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Aviation Transport Security Amendment (Screening) Bill 2012

Introduction

1.1 The Aviation Transport Security Amendment (Screening) Bill 2012 was introduced into the House of Representatives by the Minister for Infrastructure and Transport, the Hon. Anthony Albanese MP, on 16 February 2012 and referred to the House Standing Committee on Infrastructure and Communications for inquiry and report.[1] Copies of the bill and the explanatory memorandum (EM) are at Appendix A.

1.2 The bill proposes four amendments to the *Aviation Transport Security Act 2004* with the aim of enhancing aviation security at Australia's international airports. The need to enhance current security measures is in response to a passenger attempt to detonate an explosive on Northwest Airlines Flight 253, en route from Amsterdam to Detroit, on 25 December 2009. The explosive device contained no metallic components so could be carried through a walk-through metal detector without triggering an alarm. This event highlighted a significant vulnerability in global aviation security screening practices, including in Australia.[2]

1.3 The bill facilitates the upcoming introduction of body scanners at Australia's international airports, and forms part of the Australian

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1 House of Representatives, *Votes and Proceedings,* No. 90, 16 February 2012, p. 1243.

2 The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 16 February 2012, p. 1571; Department of Infrastructure and Transport (DIT), *Submission 9*, p. 1.

Government's Strengthening Aviation Security Initiative, announced in February 2010. This initiative also includes the adoption of multi-view x-ray and bottled liquid scanners, additional explosive trace detection equipment, and cargo screening technologies.[3] The Committee notes that the bill will also bring Australian aviation security standards into line with those of the United States, Canada, the United Kingdom and the Netherlands.[4]

1.4 The submission prepared by the Department of Infrastructure and Transport (DIT) described a trial of the proposed body scanning equipment in Sydney and Melbourne in August and September 2011. This trial was conducted 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 airports in preparing for this introduction. The submission noted that 23 577 body scans were conducted during the seven week period of the trial, that 'overall, public reaction to the trial was positive', and that most volunteers remarked that 'it was quick and easy.'[5] It was determined that a well-informed communications strategy will be an essential element to alleviate any community concerns.

1.5 The Committee is aware of media and community concerns about issues relating to aviation security, and the ongoing public discussion about safety, privacy and health aspects where the operation of any machines using scanning technology is being considered. The Committee therefore invited public submissions, to expand the existing and available information on these subjects. The Committee also attended a demonstration in Parliament House, Canberra, of an L-3 ProVision millimetre wave body scanning machine — the machine the Federal Government is intending to introduce into Australia's international airports later this year. The Committee also attended a briefing with representatives of the Department of Infrastructure and Transport.

1.6 This report considers the bill in the context of issues raised in written submissions and in the broader Australian community. The Committee is aware that the bill is under consideration by the Senate Rural and

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3 The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, 'Strengthening Aviation Security', 9 February 2010, <http://www.minister.infrastructure.gov.au/aa/releases/2010/February/AA024_2010.aspx> viewed 14 March 2012. Information on the Strengthening Aviation Security Initiative is at <http://www.infrastructure.gov.au/transport/security/aviation/strengthening.aspx> viewed 14 March 2012.

4 The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 16 February 2012, p. 1571.

5 DIT, *Submission 9*, Attachment C, p. 3.

Regional Affairs and Transport Legislation Committee, with a report anticipated by 9 May 2012.[6] It is expected that the Senate inquiry may also consider issues relating to privacy, health, effectiveness of the technology, and the details of the consultation processes surrounding the legislation.[7]

1.7 The Committee's report outlines the provisions of the bill and notes some of the issues which arose during the course of the inquiry. The Committee considers that its role in the review of this proposed legislation is to assess whether the bill will achieve its objective, and therefore does not propose to duplicate other investigations and consultations conducted to date about these and other aspects.

Provisions of the bill

1.8 As noted above, the bill proposes amendments to the *Aviation Transport Security Act 2004.* The bill provides that a person is taken to consent to any screening procedure when that person is at a screening point, and must receive clearance in order to board an aircraft or to enter an area or zone of a security controlled airport.

1.9 The bill also provides for the introduction of body scanners at security screening points; scanners will operate alongside existing walk-through metal detection screens. The bill does not preclude other technologies from being adopted in the future. The bill will disallow airline passengers who are randomly selected for a body scan from opting for an alternative screening method, including a frisk search, unless there are physical or medical reasons. This 'no opt-out' policy is being proposed to prevent people selected for scanning from choosing a less effective form of screening.[8]

1.10 The bill provides that the images captured by the body scanners will be a generic human representation that is the same for all passengers.

