



**Australian Government**

**Department of Infrastructure, Transport,  
Regional Development and Local Government**

Ms Karen Curtis  
Privacy Commissioner  
Office of the Privacy Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

Dear Ms Curtis

**Introduction of Optimal Passenger Screening Technologies**

I refer to the Australian Government's announcement on 9 February 2010, of a comprehensive package of measures to strengthen Australia's international and domestic aviation security regime against emerging threats. Enclosed is a copy of the Prime Minister's media release for your information – it provides a factual summary of the measures to be implemented. A key measure includes the introduction of body scanners and other optimal passenger screening technologies at Australia's international gateway airports.

The Office of Transport Security (OTS) recognises that body scanning technologies raise complex questions about personal privacy. OTS is committed to considering those questions carefully in light of its responsibility to prevent unlawful interference with aviation.

Further to consultation undertaken with the Office of the Privacy Commissioner (OPC) for the Advanced Technology Trials in 2008, I am seeking to re-engage with OPC regarding how the introduction of these new technologies and other aviation passenger screening processes could be best managed to address a range of sensitivities surrounding privacy while achieving the security outcome. I am aware that a meeting has been scheduled for Monday 15 February 2010 between the Deputy Privacy Commissioner, Mr Timothy Pilgrim and Mr Andrew Wilson, Deputy Secretary Department of Infrastructure, Transport, Regional Development and Local Government to discuss privacy concerns.

I have asked [REDACTED], A/g General Manager Supply Chain and Screening Branch to manage OTS's ongoing engagement with OPC. It would be appreciated if you could nominate a point of contact to [REDACTED] by 17 February 2010. [REDACTED] can be contacted at [REDACTED]@infrastructure.gov.au or on [REDACTED]

Yours sincerely

Paul Retter, AM  
Executive Director

1/ February 2010  
Enc

OFFICE OF TRANSPORT SECURITY

**PRIME MINISTER  
MINISTER FOR INFRASTRUCTURE,  
TRANSPORT, REGIONAL  
DEVELOPMENT AND LOCAL  
GOVERNMENT**

**MINISTER FOR HOME AFFAIRS**

**STRENGTHENING AVIATION SECURITY**

The Australian Government has today announced a comprehensive package of measures to strengthen Australia's international and domestic aviation security regime against emerging threats.

These measures are consistent with the security strategy set out in the Government's Aviation White Paper released in December last year, as well as the National Security Adviser's review of aviation security in light of the attempted terrorist attack on a United States-bound flight on Christmas Day.

The Christmas Day attempt showed that no nation can afford to be complacent when it comes to security.

The Government's highest priority is the safety and security of Australians.

Australia already has a world-class aviation security regime, which we will further strengthen through a range of strategic and practical measures..

Over four years, the Government will invest \$200 million on new and improved security technologies, increased policing at airports, ~~enhanced~~ security procedures, as well as strengthened international cooperation.

***Increasing passenger and baggage screening***

There will be an immediate increase in the number of passengers who will be subject to explosive trace detection at our major international and domestic airports.

The Government will provide \$28.5 million to assist the industry to introduce a range of new screening technologies at passenger screening points.

These technologies will include the latest body scanners, next generation multi-view X-ray machines and bottle scanners capable of detecting liquid-based explosives.



The Government will also provide \$11.4 million for the Next Generation Border Security Initiative to use advanced data analysis and risk profiling to better identify and refer visa applicants who may present national security risks to intelligence agencies.

*Securing the air cargo supply chain*

The Government will introduce a number of measures to help secure Australia's air cargo supply chain.

We will provide \$54.2 million to assist industry to install cargo x-ray screening and explosive trace detection technology at selected locations.

This funding will also establish a regulated shipper scheme, which will allow for the identification of high-risk cargo for technical examination.

Recent events have shown that terrorists and terrorist organisations are trying new techniques and strategies in their efforts to target innocent people.

Although no single measure can prevent a terrorist attack, new technologies, better training and greater domestic and international cooperation can help us stay one step ahead of terrorist organisations.

As part of the process, we will work with the aviation industry and other stakeholders in order to improve the efficiency and quality of passenger screening and facilitation at domestic and international airports and ensure disruptions are minimised for travellers.

It is vital that we remain vigilant and take those steps that are necessary to protect Australian citizens and Australian interests.

**CANBERRA**

**9 FEBRUARY 2010**

**PRESS OFFICE (02) 6277 7744**

**MINISTER ALBANESE'S OFFICE (02) 6277 7680**

**MINISTER O'CONNOR'S OFFICE (02) 6277 7290**



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Executive Director

12 February 2010  
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These technologies will include the latest body scanners, next generation multi-view X-ray machines and bottle scanners capable of detecting liquid-based explosives.

