

The Senate

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Rural and Regional Affairs  
and Transport  
Legislation Committee

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Aviation Transport Security Amendment  
(Screening) Bill 2012 [Provisions]

May 2012

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# Membership of the committee

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Senator the Hon. Bill Heffernan, Deputy Chair	New South Wales, LP
Senator Alex Gallacher	South Australia, ALP
Senator Fiona Nash	New South Wales, NATS
Senator Rachel Siewert	Western Australia, AG
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Senator Scott Ludlam	Western Australia, AG
to replace Senator Rachel Siewert from 1 March 2012	
Senator Anne McEwen	South Australia, ALP
to replace Senator Anne Urquhart from 9 May 2012	

## Participating members participating in this inquiry

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## Abbreviations

ARPANSA	Australian Radiation Protection and Nuclear Safety Agency
ASIC	Aviation Security Identification Card
AusALPA	Australian Airline Pilots' Association
CCL	New South Wales Council for Civil Liberties
CLA	Civil Liberties Australia
HSAP	Homeland Security Asia/Pacific Pty Ltd
MOU	Memorandum of Understanding
OAIC	Office of the Australian Information Commissioner
PIA	Privacy Impact Assessment
the Act	<i>Aviation Transport Security Act 2004</i>
the bill	Aviation Transport Security Amendment (Screening) Bill 2012
the committee	Senate Rural and Regional Affairs and Transport Legislation Committee
the department	Department of Infrastructure and Transport
the Privacy Act	<i>Privacy Act 1988</i>
the Regulations	Aviation Transport Security Regulations 2005





# Recommendations

## 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*.

## 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.

## 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.

## 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*.



# Chapter 1

## Introduction

### Conduct of the inquiry

1.1 On 1 March 2012, the Senate referred the provisions of the Aviation Transport Security Amendment (Screening) Bill 2012 (the bill) to the Senate Rural and Regional Affairs and Transport Legislation Committee (the committee) for inquiry and report by 9 May 2012.<sup>1</sup> The reporting date was further extended to 18 May and then 30 May 2012.

1.2 The reason given for the referral of the bill through the Senate Selection of Bills Committee was that:

- the privacy and health issues at stake with the technology described in the bill require input from experts;
- security and counter-terrorism experts should be consulted as to whether the new screening arrangements contained in the bill would enhance security; and
- a Senate inquiry would help to provide more detail about the consultation process between the Office of the Information Commissioner and the Office of Transport Security on the screening arrangements.<sup>2</sup>

1.3 In accordance with usual practice, the committee advertised the inquiry on its website and in *The Australian*. In addition, the committee wrote to relevant organisations inviting submissions. The committee received 16 submissions (see Appendix 1).

1.4 The committee did not hold a public hearing in relation to the inquiry. It did, however, seek clarification regarding a number of issues in a series of written questions on notice to the Department of Infrastructure and Transport. A list of the questions and responses is at Appendix 2.

### House of Representatives inquiry

1.5 The bill was introduced into the House of Representatives by the Minister for Infrastructure and Transport, the Hon. Anthony Albanese MP, on 16 February 2012.<sup>3</sup>

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1 Commonwealth of Australia, *Journals of the Senate*, 1 March 2012, p. 2188.

2 Senate Selection of Bills Committee, *Report No. 2 of 2012*, Appendix 1.

3 Commonwealth of Australia, *House of Representatives Votes and Proceedings*, 16 February 2012, p. 1235.

1.6 The House of Representatives Selection Committee referred the bill for inquiry to the House Standing Committee on Infrastructure and Communications.<sup>4</sup> The House of Representatives committee tabled its report on 9 May 2012. The report concluded that the bill be passed as it will achieve its stated purpose.<sup>5</sup>

### **Purpose of the legislation**

1.7 The bill proposes amendments to the *Aviation Transport Security Act 2004* (the Act) and the *Aviation Transport Security Regulations 2005* (the Regulations) to support the introduction of body scanners at Australian international airports.