1.11 The four provisions of the bill are as follows:

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6 Referred on 1 March 2012: Senate Selection of Bills Committee, *Report No. 2 of 2012*, 1 March 2012, p. [3]. <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=selectionbills_ctte/reports/2012/> viewed 1 March 2012.

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

8 The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 16 February 2012, p. 1572.

- **Item 1** inserts a new section (41A) into the Act, which stipulates that if a person is at a screening point and the person must receive clearance to board an aircraft or enter certain areas or zones of a security controlled airport, the person is taken to consent to each screening procedure that may be conducted at the screening point. This implied consent does not apply if the procedure is a frisk search or if the person refuses to undergo the procedure. This section is intended to streamline the screening process and thereby minimise the potential impact that the introduction of body scanners and other future technology may have on passenger facilitation rates.[9]
- **Item 2** amends paragraph 44(2)(aa) of the Act, to read:

  > (2) Without limiting the matters that may be dealt with by regulations made under subsection (1), the regulations may deal with the following: ...
  >
  > (aa) the persons or things that must not pass through a screening point...

  Previously, paragraph 44(2)(aa) only referred to the things that must not pass through a screening point. The Minister stated that this amendment will allow the Aviation Transport Security Regulations 2005 to prescribe the persons that must not pass through a screening point, in addition to things that must not pass through a screening point. As noted in the Minister's second reading speech, a person who refuses to undergo a screening procedure for which they have been randomly selected will not be permitted to pass through a screening point.[10]
- **Item 3** inserts sub-sections 44(3A) and 44(3B) into the Act. Sub-section 44(3A) comprises an inexhaustive list of equipment that may be used for screening, including metal detection equipment, explosive trace detection equipment, and body scanning equipment such as an active millimetre wave body scanner. Sub-section 44(3B) states that if body scanning equipment is used for the screening of a person, and the equipment produces an image of the person, the image must only be a generic body image that is gender-neutral and from which the person cannot be identified.

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

10 The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 16 February 2012, pp. 1-2.

- **Item 4** repeals section 95A of the Act, which currently allows a person to choose to undergo a frisk search as an alternative to another screening procedure.

Issues arising during the inquiry

1.12 During the course of its inquiry, the Committee received submissions and reviewed debate in the wider community regarding aspects of aviation security. An overview of these views is provided, including those which relate to the technology used by the proposed body scanning units and its purported health impacts, the effectiveness of the scanners in providing greater aviation security, the inability to 'opt-out' of a scan, as well as concerns about privacy.

Technology used by proposed body scanning units

1.13 Active millimetre wave scanners use non-ionising radiation in the form of millimetre waves, a kind of radiofrequency radiation similar to that emitted by mobile phones. According to the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), non-ionising radiation has less energy than ionising radiation.[11]

1.14 Millimetre waves can pass through any clothing or organic material a person is wearing. The scanners transmit very low intensity millimetre waves from antennas that rotate around the person being scanned. The waves reflected from a person's body can be measured and a 3-D image of the person is reconstructed from them.[12]

1.15 The very low intensity of the millimetre waves and the short duration of the scan (approximately two seconds) means that the person being scanned is exposed to less electromagnetic energy than from a short mobile phone call.[13]

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11 Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), Radiation Basics – Ionising and Non Ionising Radiation, January 2012, <http://arpansa.gov.au/radiationprotection/basics/ion_nonion.cfm> viewed 21 February 2012.

12 ARPANSA, Airport Passenger Screening Technologies, February 2012, <http://arpansa.gov.au/radiationprotection/Factsheets/is_AirportScreening.cfm> viewed 21 February 2012.

13 ARPANSA, Airport Passenger Screening Technologies, February 2012, <http://arpansa.gov.au/radiationprotection/Factsheets/is_AirportScreening.cfm> viewed 21 February 2012; DIT, *Supplementary Submission 9.1*, p. [8].

1.16 The Committee understands that other types of body scanning units operate elsewhere in the world, including those which use 'back-scatter x-ray' technologies. According to government policy, only active millimetre wave body scanners will be used in Australia.