**Body scanners will be introduced progressively as an additional screening measure at screening points servicing international departing passengers by early 2011.**

**The Government understands the privacy concerns some travellers may have with body scanning technologies and will implement appropriate privacy and facilitation measures to mitigate these concerns.**

**We will also provide \$32 million to bring forward screening at a number of additional regional airports that are currently served by larger passenger turbo-prop aircraft.**

**We are also introducing more stringent training and performance requirements for security screening staff, as part of the Government's Aviation White Paper.**

#### ***Policing at airports***

**The Government will provide \$17.7 million to increase the number of Firearms and Explosive Detection Dogs at major international airports by 50 per cent.**

**When teamed with bomb appraisal officers and other uniformed Australian Federal Police officers, these highly-trained detection dogs and their handlers make a highly visible and effective contribution to aviation security and law enforcement.**

**In addition, we will provide \$12.3 million to maintain the AFP presence at major airports, in line with the Beale review's recommendations on airport policing to deliver more responsive and better coordinated policing at these vital gateways.**

#### ***Strengthening international cooperation***

**The Government will provide \$18.2 million to strengthen engagement and cooperation in the Asia-Pacific region and internationally and to improve security on international flights.**

**We will expand our international cooperation regime of visits, inspections and security assessments at last ports of call airports for flights coming to Australia.**

**We will also conduct a trial, in partnership with the United States and United Kingdom at an Australian airport on technology-based solutions to assist in further improvements to the detection of liquids-based explosives.**

#### ***Passenger security processing measures***

**The Government will provide \$24.9 million for new technology as part of the Enhanced Passenger Assessment and Clearance Program, to enable Customs to assess a larger number of passengers earlier and faster and share relevant data with intelligence, border management and law enforcement agencies.**

**This will bring together passenger travel history quicker to inform judgements at the border and to address one of the issues identified after the Christmas Day attempt.**

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**MINISTER O'CONNOR'S OFFICE (02) 6277 7290**

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Friday, 12 February 2010 9:50 AM  
**To:** [REDACTED] Spencer Nicole  
**Subject:** FW: Letter to the Privacy Commissioner [SEC=UNCLASSIFIED]  
**Attachments:** Letter from Paul Retter to Karen Curtis OPC signed 12 Feb 2010.pdf

Fyi.

Regards,

[REDACTED]  
Acting General Manager  
Supply Chain and Screening Branch  
Office of Transport Security  
Department of Infrastructure, Transport, Regional Development and Local Government

[REDACTED]  
F: 02 6274 7097

E: [REDACTED]@infrastructure.gov.au

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**From:** [REDACTED]  
**Sent:** Friday, 12 February 2010 9:50 AM  
**To:** 'Leife Shallcross'; Retter Paul  
**Cc:** Wilson Andrew  
**Subject:** Letter to the Privacy Commissioner [SEC=UNCLASSIFIED]

Dear Leife,

As a follow up to our discussion yesterday, please find attached the letter and attachment which will be sent to the Privacy Commissioner today. The letter refers to the Prime Minister's announcement on 9 February 2010, specifically to the new screening technologies (including body scanners) measure.

The letter also notes the meeting to be held on Monday 15 February between the Deputy Privacy Commissioner, Mr Timothy Pilgrim and Mr Andrew Wilson, Deputy Secretary Department of Infrastructure, Transport, Regional Development and Local Government.

Regards,

[REDACTED]  
Acting General Manager  
Supply Chain and Screening Branch  
Office of Transport Security  
Department of Infrastructure, Transport, Regional Development and Local Government

[REDACTED]  
F: 02 6274 7097

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**MINISTER O'CONNOR'S OFFICE (02) 6277 7290**

[REDACTED]

**From:** Leife Shallcross [Leife.Shallcross@privacy.gov.au]  
**Sent:** Wednesday, 5 May 2010 11:44 AM  
**To:** Spencer Nicole; [REDACTED]  
**Cc:** Timothy Pilgrim; Andrew Solomon  
**Subject:** FW: Possible MOU between the OPC and Department of Infrastructure [SEC=UNCLASSIFIED]  
**Attachments:** 2010-02 MOU OPC Dept of Infrastructure v18 Feb.doc

Good morning Nicole

Further to our conversation yesterday, this is the draft MOU and email last forwarded to Infrastructure. Following this, OTS advised that the MOU would not be going ahead, however, subsequently the Commissioner met with Mike Mrdak on Friday 26 March. Yesterday I advised that Mr Mrdak had agreed to enter into an MOU at this meeting, but Karen Curtis advises that this is not the case (apologies for that) – however he did say that he would be prepared to revisit the issue with OTS as he understood the resource restraints this office operates under and the priority the Government has placed on this initiative. We have not heard anything further at this stage.

Leife Shallcross  
Deputy Director - Policy  
Office of the Privacy Commissioner  
ph 02 6247 4388  
email [leife.shallcross@privacy.gov.au](mailto:leife.shallcross@privacy.gov.au)

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**From:** Timothy Pilgrim  
**Sent:** Thursday, 18 February 2010 3:07 PM  
**To:** peter.robertson@infrastructure.gov.au  
**Cc:** Andrew Solomon; Leife Shallcross  
**Subject:** Possible MOU between the OPC and Department of Infrastructure [SEC=UNCLASSIFIED]

Hi Peter

At our meeting last Monday on the introduction of body scanning technology at Australian international airports I mentioned that we would like to enter into a MOU between our two Offices. This MOU would be necessary to ensure that the Office is in a position to be able to provide advice and support on the privacy implications of this initiative. It would also provide for the Office to have an ongoing oversight role.

I have attached a draft of a possible MOU for you to consider.

Please note that we have taken the liberty of preparing a possible set of tasks to be completed by us under the MOU in order to give you some indication of the types of advice and auditing that we would anticipate might be required based on our past experience with initiatives of this size and sensitivity. We are quite open to further discussion on the actual tasks that you contemplate should be covered by the MOU.

We have calculated the resourcing quantum (\$185,000 per annum for 3 years) based on our experience with similar MOUs. It includes the whole of office staff and executive resources required to undertake the various tasks and travelling and other administrative costs.