1.8 The four main amendments proposed to the Act and the Regulations will:

- allow aviation screening officers to assume that a person who presents at an aviation security screening point consents to any screening procedure, with the exception of a frisk search, unless the person expressly states their refusal to undergo a particular screening procedure;
- prescribe that a randomly selected person who refuses to undergo a screening procedure will not be granted clearance and will be unable to pass through the screening point to the departure gates;
- repeal the current provision allowing passengers to request a frisk search as an alternative to another screening procedure; and
- list 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.<sup>6</sup>

### **Acknowledgement**

1.9 The committee appreciates the time and effort of all those who provided written submissions to the inquiry. Their work has assisted the committee considerably in its inquiry. The committee also acknowledges the cooperation of the Department of Infrastructure and Transport for its timely responses to questions on notice.

### **Report structure**

1.10 This report is divided into three substantive chapters. Chapter 2 outlines the background and policy context in which the legislation is proposed and Chapter 3

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4 House of Representatives Selection Committee, *Report No. 44*, 16 February 2012, p. 3.

5 See House of Representatives Standing Committee on Infrastructure and Transport website, *Aviation Transport Security Amendment (Screening) Bill 2012*, [www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=ic/aviation/report.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ic/aviation/report.htm) (accessed 15 May 2012).

6 The Hon. Anthony Albanese, Minister for Infrastructure and Transport, Second Reading Speech, 16 February 2012, pp 3–8.

discusses the issues raised during the committee's inquiry and outlines the committee's views and conclusions and provides recommendations.



## 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."<sup>1</sup> 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.<sup>2</sup>

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."<sup>3</sup> 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.<sup>4</sup>

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;

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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.<sup>5</sup>

## **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.<sup>6</sup>

### ***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.<sup>7</sup>

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.<sup>8</sup> 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.

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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](http://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.<sup>9</sup>

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.<sup>10</sup>

### **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.<sup>11</sup>

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."<sup>12</sup>

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

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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](http://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."<sup>13</sup>

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).<sup>14</sup>

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.<sup>15</sup>

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."<sup>16</sup>

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

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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.

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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.<sup>17</sup>

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.<sup>18</sup>

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.<sup>19</sup>

### **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."<sup>20</sup> 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

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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.<sup>21</sup>

## Overview of the bill

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

### *Provisions of the bill*<sup>22</sup>

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.

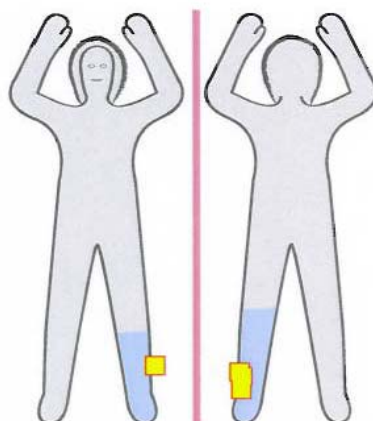
2.26 The second part of this clause proposes that where a body scanner is used for the screening of a person, any image produced by the equipment must be a gender-neutral, generic image such that the person is not identifiable and no anatomical or physical attributes of that person are revealed. Figure 1 provides an example of the type of generic image that may be produced.

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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 Committee<sup>23</sup>**

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](http://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.

# 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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."<sup>4</sup>

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."<sup>5</sup> The consequence of refusing to undergo a body

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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."<sup>6</sup>

3.6 Several submitters raised concerns that during the consultation process the Government was not considering the no opt-out policy.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup>

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

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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](http://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."<sup>10</sup>

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.<sup>11</sup>

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

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.<sup>13</sup>

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".<sup>14</sup>

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.<sup>15</sup>

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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.<sup>16</sup> 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"<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup>

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

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.<sup>22</sup>

### ***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

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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."<sup>23</sup> 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.<sup>24</sup>

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*.**

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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".<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup>

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

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".<sup>29</sup>

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

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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.<sup>31</sup>

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.<sup>32</sup>

### ***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.<sup>33</sup> A copy of the Minister's response is provided at Appendix 4.

