

Submission to joint committee on security and intelligence

The crimes legislation amendment (police powers at airports) bill 2018

12 October 2018

Abstract

The current trifactor combination of airport security, identity matching bill(s) and anti encryption bills are a step change into a police state of gigantic proportions. All three bills should be condemned. Aviation security is wildly excessive already given the risk and these proposed changes will magnify the injustice. The treatment has become worse than the disease. Airport security is one example of national security extremism which is becoming a greater risk to the ordinary reasonable person than crime or terror. Airport security is expensive, ineffective, unaccountable, unjust and in dire need of a rethink. This bill also has fundamental flaws and injustices running contrary to democratic principals and the rule of law.

National Security Extremism

Australia is sleep walking into a police state. Terrorism is the catalyst which has provided justification to give law enforcement power they should not have in a democratic country. While terrorism itself is a political football and hotly debated it is also the subject of a lot of misinformation pedaled by numerous groups to propagate their own agendas. Ultimately the risk is serious and real given the 33 000 plus documented terrorist attacks since 9/11 [1]. What terrorism is not is a valid justification for abandoning rule of law and 2000 years of legal evolution, effectively replacing our legal system for a police state. The consequences of which are potentially far worse than any plan a terrorist could execute,

Risks of national security extremism are lesser understood than terrorism. Governments are actively engaged in obscuring this risk leaving discussion to academics and activists. National security extremism is overtaking the risk of terrorism as Australia transitions to a police state with economic and social consequences starting to show as rule of law is abandoned. These two escalating phenomena terrorism and national security are competing forces of evil and need to be called as such. More and more innocent people are running foul of national security laws getting caught in the net. Alternatively put, collateral damage in the war on terror is becoming very high.

The number of people killed by police in Australia far exceeds the number killed by terrorists. The Australian criminology institute report a total 454 people killed in police custody [2] between 2001 and 2015. This includes those ruled as justified, accidental and homicides. During the same period just three people were killed in terrorist attacks in Australia [3]. An individual is more than 150 times more likely die at the hands of police than a terrorist. While not all police fatalities were a result of powers given to them under national security laws, police are more numerous, more powerful and more heavily armed due to national security policy. These additional resources are likely to contribute to fatalities. In any case police themselves have become a greater threat to the community than terrorists.

National security extremism is fueling racial intolerance. United Nations experts [4,5] have found national security policy to be a cause of race hate and division. As a result of people losing their rights and freedoms they blame the racial group commonly associated with terrorist acts and vent their frustrations according.

National security extremism also comes at an economic cost. Money wasted on national security would have been better spent on badly needed infrastructure. Not only is there direct costs but economic consequences as well. Our economy is a confidence driven economy and as people loose trust in government they withdraw from economic related activity. History shows dictatorships don't have strong economies.

Airport Security

Around 200 anti terror laws have been enacted since 9/11 which removes freedoms and rights. Most people will be unaffected by the vast majority of anti-terror law however it is in airports where people are confronted with the stark reality that their rights are taken away. Air passengers now have to endure being violated, bullied, harassed, intimidated and abused by airport security. Many view screening regimes as unjust given it is conducted without a reasonable suspicion basis.

Bullying and harassment are not acceptable in modern Australia. Workplace bullying and harassment is illegal, sexual harassment is illegal and bullying is generally regarded as unacceptable. Despite this, the government expects the people to tolerate acts of public harassment perpetrated by law enforcement. This is a double standard and sends a message that harassment is acceptable if perpetrated by someone with authority. Any government that believes authoritarian harassment is justified is an authoritarian government.

The direct costs of Airport security are simply unjustified given the risk. A research paper by Stewart and Mueller [6] who studied cost to benefit ratios of airport security in the United States found that expenditure is wildly excessive for the risk. They compared the cost per life saved between various programs. They also questioned whether passenger screening was even effective at preventing terror attacks.

Passenger screening is not effective in preventing air related terror attacks. A leaked report in 2015 found that the American TSA was 95 percent ineffective at finding contraband items that could be used for terrorism [7,8]. Even after the public outcry and improved security measures were implemented the TSA was still 80 percent ineffective. Australia has a similar screening regime and would likely be just as ineffective.

Other studies have even suggested that air security even kills more people than it saves. This idea is based on the number of people killed in car crashes because they drove instead of flying interstate. A research paper by Kadiyali & Simon [9] found 2300 driving deaths occurred in the United States between 2001 and 2011 as a result of interstate travelers driving instead of flying. The principle is equally valid in Australia given we have a similar culture, economics and airport screening regime. Given that both Pacific and Hume highways are currently being upgraded it is highly likely that much of this traffic is due to travelers avoiding airports.

Behaviour observation would be ineffective in Australia in the current regime. The current system is so bad at making everyone nervous that attempting to single out nervous people would be pointless and raise too many false positives. If the intent is to find nervous people then everyone qualifies. For behaviour observation to be effective airport security needs to be rationalized and gain public confidence.

Behavior observation has been proven to be highly effective in preventing air related terrorism. Israel has the greatest risk of terrorism of any country in the world and has developed highly effective screening methods based on the idea of "finding the person not the bomb".

Police powers at airports Bill

Section 3UN Identity Information at airports

This bill is extremely draconian and fails the pub test badly. ID must be produced on reasonable suspicion of an offense or threat to aviation. The requirement for reasonable suspicion is never much of a threshold. Clearly section 3UN is not limited to terror offences. Both requirements should need to be met and reasonable suspicion requirement should be limited only to terror offences.

