inc., *Submission 11*, [p. 2].

22 Civil Liberties Australia Inc., *Submission 3*, [p. 2].

screening methods."²³ The department's submission also indicated that in the consultation draft of the PIA, it was stated that all passengers would be offered alternative screening procedure if they objected to undergo a body scan.

3.20 The Government has since reassessed its decision in relation to allowing passengers the alternative option of choosing to undergo a frisk search. It has been argued that this decision has been based, in part, on the experience of overseas transport security regulators.

3.21 The committee notes, however, that of the jurisdictions listed by the department, only the United Kingdom has implemented a no opt-out policy, whereas the United States, Canada and the Netherlands each have alternative screening methods available. The committee also notes that alternative screening options will be provided where there are physical or medical reasons. The committee further notes that the use of frisk searches will be used to resolve alarms triggered during a body scan.²⁴

3.22 The committee believes that this is a significant change of policy, given that the OAIC, working on behalf of the department, is of the opinion that giving members of the public an option may better address privacy concerns and this is an opinion that up until quite recently the department seemed to share.

3.23 The committee is mindful of ensuring that Australia has a strong and effective aviation security regime that is proportional with the level of security risk. Accordingly, the committee supports the transition to millimetre-wave technology body scanners at Australia's international airports. This new technology has a range of benefits including the ability to detect and pinpoint the location of both metallic and non-metallic items present within or underneath a person's clothing.

3.24 However, the evidence provided to the committee does not demonstrate that there will be a reduction in the level of security if the current arrangement for a frisk search as an alternative screening procedure is continued. Accordingly, the committee recommends that the current arrangements which allow frisk searches to be used as an alternative screening procedure be retained.

Recommendation 1

3.25 The committee recommends that the use of frisk searches continue to be an alternative screening procedure at Australian international airports and, accordingly, that the bill not repeal section 95A of the *Aviation Transport Security Act 2004*.

23 Office of Transport Security, Department of Infrastructure and Transport, *Submission 5*, p. 28.

24 Department of Infrastructure and Transport, answer to question on notice, 18 April 2012 (received 30 April 2012), [p. 5].

Consent to screening procedures

3.26 A number of submissions raised concerns regarding proposed section 41A which would allow aviation screening officers to assume that a person who presents at an aviation security screening point consents to any screening procedure which is necessary (in order to board an aircraft or to enter an area or zone of a security controlled airport).

3.27 The Explanatory Memorandum notes that this section would not apply to a "frisk search or where a person expressly refuses to undergo a procedure".²⁵ The Explanatory Memorandum also notes that the amendment is designed 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 the 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.²⁶

3.28 A submission provided by Homeland Security Asia/Pacific Pty Ltd (HSAP) noted that "regardless of regulations, there will always be passengers who will refuse to conform". The submission went on to argue that:

Refusal will undoubtedly cause delays, heated arguments, possibly violent outbursts, unrest for other passengers and create public safety risks and a threat to the safety and security of airport workers.²⁷

3.29 HSAP recommended well-placed, clear signage be placed in areas leading up to screening areas in order to mitigate adverse passenger reaction.²⁸

3.30 Ms Andrea and Mr Michael Schafer argued that "the 'simplification' of consent requirements in this case manifests as the removal of a person's freedom of choice".²⁹

3.31 This view was shared by the Counter-Terrorism Unit, Department of Police and Emergency Management (Tasmania)³⁰ and CLA which argued that:

25 Explanatory Memorandum, Aviation Transport Security Amendment (Screening) Bill 2012, p. 6.

26 Explanatory Memorandum, Aviation Transport Security Amendment (Screening) Bill 2012, p. 6.

27 Homeland Security Asia/Pacific Pty Ltd, *Submission 1*, p. 2.

28 Homeland Security Asia/Pacific Pty Ltd, *Submission 1*, p. 2.

29 Ms Andrea and Mr Michael Schafer, *Submission 2*, p. 2.

Australians are being given no choice about being forcibly subjected to the scanners, which is a complete denial of civil liberties and at odds with all other scanning/security systems under which options are available.³¹

3.32 VIPA – the organisation representing Virgin Group Pilots – also suggested that, in line with the United States and Europe, passengers should retain the right to refuse to be subject to the full body scanning process. VIPA recommended that:

This should be done discretely, and the passenger should then be required to pass through a metal detector and be subjected to a pat-down. Again biometric identification may negate this requirement. There should be an automatic opt-out for children, pregnant women, the disabled and the ill.³²

Committee comment

3.33 The committee acknowledges the concerns raised by several submitters in relation to the changes to the consent requirements. The committee also notes that the new arrangements will not apply where a person expressly refuses to undergo a procedure or a frisk search.