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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.<sup>34</sup>

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.<sup>35</sup> 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.<sup>36</sup>

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",<sup>37</sup> 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.<sup>38</sup>

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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 ( $4 \times 10^{-5}$ ) and 0.00064 ( $6.4 \times 10^{-4}$ ) watts per square metre, which is several thousand times less than the maximum exposure levels set in these standards.<sup>39</sup>

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.<sup>40</sup>

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.<sup>41</sup>

### ***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.

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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.<sup>42</sup>

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'.<sup>43</sup>

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."<sup>44</sup>

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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.<sup>45</sup>

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.<sup>46</sup>

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."<sup>47</sup>

### ***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."<sup>48</sup>

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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.<sup>49</sup>

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."<sup>50</sup>

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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.<sup>51</sup>

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.<sup>52</sup>

### *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.**

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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"<sup>53</sup> 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.<sup>54</sup>

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.<sup>55</sup>

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.<sup>56</sup>

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 ...".<sup>57</sup>

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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].

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**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."<sup>58</sup>

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."<sup>59</sup>

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.<sup>60</sup>

**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

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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.<sup>61</sup>

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."<sup>62</sup>

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.<sup>63</sup>

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

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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.<sup>64</sup>

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.<sup>65</sup>

### ***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.

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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**



# **Additional Comments**

## **Australian Greens**

1.1 The Australian Greens referred this bill to an inquiry because of the privacy and health concerns elaborated in several submissions.

1.2 While these issues have been examined in the Committee's report and the government amendment prohibiting the storage and transmittal of images is welcome, the health problems experienced overseas with back-scatter scanners that use ionising radiation are serious enough to warrant more attention. These issues provide compelling reasons to reject outright the use of ionising backscatter x-ray equipment, rather than limit it to 'certain clearly defined exceptional circumstances,' (Recommendation 2), especially as other technology is available.

1.3 The EU has banned the use of backscatter body scanners because of the possible health risks to passengers and staff. They continue to be used in the USA where passengers have the right to request a frisk search as an alternative. Documents before a USA Federal Court indicate that the health implications of the use of this type of technology have been grossly understated by authorities. The presence of a cancer cluster at Logan Airport in Boston has been documented.

1.4 The Australian Greens support the Committee's recommendation that frisk searches should continue to be an alternative to body scanners (Recommendation 1) and that the government should ensure that screening technology is thoroughly tested for compliance with health regulations (Recommendation 3).

1.5 The Australian Greens note that conducting inquiries 'on the papers' might appear to save time, however, clarifying the intention of proposed legislation with experts and Departments at public hearings saves numerous questions on notice and informal information seeking that were necessary in this case.

**Senator Scott Ludlam**



# Appendix 1

## Submissions Received

<b>Submission Number</b>	<b>Submitter</b>
1	Homeland Security Asia/Pacific Pty Ltd
2	Andrea and Michael Schafer
3	Civil Liberties Australia Inc
4	Australian Airline Pilots' Association
5	Office of Transport Security, Department of Infrastructure and Transport
6	Justin Hastings
7	Graham West
8	VIPA
9	Office of the Australian Information Commissioner
10	Counter-Terrorism Unit, Department of Police and Emergency Management
11	NSW Council for Civil Liberties
12	Queensland Council for Civil Liberties
13	Australian Radiation Protection and Nuclear Safety Agency
14	Aaron Heath
15	Australian Airports Association
16	Amy Tomoe

## Additional Information Received

- Received on 30 April 2012, from the Department of Infrastructure and Transport (DIT). Answers to Questions taken on Notice on 18 April 2012
- Received on 25 May 2012, from the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). Answers to Questions taken on Notice on 21 May 2012



## **Appendix 2**

**Answers to Written Questions on Notice from the  
Department of Infrastructure and Transport**

**30 April 2012**

**Answers to Written Questions on Notice from the  
Australian Radiation Protection and Nuclear Safety  
Agency**

**25 May 2012**

## Senate Rural and Regional Affairs and Transport Legislation Committee

### ANSWERS TO QUESTIONS ON NOTICE

Inquiry into the Aviation Transport Security Amendment (Screening) Bill 2012 [Provisions]

#### Department of Infrastructure and Transport

**1) *Can the Department elaborate on the reasoning behind the Government's decision to withdraw the opt-out policy?***

There are three main reasons that led to the Government's decision to withdraw the opt-out policy.