If you would like to discuss this draft please contact Andrew Solomon, Director Policy. His contact details are [andrew.solomon@privacy.gov.au](mailto:andrew.solomon@privacy.gov.au) or by telephone on (02) 9284 9708.

We look forward to your comments on both the terms of the draft MOU and the initial Work plan.

Timothy

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE DEPARTMENT OF INFRASTRUCTURE, TRANSPORT,  
REGIONAL DEVELOPMENT AND LOCAL GOVERNMENT  
(the DEPARTMENT)**

**AND**

**THE OFFICE OF THE PRIVACY COMMISSIONER  
(OPC)**

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In relation to the provision of funding by the Department to the OPC to enable the OPC to provide dedicated privacy advice and conduct audits in relation to the development and implementation of body scanning technology in Australian airports and to enable the OPC to adequately respond to privacy matters arising from the implementation of body scanning technology in Australian airports.

**MEMORANDUM OF UNDERSTANDING** made on the ~~XXXX~~ day of ~~XXXX~~ 2010

**between**

**the Department of Infrastructure, Transport, Regional Development and Local Government, an Australian Government Department of 111 Alinga Street, Canberra City in the Australian Capital Territory (the Department)**

**and**

**the Office of the Privacy Commissioner, established under the *Privacy Act 1988*, of Level 8, 133 Castlereagh Street, Sydney in the State of New South Wales (OPC)**

**PREAMBLE**

- 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.
- B The Department is progressing the development and implementation of body scanning technology in Australian international airports. The Department seeks to ensure that the development and implementation of body scanning technology in Australian international airports is progressed with due regard to the necessity of ensuring privacy protections are afforded to individuals.
- 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 to achieve this objective.
- D The Department recognises that the OPC must be properly resourced to provide dedicated specialist attention to the Department and to be able to appropriately respond to privacy issues as the body scanning initiative is designed and implemented.
- 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 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.

## **IT IS AGREED AS FOLLOWS:**

### **1. Costs and Payments**

- 1.1.** The Department agrees to provide to OPC the sum of \$185,000 (ex GST) per annum for three years (the Funds) to enable the OPC to provide the Tasks as outlined in Schedule A to this MoU (the Workplan).
- 1.2.** The first payment of \$185,000 (ex GST) by the Department to OPC will be due and payable upon the signing of this MoU.
- 1.3.** Each of the subsequent two payments of \$185,000 (ex GST) will be made in advance by the Department to OPC and will be due and payable on the first and second anniversaries of the signing of the MoU.
- 1.4.** If OPC fails to provide the services listed in the Workplan or if this MoU is terminated in accordance with clause 7.1, the Department will not be obliged to make further payments to OPC. Any monies paid in advance by the Department will be reimbursed on a pro-rata basis by OPC.

### **2. Obligations of each party**

#### **2.1.** The OPC will recognise the Department priorities and will:

- a) complete the Tasks within the timeframes outlined in the Workplan;
- b) work in partnership with the Department to develop and update the Workplan as required;
- c) not represent the Department as endorsing a proposal, policy, guideline or other document or action unless the Department provides its specific endorsement in writing; and
- d) consult with and reach agreement with the Department concerning any public document or press release connected with this Memorandum of Understanding.

#### **2.2.** In addition to providing the Funds, the Department will :

- a) provide the OPC with all information and support it requires for it to fulfil its obligations under clause 2.1;
- b) work in partnership with the OPC to develop and update the Workplan as required;
- c) provide a response where appropriate, indicating its acceptance or rejection of any advice provided by the OPC under the Workplan and, where rejecting the advice, provide reasons;
- d) where appropriate, include written advice provided by the OPC in relevant Ministerial or Cabinet submissions;
- e) not represent the OPC as endorsing a proposal, policy, guideline or other document or action unless the OPC provides its specific endorsement in writing; and
- f) consult with and reach agreement with the OPC concerning any public document or press release connected with this Memorandum of Understanding.



### **3. Outcomes Measures and Reporting**

**3.1.** Every twelve months after the signing of this MoU the OPC and the Department will meet and evaluate the outcomes achieved under this MoU by considering:

- progress made on the matters listed in the Workplan,
- the quality of progress and provide feedback against the Workplan, and
- the adequacy of resources provided under this MoU.

### **4. Meetings**

**4.1.** The OPC and the Department agree to meet or make contact as appropriate (in person, by teleconference or in writing) at least once every two months to discuss issues relevant to this MoU.

**4.2.** Other meetings may be arranged on an informal basis to discuss issues as they arise.

### **5. Contacts**

To facilitate communication and liaison between the Department and the OPC, the following people may be contacted:

#### **5.1. For the OPC:**

Mr Andrew Solomon, Director, Policy

P: 02 9284 9708, M: 0408 267 078, F: 02 9284 9666

Email: [andrew.solomon@privacy.gov.au](mailto:andrew.solomon@privacy.gov.au)

Physical address: Level 8, 133 Castlereagh St, Sydney NSW 2000

Postal Address: GPO Box 5218, Sydney NSW 2001

#### **5.2. For the Department:**

**[Insert Name]**

**[Insert Title]**

P: **XXXXXX**

M: **XXXXXX**

F: **XXXXXX**

Physical address: 111 Alinga Street, Canberra City ACT 2603

Postal address: PO Box 594, Canberra City ACT 2601

**5.3.** Each party will notify the other of any change in the responsible officer.



**6. Term of the MoU**

6.1. The term of this MoU will be three (3) years from the date of the signing of the MoU unless it is terminated earlier in accordance with clause 9.1.