Section 3UO move on notices

Move on notices may be issues for failing to provide ID or reasonable suspicion of a crime or a threat to aviation. Once again the threshold is too low. The power to remove passengers should only be used if all three of these criteria are met not just one. This requirement is so loose a two years old could be ejected from a flight for not producing a drivers license. Many people do not have photographic identification. Failing to produce ID will lead to excessive discrimination. The alternative of providing name and address is garbage given it is subject to a reasonable suspicion element. Adversely affected will be minors, elderly, disabled, mentally impaired and anyone who cannot speak English.

Section 3UR Constables and PSO duties at airports

Why should the rules only apply to police not in uniform? The requirement to provide identification should apply to uniformed and non uniformed police equally. This too creates the opportunity for uniformed police to abuse their power. Given the large number of different authorities in airports which wear uniforms it is not always obvious who has what authority.

Absolute Liability

The application of absolute liability is unnecessary and adds insult to injury. The proposed offences are draconian and oppressive on its own merits. Making these offences absolute liability will limit judicial power in malicious prosecutions and effectively facilitate abuse of authority.

“The measures in this Bill will have no impact on Government revenue. “

Explanatory notes

This statement is not correct. Airport security costs cost the economy around \$2 Billion PA. There is also an unmeasurable economic impact as citizens lose trust in government. Changes to the economy affect government revenue. Whatever this bill will cost is not zero and this statement is clearly ignorant and written by someone too lazy or inept to model such a consequence.

“such limitations are reasonable, necessary and proportionate in achieving the legitimate objectives of preserving national security “

Explanatory notes

The terms *reasonable, necessary and proportionate* was also used in 2012 by the transport minister when he introduced aviation security changes into parliament. Just like 2012 this too is tacked on the end as a concluding remark without any supporting argument. And once again this statement is far from accurate. Given the cost of aviation security in terms of direct costs, economic and social costs for a risk of terrorism which has only led to a handful of casualties aviation security is anything but proportional. Given the lack of evidence that airport security is even effective would question whether it is reasonable. It is not necessary to throw passengers off flights simply because police feel like it.

Recommendations

- 1) A holistic approach needs to be taken in air transport security. The current piece meal approach is ineffective, expensive and inconsistent.
- 2) Highly invasive screening should be conducted on a reasonable suspicion basis only. The current random screening regime is public harassment at its worst. Body scans, pat downs and explosive trace detection should only be necessary for high risk passengers. ASIC card holders and frequent flyers are very low risk and should be exempted from highly invasive screening procedures.
- 3) Legal advice should be readily available. Travelers who are harassed by law enforcement of any type should have quick and easy access to legal advice. Lawyers should be permanently based in major airports and made available at low cost to travelers.

- 4) Screening authorities should be subject to freedom of information laws. Typically screening is performed by private subcontractors. They operate in a statutory capacity and should have the same transparency as statutory bodies. Video footage should be made available on request.
- 5) If behavior observation is adopted it should be done by independent officers. This method is highly specialized and is beyond the capability of air security screening staff. The gung ho arrogance of police makes police also completely unsuitable. In the absence of a suspected terror incident police have no place in an airport.
- 6) Consent for screening should be explicitly obtained. This requirement was removed in 2012 in changes to the aviation transport security act and has been subsequently abused. This change should be repealed.
- 7) Screening procedures should be transparent. Currently section 44(3) of the aviation transport security act allows for secrecy of such procedures. One of the fundamentals of rule of law is that people have the right to know what the law is. Travelers should at least be able to know what their rights and responsibilities are.

References

- [1] <https://www.thereligionofpeace.com/>
- [2] http://www.crimestats.aic.gov.au/NDICP/2_police-custody/
- [3] https://en.wikipedia.org/wiki/List_of_terrorist_incidents_in_Australia
- [4] Ruteere, M 2011. Counter-terrorism measures are fuelling racism, UN rights expert warns.
<https://www.ohchr.org/EN/newsEvents/Pages/DisplayNews.aspx?NewsID=21778&LangID=E>
- [5] Miller, N 2017 Australia's counter-terror measures 'fuelling racism': UN committee
<https://www.smh.com.au/world/australias-counterterror-measures-fuelling-racism-un-committee-20171129-gzur1b.html>
- [6] Stewart G & Mueller J. 2013 . Cost-benefit analysis of airport security: Are airports too safe?
Journal of Air Transport Management.
<https://politicalscience.osu.edu/faculty/jmueller/JATMfin.pdf>
- [7] Campbell,A 2015 TSA Fails 95 Percent Of Airport Security Tests Conducted By Homeland Security: Report

https://www.huffingtonpost.com.au/entry/tsa-fails-95-percent-tests-homeland-security_n_7485558
- [8] Capps, K. 2015. Airport Security: Astoundingly Expensive and 95 Percent Ineffective

<https://www.citylab.com/transportation/2015/06/airport-security-astoundingly-expensive-and-95-percent-ineffective/394778/>
- [9] Kadiyali, V & Simon, D. 2011. Driving fatalities after 9/11: a hidden cost of terrorism. Journal of Applied economics Volume 41
https://www.researchgate.net/publication/46528808_Driving_Fatalities_After_911_A_Hidden_Cost_of_Terrorism