- a) **Technology type:** From the time of the decision to introduce body scanners, the Government has been sensitive to the health and privacy concerns held by some members of the public in relation to the use of this technology. The Government determined that the best option to address these concerns was to limit the technology type to be used to millimetre-wave body scanners that are equipped with automatic threat recognition technology. This eliminates health concerns over the use of ionising radiation and also privacy concerns over the use of raw body images. It was felt that limiting the technology options in this manner 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.

The Office of Transport Security (OTS) has recently obtained a video showing the frisk searches used by the United States Transportation Security Administration to clear passengers who do not wish to undergo a body scan. This video contains 'sensitive security information' and has been released to OTS subject to certain restrictions on its storage and distribution. The video cannot be released to the public, however it may provide members of the committee with a better understanding of the sorts of alternative screening measures that have been applied elsewhere in countries where the 'no scan no fly' principle is not in place.

**2) *Which overseas transport security regulators have implemented a no opt-out policy and which overseas transport security regulators provide an alternative screening option?***

The Government of the United Kingdom has a no-opt out policy applying to the use of body scanners. It has been reported that out of 1.5 million scans conducted in the UK, there have been 12 instances of passengers refusing to undergo a scan.

Transport Security Regulators in the United States, Canada, and the Netherlands use body scanners for security screening and allow passengers to opt-out in favour of an enhanced

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#### Department of Infrastructure and Transport

pat-down. Thailand also uses body scanners for aviation security screening on a purely voluntary basis.

**3) *What is the Department's response to the following statement made by the Counter-Terrorism Unit, Department of Police and Emergency Management, Tasmania:***

*Since there are major concerns with this technology in other countries it may be argued that it is an imposition on the freedom of Australians to be forced to use this technology. What makes this more problematic is the inclusion that 'a person is taken to consent to any screening procedure when at an aviation screening point'. This is a new definition of 'consent' that may need to be examined further. Consent is usually given by a person either verbally or in writing, it becomes difficult to administer if it is imposed by Parliament or occurs just from being at a specific location.*

The 'major concerns' referred to in this submission relate to the detection capability of equipment that was used in a trial conducted in Germany using an early version of the automatic threat recognition software. The trial conducted at Sydney and Melbourne airports last year used a more advanced software version than the German trial. It is anticipated that a further upgrade will be available by the time the technology is rolled out at Australian airports.

The Department disagrees with the assertion made by the Department for Police and Emergency Management that "*This is a new definition of 'consent' that may need to be examined further. Consent is usually given by a person either verbally or in writing.*" Consent can take many different forms and can be express or implied depending on the circumstances.

The proposed consent provision seeks to ensure that passenger facilitation rates will be maintained by clarifying that a person does not need to consent expressly to a screening procedure. A person may, however, refuse a screening procedure.

The consent provision will also apply to other screening procedures such as a hand-held metal detector screening and explosive trace detection but will not apply to frisk searches. A passenger will still be asked for express consent before undergoing a frisk search.

**4) *Can the Department provide details of studies that have been conducted in relation to the possible health impacts of body scanners on:***

***a) airport workers who are required to pass through a full-body scanner on a regular basis;***

No specific studies have been conducted on airport workers. However, individuals scanned by the L-3 millimetre-wave body scanner are exposed to exceptionally low levels of electromagnetic energy. These levels are thousands of times lower than that of a single mobile phone call and comparable to passive exposure from a mobile

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### **ANSWERS TO QUESTIONS ON NOTICE**

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#### **Department of Infrastructure and Transport**

phone being used several metres away. The United States of America Transport Security Administration has stated that the technology emits 10,000 times less radio frequency energy than an average mobile phone call.

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 40 and 640 micro-watts per square metre (or between 0.00004 ( $4 \times 10^{-5}$ ) and 0.00064 ( $6.4 \times 10^{-4}$ ) watts per square metre), which is several thousand times less than the maximum exposure levels set in these standards. In addition, these measurements are taken at the closest accessible point, between 2-3 cm, to the antennas. Under standard operating conditions, the individual being scanned is about 30 – 60 cm from the antenna.