**7. Termination**

7.1. Either party may terminate this MoU by providing two calendar months notice to the other party.

**8. Issues resolution**

8.1. The parties agree that any issues that arise in the implementation of this MOU will be dealt with as follows:

- a) The contact officers will notify the other party in writing of the issue to which it relates;
- b) Within five (5) business days the parties' respective contact officers will commence discussions in an attempt to resolve the issue in good faith and by direct communication;
- c) If the contact officers are unable to resolve the issue, the issue will be referred to the signatories to this agreement or their nominee.

**9. Confidentiality, Privacy and Security**

9.1. Both the Department and the OPC acknowledge that they are subject to certain legislative obligations and restrictions, including any relevant secrecy provisions under Commonwealth legislation, and that both agencies must conduct their activities under this MoU in accordance with those legislative obligations and restrictions.

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**MIKE MRDAK**

Secretary

Department of Infrastructure,  
Transport, Regional Development and  
Local Government

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**KAREN CURTIS**

Australian Privacy Commissioner

## Schedule A

Work priorities will be reviewed at least every twelve months during the course of the MOU. Urgent changes to the workplan can occur at any time with both parties' agreement.

DEPARTMENT - OPERATIONAL PLAN 2010/11		Activity	Timeline
Priority tasks	2010/11		
Tender Specifications	OPC will provide advice on appropriate privacy policy settings that may assist tender specifications.		
Community feedback mechanism	OPC will provide advice on stakeholder engagement and community consultation processes, to assist the Department develop an effective mechanism to receive and respond to privacy concerns related to the development and implementation of body scanning technologies at Australian airports.	Within first three months of MOU and as required during course of MOU	
Privacy Impact Assessment (PIA)	OPC will provide advice to the Department on undertaking Privacy Impact Assessments (including, for example, commenting on proposed methodologies and draft versions of PIAs)	Within first two months of MOU and as required during course of MOU	
Privacy statement	In conjunction with the Department OPC will provide assistance in developing an overarching privacy statement relating to the use of body scanning technologies at Australian airports.		
PIA Outcomes	OPC will provide advice and guidance on the Department's proposed measures to respond to, or implement, any recommendations from a PIA or other like process undertaken to determine potential privacy impacts.		

Priority Tasks		Activity	Responsible
Guidelines		OPC will provide advice on any Guidelines developed by the Department for the use of staff involved in body scanning processes.	
Staff Training		Provide advice on the content of privacy training for all relevant staff.	
Mechanism for handling privacy complaints		OPC will provide advice on mechanisms for handling privacy issues and complaints arising from the implementation of body scanning technologies in Australian airports	
		2011/12	
Audits		In consultation with the Department the OPC will develop an audit program over the second two years of the MoU. The OPC will undertake the audits, analyse results and recommend implementation strategies. Of particular relevance would be ensuring body scanning is being conducted in accordance with the processes and protocols developed to protect privacy.	
		Conduct audits involving 8 international airports	

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[REDACTED]

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**From:** [REDACTED]  
**Sent:** Monday, 10 May 2010 4:00 PM  
**To:** 'Leife Shallcross'  
**Cc:** [REDACTED]  
**Subject:** Meeting between OPC and OTS - Introduction of body scanners [SEC=UNCLASSIFIED]

Good Afternoon Leife,

I have spoken to my Director, [REDACTED] regarding your request for further details regarding the policy for the introduction of body scanners. [REDACTED] has advised that we are still finalising the details of the policy, but we will endeavour to provide OPC with further details in advance of our meeting (date yet to be confirmed).

Please contact me should you wish to discuss this matter further.

Kind Regards,

[REDACTED]

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## Security Technology Strategies

Office of Transport Security  
Department of Infrastructure, Transport, Regional Development and Local Government  
t: (02) [REDACTED]  
e: [REDACTED][@infrastructure.gov.au](mailto:[REDACTED]@infrastructure.gov.au)

6

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**From:** [REDACTED]  
**Sent:** Tuesday, 11 May 2010 2:17 PM  
**To:** 'Sandra Stanton'; 'andrew.solomon@privacy.gov.au'  
**Cc:** [REDACTED]; Spencer Nicole; [REDACTED]  
**Subject:** RE: Meeting with the Office of Transport Security - Introduction of Body Scanners [SEC=UNCLASSIFIED]

Good Afternoon Sandra,

As discussed during our phone conversation earlier today, Nicole Spencer, General Manager, Supply Chain and Screening Branch and Matthew Pedler, Director, Security Technology Strategies will travel to OPC's Sydney office on Tuesday 8 June 2010 to meet with Timothy Pilgrim, Deputy Privacy Commissioner, and Andrew Solomon, Director, Policy, to discuss privacy issues surrounding the introduction of body scanners. The meeting will take place from 12pm-1pm.

Thank you for your assistance in arranging this meeting.

Kind Regards,

---

## Security Technology Strategies

Office of Transport Security  
Department of Infrastructure, Transport, Regional Development and Local Government  
t: (02) [REDACTED]  
e: [REDACTED]@infrastructure.gov.au

---

**From:** Sandra Stanton [mailto:sandra.stanton@privacy.gov.au]  
**Sent:** Monday, 10 May 2010 11:38 AM  
**To:** [REDACTED]  
**Subject:** Meeting with the Office of Transport Security - Introduction of Body Scanners [SEC=UNCLASSIFIED]

Hi [REDACTED]

Unfortunately, Timothy and Andrew have prior commitments on 26 and 27 May. They are available on Friday 28 May at 11.30am-12.30pm; or a timeslot between 1.30pm and 3.30pm. Would either of these times suit?