Health impacts

1.17 The Committee is aware of concerns about the possible health effects from exposure to millimetre wave scanners, including that:

- long term studies on the safety of millimetre wave scanners are lacking and that the concerns over radio waves potentially being carcinogenic are not new;[14]
- whilst it is generally accepted that millimetre wave scanners provide the lesser risk to health, there is no consensus on the level of risk produced by both the millimetre wave scanner and the backscatter x-ray scanner.[15]

1.18 The Queensland Council for Civil Liberties welcomed the fact that only millimetre wave scanners would be used by the Federal Government but recommended that further research be undertaken to ensure that queries as to the existence of a scientific consensus on the safety of the scanners could be addressed.[16]

1.19 Government agencies including ARPANSA, the Department of Health and Ageing, the Therapeutic Goods Administration, and state and territory radiation regulators, were asked by DIT to provide expert advice on the safety of the technology used by millimetre wave body scanners.[17] Following this consultation, a publicly available Health and Safety Information Sheet was developed, advising that '[t]here 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.' This evidence also states that there are no known safety concerns in relation to people with implanted medical devices, including pacemakers and defibrillators, resulting from undergoing a body scan.[18]

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14 Andrea and Michael Schafer, *Submission 5*, p. [1].

15 Australian Airline Pilots' Association (AusALPA), *Submission 10*, p. [8].

16 Queensland Council for Civil Liberties, *Submission 8*, p. 3.

17 DIT, *Submission 9*, pp. 2-3.

18 DIT, *Submission 9*, Attachment B, pp. [1]-[2].

Security effectiveness

1.20 The Committee acknowledges the views which question the benefit of introducing body scanning technology to aviation security, and which cast doubt on claims that millimetre wave body scanners would have detected the explosives of the type used by the Northwest Airlines Flight 253 bomber.[19] The Queensland Council for Civil Liberties, for example, took the view that if airport measures are to be pursued, '... greater use of explosive particle detectors would be in order [as they may] detect some of the explosives which these [body] scanner machines are in fact incapable of detecting.'[20] The Australian Airline Pilots' Association (AusALPA) cited evidence in its submission which stated, in relation to public concerns in the UK on the effectiveness of millimetre wave technology, that low density materials such as powders, liquid or thin plastic do not show up on screen.[21]

1.21 Some inquiry participants claimed that body scanners are ineffective and time-consuming due to excessive false-positive rates.[22] The Australian Privacy Foundation (APF) cited overseas criticisms of high false-positive rates of detection caused by layers of clothing, certain types of footwear and, in some cases, the posture of the person being scanned.[23]

1.22 One submitter stated that the proposed body scanners would not actually improve security from terrorist attacks, and also criticised the focus on physical security at airport checkpoints on the basis that it draws resources away from the proactive intelligence work used to counter terrorism.[24]

1.23 The Committee notes the view expressed by DIT that 'body scanners represent the most advanced passenger screening technology available and are capable of detecting a range of sophisticated threats that current screening technologies are not able to detect.'[25] The Privacy Impact Assessment (PIA), included with the DIT submission to the inquiry, noted that:

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19 Richard Preston, *Submission 2*; Amy Tomoe, *Submission 6*, p. [1].

20 Queensland Council for Civil Liberties, *Submission 8*, p. 3.

21 AusALPA, *Submission 10*, p. [6].

22 Andrea and Michael Schafer, *Submission 5*, p. [1]; Amy Tomoe, *Submission 6*, p. [1].

23 Australian Privacy Foundation (APF), *Submission 12*, Response to the PIA Report on Body Scanning, p. 5, and Appendix 3.

24 Dr. Justin Hastings, *Submission 7*, pp. [1] and [2].

25 DIT, *Submission 9*, p. 1.

> Walk through metal detectors and the style of frisk search currently used at Australian airports simply cannot provide the same security outcome that a body scanner can. Body scanners offer the greatest chance of detection, owing to their ability to detect and pinpoint the location of both metallic and non-metallic items present within or underneath a person's clothing. The only alternative method of screening that would provide a similar level of assurance to that of a body scanner is an enhanced full body frisk search.[26]

1.24 DIT also states in its submission that it liaised extensively with partner agencies overseas to keep abreast of technological developments and ensure that Australia follows international best practice in relation to body scanners.[27]