***b) airport workers who are required to work in close proximity to a body scanning device for long periods of time.***

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.

***5) Can the Department explain why the legislation as drafted, does not specifically rule out or limit the use of ionising radiation?***

Specifications for equipment used in aviation screening are typically outlined in an Aviation Screening Notice under Section 4.17 of the Aviation Transport Security Regulations 2005. The requirement for airports to implement body scanners that use non-ionising radiation will be included in this Notice. The reason for detailing equipment specifications in a Notice rather than in the Act is that screening technology capabilities continually evolve and new, improved technologies continue to emerge. The Screening Notice provides the flexibility to update technology requirements in accordance with the latest developments.

***6) What assurance can the Department provide that appropriate assessments of new body scanning technologies would be conducted prior to their future introduction?***

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.



**Senate Rural and Regional Affairs and Transport Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

Inquiry into the Aviation Transport Security Amendment (Screening) Bill 2012 [Provisions]

**Department of Infrastructure and Transport**

**7) *Can the Department provide the Committee with a copy of the final report in relation to the Trial?***

The Committee was provided with a copy of the trial report on Thursday, 29 March as part of the Department's submission to this inquiry. A copy of this report has also been made available to the public on the Department's TravelSECURE website.

**8) *Can the Department also provide the Committee with detailed information regarding:***

***a) the numbers of passengers who volunteered to take part in the Trial as opposed to those who voiced concerns about the new technology;***

A total of 23,577 scans were conducted during the trial held at Sydney and Melbourne international airports.

Refusal data was only captured at the Sydney Airport trial. During this phase of the trial 4,542 scans were conducted and 437 passengers who were approached to take part in the trial declined to volunteer. Of those passengers who declined to participate, their reasons were as follows:

- 67% indicated they were in a hurry and did not have time to participate in the trial.
- 11% were unable to participate due to language difficulties.
- 11% cited health related concerns;
- 8% cited privacy concerns; and
- 3% cited other reasons.

***b) the average and the maximum time taken to process passengers using the new technology and how that compares with existing screening methods;***

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.

Part of the reason that processing was longer in the body scanner lane is that each passenger required a briefing on the new technology to ensure they understood the process and could give informed consent to participate in the trial. They were also required to divest more items than they were accustomed to divesting at aviation screening points. It is anticipated that as the travelling public becomes familiar

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### ANSWERS TO QUESTIONS ON NOTICE

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with the technology, this processing time will decrease. It was also noted that when the body scanner alarmed and a frisk search was required to resolve the alarm, that search took less time than a frisk search to resolve a walk-through metal detector alarm, because the body scanner pinpoints the location of the item whereas the walk-through metal detector does not.

***c) the percentage of “false alarms” triggered during the trial and level of delay created by “false alarms”.***

As expected, due to its ability to detect both metallic and non-metallic items, passengers alarmed considerably more frequently when screened by the body scanner than the walk-through metal detector, with the data suggesting that the average passenger is six times more likely to alarm in the body scanner. The trial involved 23,577 body scans, with 57 percent of passengers cleared to proceed immediately after being scanned.

Due to the ability of the body scanner to detect a greater range of items than the walk-through metal detector, passengers were required to divest items that they were not accustomed to divesting at aviation screening points, such as tissues, pills etc. A divestible item is any personal effect within or underneath a person’s clothing, or on a person’s body, which can be easily removed by the person and screened by X-ray equipment. On average, the body scanner detected 230 divestible items per 1000 passengers compared with 49 divestible items per 1000 passengers for the walk-through metal detector. The five most common divestible items detected by the body scanner were high boots with buckles, currency, hairclips, watches and jewellery including bangles, bracelets and necklaces. As watches and many jewellery items are worn on the wrist or hand, body scanner alarms resulting from these items could usually be resolved by a quick visual inspection.