Regards

Sandra Stanton  
Executive Assistant  
Office of the Privacy Commissioner  
t: 02 9284 9710

Privacy  
Awareness Week

10 MAY 2010

---

**From:** [REDACTED] [mailto:[REDACTED]@infrastructure.gov.au]

**Sent:** Friday, 7 May 2010 11:29 AM

**To:** 'suzanne.cristian@privacy.gov.au'; Sandra Stanton; Andrew Solomon

**Cc:** [REDACTED]

**Subject:** 1:30-2:30 Friday 14 May 2010 - Meeting with the Office of Transport Security - Introduction of Body Scanners [SEC=UNCLASSIFIED]

Good Morning Suzanne,

Thank you for your assistance in arranging this meeting in Sandra's absence. Please find below further details regarding the proposed meeting between the Office of Transport Security (OTS) and the Office of the Privacy Commissioner (OPC).

OTS is seeking to undertake discussions with the OPC to progress arrangements for the implementation of body scanning technologies at international airports, and to inform the development of a communications strategy for the travelling public. Ms Nicole Spencer, General Manager Supply Chain and Screening Branch within OTS has requested a meeting with OPC representatives regarding the privacy issues related to the introduction of body scanners in Australia's international airports.

As Thursday 20 May is not a suitable date from our end, I would like to suggest the following alternative dates:

- Wednesday 26 May from 1:30-2:30pm; or
- Thursday 27 May from 1:30-2:30pm.

As discussed, the meeting will take place at OPC's Sydney office located at level 8, 133 Castlereagh Street. Mr [REDACTED], Director, Security Technology Strategies will attend. I understand that the Deputy Commissioner would also like Mr Andrew Solomon to attend and OTS believes that there would be considerable value to be gained from his attendance, if he is available.

Please advise of the Deputy Commissioner and Mr Solomon's availability to meet at either of the times outlined above. Please contact me using the details below should you wish to discuss this matter further. Thank you again for your assistance in arranging this meeting.

Kind Regards,

[REDACTED]

---

## Security Technology Strategies

Office of Transport Security

Department of Infrastructure, Transport, Regional Development and Local Government

t: (02) [REDACTED]

e: [REDACTED]@infrastructure.gov.au

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\*\*\*\*\*

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Tuesday, 11 May 2010 4:09 PM  
**To:** 'Sandra Stanton'; 'andrew.solomon@privacy.gov.au'  
**Cc:** [REDACTED] Spencer Nicole  
**Subject:** Meeting with the Office of Transport Security - Introduction of Body Scanners  
[SEC=UNCLASSIFIED]

Good Afternoon Sandra,

Apologies for the repeat emails.

**Thursday 20 May 2010, from 12-1pm** is now confirmed as a suitable time for the meeting between OTS and OPC to discuss the privacy issues surrounding the introduction of body scanners in Australia's international airports. As outlined in previous emails, Nicole Spencer, General Manager, Supply Chain and Screening Branch and [REDACTED] Director, Security Technology Strategies will be representing OTS at the meeting, to be held at OPC's Sydney office.

Thank you for your continued assistance in arranging this meeting.

Kind Regards,

[REDACTED]

---

## Security Technology Strategies

Office of Transport Security  
Department of Infrastructure, Transport, Regional Development and Local Government  
t: (02) [REDACTED]  
[REDACTED]@infrastructure.gov.au





Australian Government

Office of the Australian Information Commissioner

Our reference: P08/78

Mr Paul Retter  
Executive Director  
Office of Transport Security  
GPO Box 594  
CANBERRA ACT 2601

Dear Mr Retter

**Variations to Memorandum of Understanding re the implementation of body scanning technology in Australian International airports**

On 7 February 2011 Angelene Falk, Director – Policy, and Tim de Sousa of the Office of the Australian Information Commissioner (the OAIC) met with [REDACTED] and [REDACTED] of the Office of Transport Security (the OTS).

**Request to extend the term of the Memorandum of Understanding**

At that meeting, [REDACTED] noted that the Memorandum of Understanding (the MOU) entered into between the Department of Infrastructure, Transport, Regional Development and Local Government (the Department: now the Department of Infrastructure and Transport) and the Office of the Privacy Commissioner (the OPC: now the OAIC) on 9 June 2010, will expire on 9 June 2011.

Mr [REDACTED] also noted that, as certain project milestones have yet to be reached, several items in the MOU work plan which the OAIC is required to carry out have yet to be commenced.

Accordingly, Mr [REDACTED] requested that the OAIC agree to extend the term of the MOU to allow the completion of the outstanding items.

The OAIC formally agrees to extend the term of the MOU to **31 December 2011**. We note that the OTS was advised of this intention by email from Tim de Sousa to [REDACTED] on 4 March 2011.

**Request to facilitate additional public consultation**

At the meeting on 7 February 2011, Mr [REDACTED] also proposed that the OTS engage in further public consultation (to be facilitated by the OAIC) including:

- a second privacy roundtable, and

- prior to the second roundtable, a series of 'focus groups' with small groups of stakeholders with common concerns.