3.34 The committee believes that the assumed consent arrangement in combination with the ability of passengers to expressly refuse to undergo a screening procedure strikes an appropriate balance between airport security, efficient passenger facilitation and freedom of choice. To require consent to be expressly sought from every passenger, where a very significant majority of passengers appear willing to pass through the body scanner, could cause unnecessary and lengthy delays in passenger facilitation.

3.35 The committee encourages the government to ensure that clear information on a passenger's ability to refuse to undergo a screening procedure and the consequences of such a refusal, should be provided at the entry point to all relevant screening areas.

3.36 In this regard the committee notes the Minister's response to the Scrutiny of Bills Committee's concerns about the proposed consent provision. The Minister indicated that amendments will be made to the Aviation Transport Security Regulations 2005 to mandate that airports display appropriate signage at screening points advising passengers of their rights in relation to aviation security screening.³³ A copy of the Minister's response is provided at Appendix 4.

30 Department of Police and Emergency Management (Tasmania), Counter-Terrorism Unit, *Submission 10*, p. 2.

31 Civil Liberties Australia Inc., *Submission 3*, [p. 1].

32 VIPA, *Submission 8*, p. 10.

33 Correspondence to Chair, Scrutiny of Bills Committee from the Hon. Anthony Albanese, Minister for Infrastructure and Transport, dated 22 May 2012.

Airport staff and aircrew

3.37 The Australian Airline Pilots' Association (AusALPA) submitted that for a large percentage of the travelling public, there will be minimal exposure to body scanning equipment and minimal health risks. AusALPA argued however, the health risk is "exacerbated for frequent flyers and more so for aircrew, both pilots and cabin crew." It was further argued that:

Aircrew, by nature of their employment, who attend work on four occasions per week face the possibility of exposure at least four times during that period and possibly up to eight times or more. This equates to a possible exposure rate of between 200 and 400 times per year and possibly significantly higher as crews changing between aircraft, terminals, flights or domestic/international operations could be screened multiple times during a single duty period.³⁴

3.38 AusALPA stated that in the United States, the Transportation Security Administration has mandated that all on-duty pilots (who are able to provide two forms of identification) are not required to undergo any form of body scanning.³⁵ The Association also noted that both the United States and Canada have introduced systems which allow aircrew, who have registered their personal and work details, to access airports through biometric scanning. The authenticity of the person seeking access is able to be checked and access is allowed or denied, based on stored data. AusALPA suggested that this system:

... has the ability to reduce the strain on the passenger screening system and reduce the exposure rate of aircrew to possible health effects of the scanners themselves.³⁶

3.39 VIPA also argued that pilots and cabin crew should not be subjected to body scanning. VIPA noted that pilots and cabin crew undergo rigorous security background checks and argued that "once issued with an Airport Security Identity Card pilots and cabin crew are then entitled to work in and around aircraft as part of their normal duties",³⁷ and recommended that:

Pilots, Cabin Crew and perhaps other regular airport workers be exempt from using full-body scanners. Instead a separate, private area should be made available for crews to pass through a metal detector and have a pat-down should the detector's alarm sound. Pat-downs must be at all times videoed and there should be another crew member present. Many people find pat-downs intrusive; to alleviate this requirement government could introduce crew card or biometric identification.³⁸

34 Australian Airline Pilots' Association, *Submission 4*, [p. 13].

35 Australian Airline Pilots' Association, *Submission 4*, [p. 13].

36 Australian Airline Pilots' Association, *Submission 4*, [p. 15].

37 VIPA, *Submission 8*, p. 9.

38 VIPA, *Submission 8*, p. 10.

3.40 In response to a question on notice the department indicated that the levels of electromagnetic energy exposure from a body scan is significantly less than the relevant radiation protection standard:

The power density that a person could be exposed to within the ProVision body scanner is significantly less than the maximum permissible exposure levels for the public specified in the Australian Radiation Protection and Nuclear Safety Agency's (ARPANSA) Radiation Protection Standard: *Maximum Exposure Levels to Radiofrequency Fields -3 kHz -300 GHz*. This standard sets a maximum permissible exposure level for members of the public, including children, of 10 watts per square metre. In comparison, the power density of the ProVision body scanner has been measured to be ... between 0.00004 (4×10^{-5}) and 0.00064 (6.4×10^{-4}) watts per square metre, which is several thousand times less than the maximum exposure levels set in these standards.³⁹

3.41 In relation to airport screening staff who work in close proximity to the body scanners, the department advised that:

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 is considered to be insignificant.⁴⁰

3.42 The department's Health and Safety Information Sheet, which was compiled with the assistance of ARPANSA and the Therapeutic Goods Administration, specifies that:

There is no evidence to suggest that millimetre-wave body scanners, or other devices in this frequency and at the power density used by scanners, are a health risk for the travelling public or the operators.⁴¹

Committee comment

3.43 The committee accepts ARPANSA's health and safety advice that due to the very low level of exposure, the currently proposed millimetre-wave scanners do not cause concern from the radiation health perspective for either regular passengers, aircrew or airport staff. Accordingly, there appears no justification for a special exemption to be granted to aircrew and airport staff.

39 Department of Infrastructure and Transport, answer to question on notice, 18 April 2012 (received 30 April 2012), [p. 3].

40 Department of Infrastructure and Transport, answer to question on notice, 18 April 2012 (received 30 April 2012), [p. 3].

41 Department of Infrastructure and Transport, *Submission 5, Attachment C*, [p. 1].

Screening technologies

Types of technology

3.44 For health reasons, the Government has publicly committed to using only non-ionising millimetre-wave technology:

There are two types of body scanning technology used for aviation security screening internationally: millimetre-wave and backscatter X-ray.

After consideration of the merits of both technologies and extensive consultation with relevant federal and state government agencies, including the Australian Radiation Protection and Nuclear Safety Agency, the Therapeutic Goods Administration, the Department of Health and Ageing, state health agencies and international partner agencies, the government decided that only body scanners that use millimetre-wave technology will be used in Australia.

Active millimetre-wave body scanners use safe non-ionising radiation and produce emissions well below the permissible limits set by the Australian Radiation Protection and Nuclear Safety Agency.

3.45 However, a number of submitters noted the proposed amendment which would provide that the bill list, but not limit, the types of equipment that may be used for aviation screening purposes. Proposed new subsection 44(3A) states that:

(3A) ... 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.⁴²

3.46 Concerns were raised that the implementation of this provision would result in there being no legislative protection which would prevent or limit the future use of technologies other than millimetre-wave scanners. It was argued, for example, that a future government would be at liberty to use the more controversial backscatter x-ray machines or larger versions of the technology intended for 'group screening'.⁴³

3.47 The submission by ARPANSA indicated that the "currently proposed millimetre wave scanners emit *non*-ionising radiation at very low levels and do not cause ARPANSA concern from a radiation health perspective."⁴⁴

42 Aviation Transport Security Amendment (Screening) Bill 2012, p. 3.

43 Ms Andrea and Mr Michael Schafer, *Submission 2*, p. 8.

44 Australian Radiation Protection and Nuclear Safety Agency, *Submission 13*, [p. 2], emphasis in original.

3.48 In relation to the possible future use of ionising radiation technologies, ARPANSA indicated that:

Exposure to ionising radiation is known to cause harmful effects to the human body. It is assumed in international radiation protection guidance that all exposure to ionising radiation carries some level of risk, with the highest concern related to the possibility of cancer formation. Whenever a human activity causes an individual to be exposed to ionising radiation, the activity needs to be justified and the exposures should be as low as reasonably achievable.