A higher number of non-divestible items caused alarms on the body scanner than on the walk-through metal detector. The five most common non-divestible items detected by the body scanner during the trial were clothing items such as pockets on cargo pants, studs on jeans, additional zips and buttons, baggy clothes that created folds in the material and sequins on shirts. As the majority of these alarms occurred in the leg area, they could usually be resolved by a quick targeted frisk search to determine that there were no other items present. Once screening officers became familiar with these types of alarms, it was easier for them to identify the source of the alarm and quickly resolve it. As the technology is deployed, screening officers will become increasingly familiar with non-divestible items that may cause the body scanner to alarm.

## **Senate Rural and Regional Affairs and Transport Legislation Committee**

### **ANSWERS TO QUESTIONS ON NOTICE**

Inquiry into the Aviation Transport Security Amendment (Screening) Bill 2012 [Provisions]

#### **Department of Infrastructure and Transport**

**9) *How does the Department intend to ensure that the Government's policy in relation to the use of images is made widely known to Stakeholders, community organisations and the general public?***

The Aviation Transport Security Amendment (Screening) Bill contains a provision which specifies that any image of a person produced by a body scanner must be a generic body image that is gender-neutral and from which the person cannot be identified. The Department has released media statements which display the generic "stick figure" image that will be used to display the results of each scan. In addition, it has released a comprehensive Privacy Impact Assessment (PIA) outlining the Government's policy in relation to body scanner images. The PIA, along with answers to frequently asked questions about body scanners, is publicly available on the Department's TravelSECURE website.

**10) *Is it the Government's intention to include a definitive statement to the effect 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"?***

This statement has been made in the Department's Privacy Impact Assessment. The 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.

**11) *What other signage or information will be provided to passengers in the vicinity of the body scanners?***

Changes will be made to the Aviation Transport Security Regulations 2005 to mandate that official signage be placed at screening points to inform 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.

**Senate Rural and Regional Affairs and Transport Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

Inquiry into the Aviation Transport Security Amendment (Screening) Bill 2012 [Provisions]

**Department of Infrastructure and Transport**

***12) Can the Department provide specific, detailed information regarding the type of training airport screening staff will be required to undertake, particularly in light of the Government's current policy in relation to a "No Opt-out policy", and issues that may be anticipated in conducting full-body scans of passengers with a disability and members of the transgender and intersex communities.***

Regulation 5.06 of the Aviation Transport Security Regulations 2005 specifies the training and qualification requirements for screening officers. The Department works with the Transport and Logistics Industry Skills Council in developing screener competencies including the need for disability awareness and gender awareness.

The screening service provider companies are responsible for providing training for screening officers. During the body scanner trial conducted last year, the screening providers recognised the need for screening officer training to have an increased focus on factors such as tolerance, cultural and disability awareness, and conflict resolution. At least one screening provider has been in contact with members of Organisation Intersex International Australia to gain their assistance in developing training materials for screening officers.

The Department currently provides guidance for screening providers in relation to the screening of persons with a disability. The Department also engages regularly with disability groups through the Aviation Access Working Group in order to address stakeholder concerns.

SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT COMMITTEE  
Aviation Transport Security (Screening) Bill 2012

ANSWERS TO QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Question no: 1

OUTCOME 1: Population Health

Topic: ARPANSA's view on research on millimetre wave findings

Written Question on Notice:

Senator Ludlam asked: What is ARPANSA's view on research conducted by Boian S. Alexandrov (and colleagues) at the Center for Nonlinear Studies at Los Alamos National Laboratory in New Mexico which found that millimetre waves could "...unzip double-stranded DNA, creating bubbles in the double strand that could significantly interfere with processes such as gene expression and DNA replication."?

Answer:

The Australian Radiation and Nuclear Safety Agency (ARPANSA) has considered the 2010 paper by Alexandrov and colleagues referring to the possibility that terahertz (THz) frequency electromagnetic waves of sub-millimetre wavelength could produce genetic damage.

The Alexandrov et.al. publication describes a theoretical investigation of a mathematical model of possible interactions between terahertz (1 THz = 1,000,000,000,000 Hz) electromagnetic fields and DNA. Because details of the exact physical interaction between the radiation and the DNA are not known, the study makes various assumptions that affect its conclusions but which may not apply in living human tissue. The potentially damaging effects on DNA discussed in the paper occurred at simulated exposure levels well above current safety limits.

