



Ms Julia Morris
Committee Secretary
House of Representatives Standing Committee
on Infrastructure and Communications
PO Box 6012
Parliament House
CANBERRA ACT 2600

Dear Ms Morris

Inquiry into the *Aviation Transport Security Amendment (Screening) Bill 2012*

Introduction

The Office of the Australian Information Commissioner (the OAIC) refers to the Inquiry of the Standing Committee on Infrastructure and Communications (the Committee) into the *Aviation Transport Security Amendment (Screening) Bill 2012* (Bill).¹

The OAIC makes the following comments to advise the Committee of the OAIC's engagement in this matter.

The Office of the Australian Information Commissioner

The OAIC was established by the *Australian Information Commissioner Act 2010* (Cth) and commenced operation on 1 November 2010.

The OAIC is an independent statutory agency headed by the Australian Information Commissioner. The Information Commissioner is supported by two other statutory officers: the Freedom of Information Commissioner and the Privacy Commissioner.

The former Office of the Privacy Commissioner (the OPC) was integrated into the OAIC on 1 November 2010.

The OAIC brings together the functions of information policy and independent oversight of privacy protection and freedom of information in one agency, to advance the development of consistent workable information policy across all Australian government agencies.

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www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ic/aviation/index.htm

History of the OAIC's engagement in this matter

On 9 June 2010, the former OPC entered into a Memorandum of Understanding (the MOU) with the Department of Infrastructure, Transport, Regional Development and Local Government (the Department: now the Department of Infrastructure and Transport) regarding the implementation of body scanners in Australian international airports (the body scanning project). Specifically, the Department agreed to fund the OAIC to assist the Department by providing advice on privacy matters and facilitating stakeholder consultation.

The initial term of the MOU was 9 June 2010 to 9 June 2011. The term was extended by agreement between the parties and concluded on 31 December 2011.

Under the MOU, the OAIC relevantly carried out the following tasks:

- The OAIC provided information and policy advice to the Department on privacy matters relating to the body scanning project.
- The OAIC facilitated two privacy roundtables (held on 22 September 2010 and 21 September 2011) between the Department and a selection of affected stakeholder groups, including privacy, civil liberties, children's, religious, transgender, intersex, and disability advocacy groups. The roundtable held on 21 September 2011 considered the consultation draft of the '*Implementation of Body Scanners: Privacy Impact Assessment*' (the draft PIA) released by the Department in August 2011.
- The OAIC provided advice and comments to the Department on the draft PIA at several points during the preparation of the draft, including advice on structure and content. The OAIC made a submission to the Department regarding the consultation draft PIA, a copy of which is available on the OAIC's website.²

The MOU expressly recognised the OAIC's role as an independent advisor to the Australian Government, and as an independent statutory office with regulatory functions. The preamble to the MOU relevantly provided:

- A *The OPC is an independent statutory office established by the Privacy Act 1988 (the Privacy Act) to perform the functions vested in it by the Privacy Act.*
- ...
- C *Recognising the benefits of close cooperation between the OPC and the Department on privacy issues, and without compromising the independence of the OPC, the OPC has agreed to assist the Department in the development and implementation of Body Scanning technology in Australian international airports by providing dedicated privacy advice and related services.*
- D *The Department recognises that the OPC must be properly resourced to provide dedicated specialist attention to the Department and be able to appropriately respond to privacy issues as the body scanning initiative is implemented.*

² http://www.oaic.gov.au/publications/submissions/2011_09_consult_body_scanners.html

- E The objective of this Memorandum of Understanding (MoU) is to set out the level of resources that the Department undertakes to provide to the OPC for the period of the agreement and to specify the work plan the OPC agrees to undertake, taking account of the OPC's role as an independent adviser to the Australian Government and an independent statutory office with regulatory functions.*

Under the *Privacy Act 1988* (Cth) (the Privacy Act), the Information Commissioner (and, under the *Australian Information Commissioner Act 2010* (Cth), the Privacy Commissioner) has a number of functions, including to provide (on request or on the Commissioner's own initiative) advice to an agency on any matter relevant to the operation of the Privacy Act. The Commissioner also has the function to investigate and seek to resolve complaints, examine proposed enactments, research and monitor developments in technology, and to promote an understanding and acceptance of the privacy principles contained in the Privacy Act (see, generally, s27(1) (a), (b), (c), (d), (f) and (s) of the Privacy Act).

All advice provided by the OAIC to the Department reflected its independence, and the independence of the Commissioners with respect to the execution of their statutory functions.

If you have any questions regarding any of the above, in the first instance please contact

Yours sincerely

Timothy Piggin
Australian Privacy Commissioner

9 March 2011