While the ionising radiation exposure to individuals from the current generation of x-ray body scanners is very low, and the associated radiation risk is very small, international guidance recommends that the use of ionising radiation for human imaging outside use for medical purposes is not justified, except in exceptional circumstances.⁴⁵

3.49 CCL noted that it had participated in the various consultations relating to body scanning over several years. CCL indicated that it was satisfied with the Government's decision to introduce millimetre-wave technology and suggested that this was a good choice – for both health and privacy reasons – and because it addressed a range of concerns expressed during the consultation process. CCL did, however, note that it had expressed some concerns in relation to the PIA document provided during the last round of consultations – specifically, that the document contained an unexplained reference to the continuation of work on x-ray technology.⁴⁶

3.50 CCL stated that it is, therefore "concerned at the open-ended description of body scanner technology referenced in amendment 3: *(c) body scanning equipment such as an active millimetre wave body scanner*". CCL's recommendation is that the amendment should be reframed to "restrict the technology to that currently known to have minimal danger to health."⁴⁷

Committee comment

3.51 The committee notes the concerns of some submitters in relation to the proposed amendment which would mean that the types of equipment that may be used for aviation security screening purposes would be listed, but not limited. The committee also notes the statement contained in the Explanatory Memorandum which indicates that the bill would "provide flexibility in the future for the Government to introduce new screening tools as improvements are made to existing technologies."⁴⁸

45 Australian Radiation Protection and Nuclear Safety Agency, *Submission 13*, [p. 5].

46 NSW Council for Civil Liberties Inc., *Submission 11*, [p. 1].

47 NSW Council for Civil Liberties Inc., *Submission 11*, [p. 2], emphasis in original.

48 Explanatory Memorandum, Aviation Transport Security Amendment (Screening) Bill 2012, p. 2.

3.52 The committee notes that following consultation with a number of relevant federal and state bodies, including ARPANSA, the Therapeutic Goods Administration, and the Department of Health and Ageing, the Government has made the decision that body scanning technology that uses millimetre-wave technology will be used in Australia.

3.53 The committee accepts that the levels of radiation passengers will be exposed to through the use of the preferred non-ionising millimetre-wave technology (the L-3 ProVision millimetre-wave body scanner) have been judged by ARPANSA as safe to human health. The committee notes, however, that the bill does not specifically rule out the use of potentially harmful ionising radiation, or indicate as recommended by ARPANSA that this type of technology will only be used "in exceptional circumstances".

3.54 The committee supports the need for flexibility in terms of the introduction and use of updated screening technology. However, given the potential adverse health impacts of ionising backscatter x-ray technologies, which have been identified by ARPANSA and others, the committee recommends the government clearly articulate the circumstances in which such technology would be used.

Recommendation 2

3.55 The committee recommends that the Government amend the bill to limit the use of ionising backscatter x-ray equipment for security screening to certain, clearly defined exceptional circumstances.

Independent testing of technology

3.56 Submissions also raised concerns about a lack of independent testing in relation to the new technology.

3.57 Andrea and Michael Schafer for example, argued that whilst at first glance it may be easy to dismiss the idea that body scanning machines 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.⁴⁹

3.58 ARPANSA also noted that "future use of *non*-ionising radiation technologies producing significantly higher exposure would require further scrutiny for potential health effects."⁵⁰

49 Ms Andrea and Mr Michael Schafer, *Submission 2*, p. 4.

50 Australian Radiation Protection and Nuclear Safety Agency, *Submission 13*, [p. 2].

3.59 CLA argued that more time should be allowed for research and analysis to be conducted in relation to what are detailed electronic and radiation issues. It was noted that no one, including the Australian Government, has access to technical information and data collected over a reasonable timeframe. It was further argued that:

The Government must commission a study into use of each new item of equipment chosen. It should analyse the health affects on a randomly selected sample of passengers, crew, security operators and airport staff over an initial 12-month period, with longer term follow-up. It should cover exposure to airport screening – and other such wave/radiation equipment – cumulatively.⁵¹

3.60 In response to these concerns the department stated that:

It is a requirement that all equipment introduced at Australian airports is approved by an overseas transport security regulator that is recognised by the Australian Government. This means that the equipment must meet certain standards in terms of its ability to detect aviation security threats. The Government does not intend to allow the introduction of equipment that is not appropriately certified.⁵²

Committee comment

3.61 Although security standards for new technologies introduced into Australia need to be approved by an overseas transport security regulator recognised by the Government, the committee notes that it is unclear whether the Government intends to make specific health testing regimes mandatory prior to the introduction of new technology. For example, it is noted that there are health concerns in relation to the use of ionising technologies such as 'backscatter x-ray' equipment. Similarly, ARPANSA has indicated that any significant increase in the proposed level of exposure to new non-ionising radiation technologies would require further research in relation to potential health effects.