ARPANSA does not consider that the Alexandrov research should raise concerns about the safety of the currently proposed scanning technology which uses very low level exposures of short duration in a much lower frequency range. It may, however, highlight the importance of research in the higher THz frequency region if technologies using this range are being considered.



## Appendix 3

### Extract from Senate Standing Committee for the Scrutiny of Bills *Alert Digest No. 2 of 2012*

#### **Trespass on personal rights and liberties**

##### **Item 4, repeal existing section 95A**

Item 4 seeks to repeal existing section 95A, which provision currently allows a person to choose a frisk search over another screening procedure. The explanatory memorandum at page 3 states that this amendment will enable the introduction of a policy whereby a person selected to pass through a body scanner may not choose an alternative screening method and that this ‘will ensure that the strongest security outcome is achieved from the technology’.

This encroachment on the right to freedom of movement, to the extent an option of a frisk search is removed, is justified in the SOC on the basis that (1) body scanners offer the greatest chance of detection of security threats, those threats being asserted to be serious and continuing, and (2) a full body frisk, which may be thought to achieve a similar outcome to a body scanner, would ‘involve a frisk of the entire body, including sensitive areas, as well as the possible loosening and/or removing of some clothing’ (see the explanatory memorandum at page 3). Further in relation to (2) above, it is stated that ‘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’, for which a person has been randomly selected.

**In the circumstances, the Committee leaves the question of whether the right to freedom of movement has been limited in an appropriate, reasonable and proportionate manner is left to the consideration of the Senate as a whole.**

*The Committee draws Senators’ attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee’s terms of reference.*

#### **Insufficiently defined legislative powers**

##### **Item 4, repeal existing section 95A**

As suggested above, the question of whether the overall policy approach underlying this amendment is appropriate is left to the Senate as a whole. However, the explanatory memorandum, at page 6, notes that in applying the requirement that all persons who have been selected to pass through a body scanner may not choose an alternative screening procedure, allowances ‘will be made where there is a physical or medical reason that would prevent a person being screened by a body scanner’. In the SOC it is

stated that the rights of persons with disability are not inappropriately affected as ‘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’ (see page 4 of the explanatory memorandum). The SOC also notes, at page 5, that preparations 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’.

Although the Committee accepts these assurances, based on the proposed amendments 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 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 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.**

*Pending the Minister's reply, the Committee draws Senators' attention to the provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the Committee's terms of reference.*

### **Trespass on personal rights and liberties**

#### **Schedule 1, item 1, proposed section 41A**

#### **Schedule 1, item 3, proposed paragraph 4(3)(3B)**

Item 1 of Schedule 1 proposes a new section 41A. This provision deems consent to have been given to conduct screening procedures, including body scans but excluding frisk searches, unless a person expressly refuses to undergo a procedure. It is noted that the Statement of Compatibility acknowledges that screening procedures are of concern from the perspective of the protection of an individual's privacy, and the Committee adds that this concern is heightened when consent to procedures is deemed. However, the SOC, at page 3 of the explanatory memorandum, states that the Office of the Australian Information Commissioner (OAIC) has been closely involved with the development of a comprehensive privacy impact assessment to protect a passenger's right to privacy.

Particularly in relation to the introduction of body scanners, it is stated that this technology is less intrusive than the only realistic alternative that could provide similar outcomes (full frisk searches) and that the implementation of ‘automatic threat recognition technology’ will mean that areas of concern



are only displayed 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'. Finally, it is stated that the 'body scanners that are introduced in Australia will not be capable of storing or transmitting any information or data' (also at page 3 of the explanatory memorandum).

In support of this approach, item 3 proposes a new paragraph 4(3)(3B) which provides that if body scanning equipment is used for screening a person, then any image 'must only be a generic body image that is gender-neutral and from which the person cannot be identified'. In light of the detailed explanation in the explanatory memorandum, the Committee leaves to the consideration of the Senate as a whole the general question of whether the overall approach is reasonable and proportionate.

**However,** the 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 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.**

*Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.*



## **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

Enc