Item 1 in the MOU work plan specifies that the OAIC '*will facilitate a privacy issue roundtable between the Department and relevant privacy and public interest advocacy groups*'. The work plan does not contain any other items relating to the conduct or facilitation of public consultation.

The OPC facilitated a privacy roundtable on behalf of the OTS on 22 September 2010. Accordingly, the OAIC is of the view that it has completed item 1.

Accordingly, the OAIC considers that the request that it facilitate further public consultation constitutes a variation to the MOU work plan.

The OAIC agrees to that variation, subject to the matters set out below.

#### ***Focus groups***

The OAIC recommends that the number of focus group meetings be limited to a maximum of four.

The OAIC suggests that the meetings be structured around the following concerns:

- Personal dignity concerns (religious and cultural modesty advocates, possibly also including youth and children's rights groups).
- Concerns regarding disabilities, prosthetics or other health issues that may be identified or disclosed through the screening process (disability advocates, chronic illness and aged care groups).
- Gender identity issues relevant to the transgender and intersex community (transgender and intersex advocates).
- Privacy and public interest issues generally (privacy and civil liberties advocates).

In order to achieve the maximum benefit from the focus groups, the OAIC recommends that the OTS:

- provide a draft of its Privacy Impact Assessment (PIA) to the invitees in advance of the meeting and, preferably, specific information regarding the privacy impacts that may affect invitees and the measures proposed to mitigate those impacts,
- be in a position to detail and speak to proposed measures to mitigate the privacy impacts relevant to each focus group, and to test the groups reaction to those proposed measures, and

- use the outcome of the focus groups to refine the PIA, prior to releasing it for consultation in preparation for the second privacy roundtable.

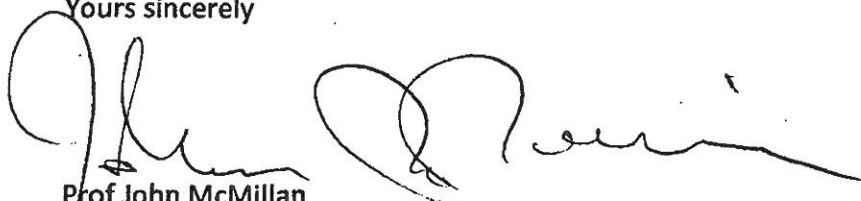
The OAIC would be happy to work with the OTS to develop a process and agenda for the focus groups.

The OAIC does not seek a variation to the amount of funds provided to the OAIC under the MOU as a result of the variation of the term of the MOU or the workplan.

Please confirm that the Department agrees to the terms of the proposed variations by return correspondence.

If you have any questions regarding any of the above, please contact Ms Falk, on (02) 9284 9651 or at [angelene.falk@oaic.gov.au](mailto:angelene.falk@oaic.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'John McMillan', written over a horizontal line.

Prof John McMillan  
Australian Information Commissioner

13 May 2011

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Thursday, 20 May 2010 9:17 AM  
**To:** 'suzanne.christian@privacy.gov.au'; 'Sandra Stanton'; 'andrew.solomon@privacy.gov.au'  
**Cc:** [REDACTED]  
**Subject:** CANCELLED: Meeting with the Office of Transport Security - Introduction of Body Scanners [SEC=UNCLASSIFIED]

Good Morning Suzanne,

As discussed, please be advised that due to illness, today's meeting to discuss the introduction of body scanners will not go ahead. I will be in contact in the near future to reschedule.

Thank you for your understanding.

Kind Regards,

[REDACTED]

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## Security Technology Strategies

Office of Transport Security  
Department of Infrastructure, Transport, Regional Development and Local Government  
t: (02) [REDACTED]  
e: [REDACTED]@infrastructure.gov.au

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**From:** Sandra Stanton [mailto:sandra.stanton@privacy.gov.au]  
**Sent:** Tuesday, 11 May 2010 4:21 PM  
**Subject:** RE: Meeting with the Office of Transport Security - Introduction of Body Scanners [SEC=UNCLASSIFIED]

Noted, thanks [REDACTED]  
Sandra

---

**From:** [REDACTED] [mailto:[REDACTED]@infrastructure.gov.au]  
**Sent:** Tuesday, 11 May 2010 4:09 PM  
**To:** Sandra Stanton; Andrew Solomon  
**Cc:** [REDACTED] Spencer Nicole  
**Subject:** Meeting with the Office of Transport Security - Introduction of Body Scanners [SEC=UNCLASSIFIED]

Good Afternoon Sandra,

Apologies for the repeat emails.

Thursday 20 May 2010, from 12-1pm is now confirmed as a suitable time for the meeting between OTS and OPC to discuss the privacy issues surrounding the introduction of body scanners in Australia's international airports. As outlined in previous emails, Nicole Spencer, General Manager, Supply Chain and Screening Branch and Matthew Adler, Director, Security Technology Strategies will be representing OTS at the meeting, to be held at OPC's Sydney office.

Thank you for your continued assistance in arranging this meeting.

Kind Regards,

[REDACTED]

---

## Security Technology Strategies

Office of Transport Security  
Department of Infrastructure, Transport, Regional Development and Local Government  
t: (02) [REDACTED]  
e: [REDACTED]@infrastructure.gov.au

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\*\*\*\*\*

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Tuesday, 25 May 2010 3:56 PM  
**To:** 'andrew.solomon@privacy.gov.au'  
**Cc:** Spencer Nicole; [REDACTED]  
**Subject:** Teleconference OPC/OTS: body scanning technologies - privacy [SEC=UNCLASSIFIED]

Good afternoon Mr Solomon

Thank you for confirming your availability to speak with Ms Nicole Spencer, General Manager, Supply Chain and Screening Branch Office of Transport Security via teleconference tomorrow morning (Wednesday 26 May) at 10am, to discuss privacy issues surrounding the implementation of body scanning technologies. Ms Spencer has also asked [REDACTED] Director Security Technology Strategies and [REDACTED] Director Optimal Technologies Implementation, to participate in this discussion.