3.62 The committee is of the view that before any new screening technology is introduced into Australia, it must be thoroughly tested for compliance with the relevant health regulations.

Recommendation 3

3.63 The committee recommends that the Government ensure that prior to the introduction of any new security screening technology at international airports, that the technology be thoroughly tested for compliance with the relevant health regulations.

51 Civil Liberties Australia Inc., *Submission 3*, [p. 2].

52 Department of Infrastructure and Transport, answer to question on notice, 18 April 2012 (received 30 April 2012), [p. 3].

Impact on processing of passengers

3.64 CLA argued that the body scanners proposed to be introduced in Australian airports "quite probably (from overseas test results) will increase the false positives"⁵³ thus causing delays.

3.65 The Queensland Council for Civil Liberties also pointed to the issue of delays at airports and noted that the submission's author had witnessed body scanning equipment in operation at a United States airport in January 2001:

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.⁵⁴

3.66 The department's submission noted that the Body Scanner Proof of Concept Trial was conducted at Sydney and Melbourne Airports during August and September 2011. The department indicated that one objective of the trial was to measure the impact of the new technologies on passenger facilitation. The department's results indicated that over 23,000 scans were conducted and that nearly 60 per cent of passengers who undertook a body scan were immediately cleared.⁵⁵

3.67 The committee sought further information from the department on the potential for delayed processing through security screening points. The department's response illustrates that the average extra time taken compared to a walk-through metal detector is 25 seconds:

Data captured during the trial indicates that the average time for a person to be processed (from divesting at the X-ray machine to being reunited with their belongings) through the body scanner lane was 122 seconds compared with an average time of 97 seconds through the walk-through metal detector lane. The maximum time recorded for processing a passenger through the body scanner lane was 606 seconds compared with 224 seconds for the walk-through metal detector.⁵⁶

3.68 The department went on to explain that "it is anticipated that as the travelling public becomes familiar with the technology, this processing time will decrease ...".⁵⁷

53 Civil Liberties Australia Inc., *Submission 3*, [p. 1].

54 Queensland Council for Civil Liberties, *Submission 12*, p. 3.

55 Office of Transport Security, Department of Infrastructure and Transport, *Submission 5*, pp 20–21.

56 Department of Infrastructure and Transport, answer to question on notice, 18 April 2012 (received 30 April 2012), [p. 4].

57 Department of Infrastructure and Transport, answer to question on notice, 18 April 2012 (received 30 April 2012), [pp 4–5].

Committee comment

3.69 It appears from the evidence provided to the committee that, on average, the introduction of millimetre-wave scanners will not cause significant delays in passenger facilitation. The committee also accepts that processing times are likely to decrease as the travelling public becomes more familiar with body scanner technology.

Storage and retrieval of images

3.70 The department submitted that "the body scanners to be used at Australian airports will not be equipped with the imaging software or workstations, nor will they be physically able to store or transmit data collected from the scans, no images can be reconstructed."⁵⁸

3.71 Submissions from stakeholders however indicated that privacy and the use of images remains an area of concern. CCL, for example, noted that whilst the Minister for Infrastructure and Transport did offer an assurance in his second reading speech that there would be no data storage, "the proposed amendment does not make any mention of such a proscription. It should."⁵⁹

3.72 In response to a committee question on notice, the department noted that:

The [Senate] Scrutiny of Bills Committee has also requested that the Aviation Transport Security Amendment (Screening) Bill be amended to include a provision that explicitly states that data from individual scans will not be stored or transmitted and the Department intends to comply with this request.⁶⁰

Committee comment

3.73 The committee agrees with the Senate Scrutiny of Bills Committee's views on this matter and also supports the department's undertaking to amend the bill to include a provision that explicitly states that data from individual scans will not be stored or transmitted.

