



NSW COUNCIL FOR CIVIL LIBERTIES SUBMISSION INQUIRY INTO THE AVIATION TRANSPORT SECURITY AMENDMENT (SCREENING) BILL 2012 [PROVISIONS]

The NSW Council for Civil Liberties welcomes the opportunity to make comment on these proposed amendments relating to the introduction of body scanners to Australian airports.

CCL participated in the various consultations relating to body scanning over several years. We welcomed the significant moves that were taken to address some of the most intrusive aspects of the earlier proposals. Most significantly this included the move away from capturing raw body images to generic male and female ‘stick figure’ images and the prohibition of any storage of images or data about from the surveillance process.

Unfortunately, the proposed amendments do not deliver on all the protections for health and privacy which we understood would be Government policy.

Generic ‘Stick Figures’

We are pleased to see the mandate of a generic stick figure is included in the Bill:

‘the image must only be a generic body image that is gender-neutral and from which the person cannot be identified’ 3(B)(b)

This is a positive aspect of the proposed amendments and will alleviate a major concerns about gross intrusion of privacy which would have been greatly distressing to many Australian travellers.

We do however have significant concerns with other aspects of these amendments – both for what is included and for what is omitted.

Data Storage

While the Minister does offer an assurance in his second reading speech that there will be no data storage:

‘....body scanners that are introduced in Australia will not be allowed to store or transmit any information or data.’¹

the proposed amendment does not make any mention of such a proscription. It should.

Technology Options

During the consultations it was clear that there were significant matters at stake in the choice made from the available technologies. We were satisfied that the Government’s decision to introduce the millimetre wave technology – both for health and privacy reasons- was a good choice which appeared to address a range of concerns. We did express our concern that the PIA document provided during the last consultation round had an unexplained reference to the continued work on X Ray technology.

¹ Commonwealth Hansard Thursday, 16 February 2012 ,Page 1571



We are 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.*

This should be amended to restrict the technology to that currently known to have minimal danger to health.

No Body Scan No Fly

We are both surprised and concerned by the proposed repeal of Section 95A.

When taken in conjunction with the statement in the Explanatory Memorandum to the Bill that ‘If a passenger refuses to submit to a body scan they will not be allowed to pass through the screening point’ the Government is introducing a ‘No body scan, No fly’ policy.

In the briefing by officials in relation to the trial of the body scanners at Sydney International Airport and at the last roundtable consultation, we were informed that the Australian Government would not be following the USA and others in mandating a rigid ‘no body scan no fly’ policy.

Following the trial at Sydney Airport officials appeared to be comfortable that this could be managed without compromising security. It was welcomed as an alternative for members of the community who might suffer embarrassment as a result of setting off the automatic threat recognition alarm for reasons relating to gender identity or prosthetic devices.

Given these prior briefings, it appears this amendment, which removes any freedom of choice as to mode of screening, may be driven more by considerations of ease and convenience for the officers conducting the security screenings, than by security concerns.

The Minister in his second reading speech suggests this has been a choice between mandatory body scanning or a more intrusive kind of body search

The only method of screening that could provide a similar security outcome to that of a body scanner is the type of invasive body search that is conducted in the United States.²

The Government has indicated it is resolute in not introducing such invasive searches – therefore there can be no choice for passengers.

Given the discrepancy between this statement and the consultation briefings from officers, CCL would like to see the evidence for this view. Until we see such evidence we consider the repeal of S95A should be rejected.

Children and Minors

The question of lack of consent of minors travelling alone is not dealt with and this sort of travel is quite common. No doubt the airlines will be forced to have parents or guardians sign a release before agreeing to carry the child.

Conclusion

These amendments represent a disturbing and disappointing weakening of the privacy protection provisions that CCL had expected from the consultation process.

² Commonwealth Hansard Thursday, 16 February 2012 ,Page 1571



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While we endorse the adoption of the stick figure technology, we urge the Government to review the Bill so as to address the concerns outlined above.

This submission was written by Kym Connell and Lesley Lynch from the NSWCCL Privacy Sub Committee.

CCL is available to meet with the Senate Committee to discuss these issues.

Yours faithfully,

Dr Lesley Lynch
Assistant Secretary
NSW Council for Civil Liberties
30th March 2012.

NSW Council For Civil Liberties

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CCL was established in 1963 and is one of Australia's leading human rights and civil liberties organisations. Our aim is to secure the equal rights of everyone in Australia and oppose any abuse or excessive power by the State against its people.