Removal of 'opt-out' provision

1.25 The 'no opt-out' policy stipulated by the bill has been a source of concern in media reports and in various submissions to the inquiry. The PIA noted that this was also a 'major stakeholder concern'.[28] The inability to opt out of a body scan is criticised in some submissions, which question the claim made in the EM that passengers would be unlikely to choose a frisk search over a body scan.[29] The APF, AusALPA, and Civil Liberties Australia all criticised the denial of an option to choose alternative screening measures under the bill.[30] The claim was also made that the European Union allows passengers to choose a frisk search over a body scan.[31]

1.26 As noted above, the DIT submission claimed that '[t]he only screening measure that would provide a similar level of assurance to that of a body scanner is an enhanced full body frisk search.'[32] The Committee understands that the Government has decided that such invasive body searches will not be introduced as part of Australia's airport security

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26 DIT, *Submission 9,* Attachment A, pp. 28-29.

27 DIT, *Submission 9*, p. 2.

28 DIT, *Submission 9,* Attachment A, p. 28.

29 Julie McKinnon, *Submission 3*; Dr. Josh McGuigan, *Submission 4*; Andrea and Michael Schafer, *Submission 5*, p.[2].

30 APF, *Submission 12*, p. 3; AusALPA, *Submission 10*, p. [15]; Civil Liberties Australia, *Submission 11*, p. [1].

31 Andrea and Michael Schafer, *Submission 5*, p. [1].

32 DIT, *Submission 9*, Attachment A, p. 35.

arrangements, and that 'passengers selected for body scanner screening will not be able to choose inferior or significantly intrusive alternatives.'[33]

1.27 The Committee notes that '[i]f a passenger refuses to undergo a body scan they will not be allowed to pass through the security point and therefore not be allowed to board their aircraft'; but that various special circumstances of individuals, including disabilities or other medical conditions, will mean that alternative screening procedures will be needed.[34] The Committee notes that further detail provided in the PIA may help to clarify issues of concern to the community.

Privacy implications

1.28 The Committee is aware of long-standing concerns in the community over the use of digital images produced by body scanners.[35] The Queensland Council for Civil Liberties regarded body scanners as being, in effect, a 'virtual strip search' and suggested that other less invasive measures should be employed.[36] Civil Liberties Australia stated that the proposed scanners infringe the civil liberties of Australians.[37] The APF was concerned that 'the existence of an anomaly [on the screen] may be broadcast by voice, which on occasion will inevitably draw the attention of others in the vicinity.'[38] The Committee heard concerns about digital images being stored following a body scan.[39] As government policy states that these images will not be stored, the Committee believes there is no basis for these concerns.

1.29 As noted earlier, DIT in its submission described the development of the PIA, including the involvement of the Office of the Australian Information Commissioner (OAIC), incorporating the Office of the Federal Privacy Commissioner. The OAIC confirmed its role in providing independent

33 DIT, *Submission 9*, Attachment A, p. 35.

34 DIT, *Submission 9*, Attachment A, p. 29.

35 When scanners were introduced in the US, privacy concerns were raised about the way that 3D 'nude scans' were made, and potentially retained, contrary to policy dictates. See, for example, J Johnson, 'One hundred naked citizens: one hundred leaked body scans', 16 November 2010, <http://gizmodo.com/5690749/> viewed 23 February 2012. These concerns were echoed in early debate about the introduction of scanners in Australia.

36 D Jopson, 'Almost half set off alarms in airport body scanner trial', Sydney Morning Herald, 5 March 2012, <http://www.smh.com.au/opinion/political-news/almost-half-set-off-alarms-in-airport-body-scanner-trial-20120304-1ub3t.html> viewed 5 March 2012; Queensland Council for Civil Liberties, *Submission 8*, p. 2.