As requested, I have advised Ms Spencer that you would like to receive an update on the proposed MoU.

If you have any questions prior to tomorrow's teleconference please do not hesitate to contact me on the details below.

Kind regards

[REDACTED]  
Security Technology Strategies  
Office of Transport Security  
Department of Infrastructure, Transport, Regional Development and Local Government  
P 02 [REDACTED]  
E [REDACTED]@infrastructure.gov.au

[REDACTED]

**From:** Andrew Solomon [andrew.solomon@privacy.gov.au]  
**Sent:** Tuesday, 25 May 2010 4:16 PM  
**To:** Spencer Nicole  
**Cc:** [REDACTED]; Leife Shallcross  
**Subject:** RE: Teleconference OPC/OTS: body scanning technologies - privacy [SEC=UNCLASSIFIED]  
**Attachments:** FW: Possible MOU between the OPC and Department of Infrastructure [SEC=UNCLASSIFIED]

Nicole,

As discussed with [REDACTED] this afternoon I only have 30 minutes available tomorrow morning at 10am. Given that time constraint I think we need to concentrate on establishing how this Office may be able to be involved in the development and implementation process for body scanning technologies at international airports and how the OTS may be able to assist the Office to prioritise this work.

As previously indicated this Office believes the best way to achieve that is through entering into an Memorandum of Understanding as we have done with other government agencies in relation to similar projects. For your convenience I have attached the email that Leife Shallcross sent to you on 5 May attaching a previous draft proposed MoU.

Also, I am not sure if you are aware of the recent letter (17 May) sent from the Australian Privacy Foundation and four other advocacy groups to Minister Albanese in relation to consultation with advocacy groups in relation to this initiative. It has been published on their website at: <http://privacy.org.au/Papers/BodyScan-MinTpt-100517.pdf>

Kind regards

**Andrew Solomon**  
Director, Policy  
Office of the Privacy Commissioner  
p: +61 2 9284 9708 | f: +61 2 9284 9666 | m: +61 408 267 078  
e: andrew.solomon@privacy.gov.au | w: [www.privacy.gov.au](http://www.privacy.gov.au)

Please consider the environment before printing this email

**Cc:** Spencer Nicole; [REDACTED]  
**Subject:** Teleconference OPC/OTS: body scanning technologies - privacy [SEC=UNCLASSIFIED]

Good afternoon Mr Solomon

Thank you for confirming your availability to speak with Ms Nicole Spencer, General Manager, Supply Chain and Screening Branch Office of Transport Security via teleconference tomorrow morning (Wednesday 26 May) at 10am, to discuss privacy issues surrounding the implementation of body scanning technologies. Ms Spencer has also asked [REDACTED] Director Security Technology Strategies and [REDACTED] Director Optimal Technologies Implementation, to participate in this discussion.

As requested, I have advised Ms Spencer that you would like to receive an update on the proposed MoU.

If you have any questions prior to tomorrow's teleconference please do not hesitate to contact me on the details below.

Kind regards

[REDACTED]  
Security Technology Strategies  
Office of Transport Security  
Department of Infrastructure, Transport, Regional Development and Local Government  
P 02 [REDACTED]  
E [REDACTED]@infrastructure.gov.au

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**Australian Government**

**Department of Infrastructure, Transport,  
Regional Development and Local Government**

Ms Karen Curtis  
Privacy Commissioner  
Office of the Privacy Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

Dear Ms Curtis

**Memorandum of Understanding (MoU)**

Enclosed is a signed copy of the MoU between the Department of Infrastructure, Transport, Regional Development and Local Government (the Department) and the Office of the Privacy Commissioner (OPC).

We look forward to working with the OPC to obtain dedicated privacy advice and related services to enable the implementation of body scanning technology in Australian international airports. The Department seeks to be able to respond to privacy matters arising from the implementation of body scanning technology in Australian airports and we recognise that body scanning technologies raise complex questions about personal privacy. The Department is committed to considering these questions carefully in light of its responsibility to prevent unlawful interference with aviation.

If you have any questions regarding this information, please contact Nicole Spencer, General Manager, Supply Chain and Screening Branch. Ms Spencer can be contacted at [nicole.spencer@infrastructure.com.au](mailto:nicole.spencer@infrastructure.com.au) or on 02 6274 7988.

Yours sincerely

Peter Robertson  
A/g Executive Director

9 June 2010  
Enc

OFFICE OF TRANSPORT SECURITY

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE DEPARTMENT OF INFRASTRUCTURE, TRANSPORT,  
REGIONAL DEVELOPMENT AND LOCAL GOVERNMENT  
(the DEPARTMENT)**

**AND**

**THE OFFICE OF THE PRIVACY COMMISSIONER  
(OPC)**

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In relation to the provision of funding by the Department to the OPC to enable the OPC to provide dedicated privacy advice in relation to the development and implementation of body scanning technology in Australian airports and to enable the OPC to adequately respond to privacy matters arising from the implementation of body scanning technology in Australian airports.

