

Appendix 4

Correspondence from the Minister for Infrastructure and Transport, the Hon. Anthony Albanese MP to the Senate Scrutiny of Bills Committee regarding the *Alert Digest No. 2 of 2012* concerning the Aviation Transport Security Amendment (Screening) Bill 2012

22 May 2012



The Hon Anthony Albanese MP

Minister for Infrastructure and Transport
Leader of the House

Reference: 01251-2012

22 MAY 2012

Senator Mitch Fifield
Chair
Senate Scrutiny of Bills Committee
S1.111
Parliament House
CANBERRA ACT 2600

RECEIVED

23 MAY 2012

Senate Standing C'ttee
for the Scrutiny
of Bills

Dear Senator Fifield

Thank you for the comments contained in the Scrutiny of Bills Committee's Alert Digest No.2 of 2012, concerning the Aviation Transport Security Amendment (Screening) Bill 2012. I offer the following comments in response.

Item 4, repeal existing section 95A

I note that the Committee has asked the Senate as a whole to consider the question of whether repealing section 95A is limiting the right to freedom of movement in an appropriate, reasonable and proportionate manner. For background, section 95A was originally included in the *Aviation Transport Security Act 2004* (the Act) to provide for persons who for medical reasons preferred not to be screened using technology that generates an electromagnetic field. I wish to assure the committee that passengers who, for medical reasons, are unable to be screened by a particular technology will be able to undergo special circumstances screening. Special circumstances screening involves the use of screening methods such as hand-held metal detectors, frisk searches or another screening method appropriate to the passenger's circumstances.

The Department of Infrastructure and Transport (the Department) has consulted extensively with privacy and civil interest groups, including disability groups, in developing the operational policy that will govern the use of body scanners for aviation security screening. Alternatives will be made available for those who, for a genuine medical or physical reason, cannot undergo a body scan.

Through the Office of the Australian Information Commissioner, the Department engaged groups such as Vision Australia, Disability Council NSW, Organisation Intersex International, the Australian Federation of Islamic Councils (Muslims Australia), the Australian Human Rights Commission and the Australian Catholic Bishops Conference, to ensure that these organisations were involved in the policy dialogue. Part of this consultation process involved the development of a comprehensive privacy impact assessment. A consultation draft for comment was released in 2011 during the body scanner trial at Sydney and Melbourne airports and three submissions were received. The feedback received in these submissions has been

incorporated into the final assessment which was released on 28 February 2012. The assessment is publically available on the Department's TravelSECURE website and a copy has been included for your information at **Attachment A**.

Regulation 4.17 of the Aviation Transport Security Regulations 2005 allows for the methods, techniques and equipment to be used for screening to be specified in a notice. This notice outlines screening requirements for a range of special circumstances passengers, such as passengers with visual impairments, passengers who are unable to walk or stand, and passengers accompanied by a carer or an assistance animal. Provisions contained in the notice for special circumstances screening will remain and will be supplemented with any additional special circumstances that relate to body scanners. In addition, the Department has a program of ongoing consultation with disability groups through the Aviation Access Working Group to ensure that screening processes cater to the needs of these stakeholders. This engagement has assisted the Department to develop screening practice guidelines for the screening of special circumstances passengers.

I am confident that the measures currently in place adequately protect special circumstances passengers, whilst providing the flexibility needed to refine processes as required. The protocols for screening passengers with special circumstances will not change significantly with the introduction of body scanners. Where alternative screening is required, those alternatives will consist of technology and procedures already used for screening passengers with disabilities and special circumstances.

Item 1, proposed section 41A

In relation to the concerns raised about the proposed consent provision, 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. These signs will clearly state that a passenger will be assumed to have consented to a screening procedure unless they expressly state their refusal. The main purpose of the consent provision is to ensure that passenger facilitation rates are not adversely affected by the requirement for express consent to be obtained from each passenger before they undergo a body scan.

Item 1, proposed section 4(3)(3B)

I note the Committee's comments about lack of legislative assurance that body scanners introduced into Australia for aviation security screening will not be able to store or transmit data from individual scans. I agree that the legislation should provide that scanners will not be capable of storing or transmitting data obtained from individual scans, or that these functions will be disabled or removed.

I trust this information will be of assistance to the Committee. If you would like clarification on any of the matters raised, the contact officer in the Department is Mr Peter Robertson, General Manager, Aviation Security, telephone number 02 6274 6271. The adviser in my office is Mr Craig Carmody, telephone number 02 6277 7685.

Yours sincerely

ANTHONY ALBANESE

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