37 Civil Liberties Australia, *Submission 11*, p. [1].

38 APF, *Submission 12*, Response to the PIA Report on Body Scanning, p. 6.

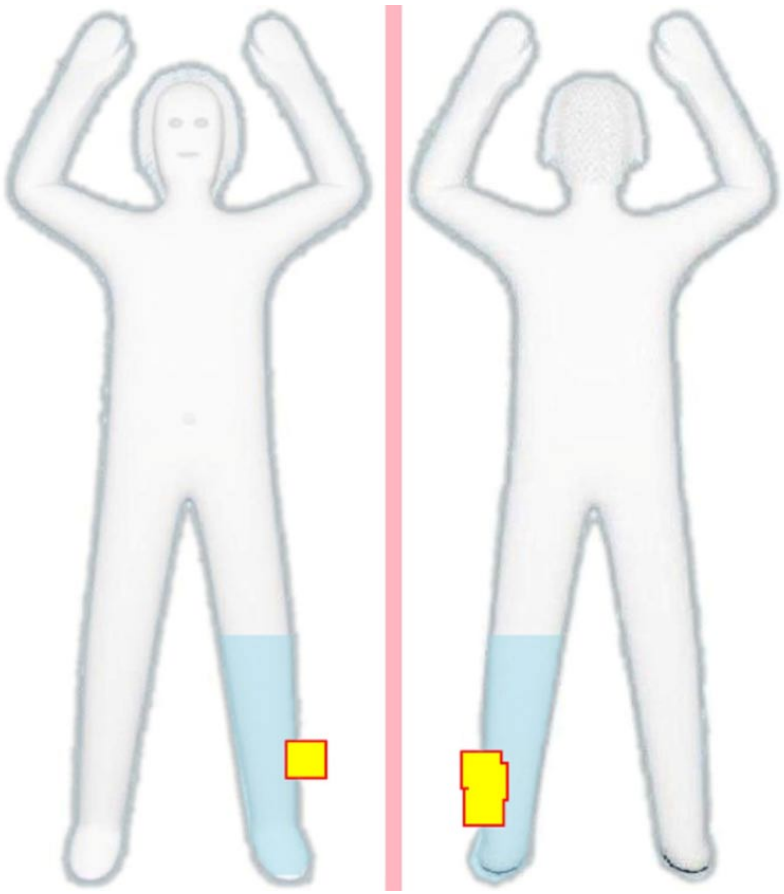
39 Andreas Markauskas, *Submission 1*.

advice during the PIA consultation phase,[40] and both DIT and the OAIC provided details on the conduct of these consultative processes. The Committee notes the recognition in the PIA that there must be 'a balance between achieving security outcomes and protecting the individual's privacy', and that the Federal Government 'is working to ensure that the new technology and associated processes achieve that balance.'[41]

40 Office of the Australian Information Commissioner, *Submission 13*, pp. 2-3.

41 DIT, *Submission 9*, Attachment A, p. 17.

Figure A sample image generated by a body scan



Source *Taken from a Frequently Asked Questions website, managed by the Department of Infrastructure and Transport, <http://travelsecure.infrastructure.gov.au/international/faq/faq_body_scanner.aspx>, viewed 23 March 2012, and also included in supplementary submission 9.1 to the Committee's inquiry.*

1.30 The Committee notes the following conclusions made in the PIA:

- that an assessment against the National Privacy Principles[42] 'has determined that no personal or identifying information will be collected, used, stored or disclosed as a result of body scanning screening'; and
- the 'comprehensive stakeholder consultation process undertaken by the Department' identified that 'the greatest privacy concern ... was the potential for misuse of revealing images, such as those produced by first generation body scanners.' Legislation being introduced 'only permits body scanners that produce a generic, gender-neutral body image from which the person cannot be identified', and that there is a requirement that body scanners used for aviation security screening 'will not be capable of storing, transmitting or printing any data produced from a body scan of a person'.[43]

Committee observation

1.31 After consideration, the Committee noted that there are some positive consequences of the use of body scanning technologies in airports. The Committee has observed that there are likely to be many Australians, particularly those with medical conditions (including medical implants such as pacemakers) who will now be able to avoid a frisk search and instead be able to comply with security measures by undertaking a body scan.

Conclusion

1.32 The Committee is aware of concerns regarding aviation security, and the manner in which screening procedures are conducted. The Committee has taken into consideration submissions made in relation to this bill. The Committee has determined that its task in considering legislation referred to it is to consider the effectiveness of the legislation in achieving its stated

42 Office of Australian Information Commissioner, 'Information Sheet (Private Sector) 1A: National Privacy Principles', February 2008, <http://www.privacy.gov.au/materials/types/infosheets/view/6583> viewed 14 March 2012.

43 DIT, *Submission 9*, Attachment A, pp. 34-35.

object, not to revise or repeat the processes which led to its introduction. The Committee considers that the bill will achieve its stated purpose, and recommends that the bill be passed.

Recommendation 1

That the House of Representatives consider and pass the Aviation Transport Security Amendment (Screening) Bill 2012.

Nick Champion MP

Chair