3.74 The committee notes that on 23 May 2012, in response to the issues raised by the Scrutiny of Bills Committee, the Minister for Infrastructure and Transport moved and the House of Representatives passed an amendment to the bill:

... to include a provision requiring that any current or future body scanner used for aviation security screening at Australian airports must not store or

58 Office of Transport Security, Department of Infrastructure and Transport, *Submission 5*, p. 28.

59 NSW Council for Civil Liberties Inc., *Submission 11*, [p. 1].

60 Department of Infrastructure and Transport, answer to question on notice, 18 April 2012 (received 30 April 2012), [p. 6].

transmit any image or personal information about the person being screened.⁶¹

3.75 The committee supports the amendment passed in the House of Representatives. As this matter appears to have been resolved effectively, the committee chooses not to make a specific recommendation.

Training of security staff and communications

3.76 In announcing the Government's Strengthening Aviation Security Initiative, the Minister indicated that, as part of the Government's Aviation White Paper, it was proposed to introduce "more stringent training and performance requirements for security screening staff."⁶²

3.77 Concerns were raised about the type of training required by the operators of body scanning machines at airports. It was argued for example that machines which scan the entire human body in this way would, in many settings, be considered a medical device and would be operated by medically trained staff:

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.⁶³

3.78 The department's *Proof of Concept Trial Report* stressed the importance of training:

It was determined that human factors will play a significant role in ensuring the successful introduction of these technologies. In particular, it was noted that training for screening officers will require a much greater focus on customer service. A strong communications strategy will be another essential element to ensure a successful rollout.

...

There is a much greater element of human interaction associated with body scanner screening and therefore a greater requirement for screening officers to possess strong communication skills. It was noted that the introduction of body scanners will alter the skill-set that is required by screening staff, with an increased need for screening officers with superior customer service skills.

There was a recognised need for screening officers to exhibit empathy and be able to put themselves in the shoes of passengers who may believe that they are being unduly inconvenienced or mistreated. As such, screening

61 The Hon. Anthony Albanese, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 23 May 2012, p. 87.

62 The Hon. Anthony Albanese, Minister for Infrastructure and Transport, *Strengthening aviation security*, Media Release AA024/2010 Joint, 9 February 2010, [p. 2].

63 Ms Andrea and Mr Michael Schafer, *Submission 2*, p. 4.

officer training for the trial focussed on factors such as tolerance, cultural and disability awareness, good manners and conflict resolution. With the increased need for screening officer/passenger interaction, language barriers will become more apparent. Multi-lingual instruction cards may provide some assistance in overcoming this challenge and the Department will consider this in its communications strategy.⁶⁴

3.79 The department elaborated on its communications strategy in response to the committee's Questions on Notice:

Changes will be made to the Aviation Transport Security Regulations 2005 to mandate that official signage be placed at screening points to inform [sic] passengers that it will be assumed that they consent to all screening process with the exception of a frisk search when they enter the screening point, unless they expressly state their refusal to undergo a particular screening procedure.

Informational signage will also be placed at screening points to inform passengers that body scanners are in operation and advise them of what they need to do to prepare to undergo a body scan.

Each airport will decide on the type of communications medium that is appropriate to their airport. Resources that will be made available to them by Government include:

- static signage for display at or near screening lanes outlining divesting procedures;
- dynamic signage for use on digital screens; and
- an instructional DVD assisting passengers to prepare for the screening process.⁶⁵

Committee view

3.80 The committee acknowledges the importance of clearly communicated information and appropriate staff training to assist in the effective introduction of millimetre-wave body scanners into Australian international airports. The committee encourages the government to work actively with the aviation industry to develop a clear and effective set of signage and informational products and training arrangements to maximise the security outcomes of the body scanners roll-out.

Conclusion

3.81 Subject to the recommendations contained in this report, the committee supports the passage of the bill.

64 Department of Infrastructure and Transport, *Optimal Technologies Proof of Concept Trial Report*, pp 3 and 7.

65 Department of Infrastructure and Transport, answer to question on notice, 18 April 2012 (received 30 April 2012), [p. 6].

Recommendation 4

3.82 The committee recommends that, subject to the recommendations made elsewhere in this report, the Senate pass the Aviation Transport Security Amendment (Screening) Bill 2012.

Senator Glenn Sterle

Chair