## MEMORANDUM OF UNDERSTANDING

between

the Department of Infrastructure, Transport, Regional Development and Local Government, an Australian Government Department of 111 Alinga Street, Canberra City in the Australian Capital Territory (the Department)

and

the Office of the Privacy Commissioner, established under the *Privacy Act 1988*, of Level 8, 133 Castlereagh Street, Sydney in the State of New South Wales (OPC)

### PREAMBLE

- 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.
- B On 9 February 2010 the Australian Government announced a \$200 million Strengthening Aviation Security package, a significant component of which was the introduction of optimal technologies for passenger screening, including body scanners, at Australia's international airports.  
  
The Department believes that from a security perspective screening all passengers using the body scanner provides the strongest security outcome.
- 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.
- 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.

**IT IS AGREED AS FOLLOWS:**

**1. Costs and Payments**

- 1.1. The Department agrees to provide to OPC the sum of \$185,000 (ex GST) (the Funds) for the initial 12 month period this MoU remains in force to enable the OPC to undertake the Tasks as outlined in Schedule A to this MoU (the Workplan).
- 1.2. A payment of \$185,000 (ex GST) by the Department to OPC will be due and payable upon the signing of this MoU.
- 1.3. If the MoU is extended for any further period, in accordance with clause 5.2, the Department and the OPC will agree an amount for that period commensurate with the tasks to be undertaken during the period. Any such sum would be due and payable within one month of the parties exercising the election to extend the MoU in accordance with clause 5.2.
- 1.4. If OPC fails to undertake the Tasks listed in the Workplan or if this MoU is terminated or varied in accordance with clause 6, any monies paid in advance by the Department will be reimbursed on a pro-rata basis by OPC.

**2. Obligations of each party**

- 2.1. The OPC will recognise the Department priorities and will:
  - a) complete the Tasks within the timeframes outlined in the Workplan;
  - b) work in partnership with the Department to develop and update the Workplan as required;
  - c) not represent the Department as endorsing a proposal, policy, guideline or other document or action unless the Department provides its specific endorsement in writing; and
  - d) consult with and reach agreement with the Department concerning any public document or press release connected with this Memorandum of Understanding.
- 2.2. In addition to providing the Funds, the Department will :
  - a) provide the OPC with all information and support it requires to enable it to fulfil its obligations under clause 2.1;

- b) work in partnership with the OPC to develop and update the Workplan as required;
- c) provide a response where appropriate, indicating its acceptance or rejection of any advice provided by the OPC under the Workplan and, where rejecting the advice, provide reasons;
- d) where appropriate, and at the Department's discretion, include written advice provided by the OPC in relevant Ministerial or Cabinet submissions;
- e) not represent the OPC as endorsing a proposal, policy, guideline or other document or action unless the OPC provides its specific endorsement in writing; and
- f) consult with and reach agreement with the OPC concerning any public document or press release connected with this Memorandum of Understanding.

### **3. Outcomes Measures and Reporting**

3.1. The OPC and the Department will meet and evaluate the outcomes achieved under this MoU, at least every 3 months from the signing of this MoU, by considering:

- progress made on, and the quality of, the Workplan Tasks
- the adequacy of resources provided under this MoU.

### **4. Meetings**

4.1. The OPC and the Department agree that the contact officers or other relevant staff will meet or make contact as appropriate (in person, by teleconference or in writing) as required to discuss issues relevant to this MoU.

4.2. Both parties will endeavour to respond promptly to verbal and written communication requests and at least make an initial response by COB the following working day. The timing for a full detailed response to communications can be negotiated on a case by case basis based on complexity of advice required.

### **5. Term of the MoU**

5.1. The term of this MoU will be an initial 12 months from the date of the signing of the MoU unless it is terminated or varied earlier in accordance with clause 6.

6. The parties may together elect to continue the MoU for a further specified period, subject to an agreed set of tasks and resourcing. This election can be effected through an exchange of correspondence between the parties prior to the end of the initial 12 month period or within one month of that date.

## **7. Termination and variation**

- 7.1. Either party may terminate this MoU by providing two calendar months notice to the other party.
- 7.2. This MOU may be varied in writing at any time with the agreement of both parties.

## **8. Issues resolution**

- 8.1. The parties agree that any issues that arise in the implementation of this MOU will be dealt with as follows:
  - a) The contact officers will notify the other party in writing of the issue to which it relates;
  - b) Within five (5) business days the parties' respective contact officers will commence discussions in an attempt to resolve the issue in good faith and by direct communication;
  - c) If the contact officers are unable to resolve the issue, the issue will be referred to the signatories to this agreement or their nominee.

## **9. Confidentiality, Privacy and Security**

- 9.1. Both the Department and the OPC acknowledge that they are subject to certain legislative obligations and restrictions, including any relevant secrecy provisions under Commonwealth legislation, and that both agencies must conduct their activities under this MoU in accordance with those legislative obligations and restrictions.
- 9.2 Given the sensitivity of information and documents provided to either party it should be noted that clearance level of staff receiving such documents should be to the level prescribed by Government Security Guidelines.

## 10. Contacts

To facilitate communication and liaison between the Department and the OPC, the following people may be contacted:

**10.1.** For the OPC: Mr Andrew Solomon, Director, Policy

P: 02 9284 9708, M: 0408 267 078, F: 02 9284 9666

Email: andrew.solomon@privacy.gov.au

Physical address: Level 8, 133 Castlereagh St, Sydney NSW 2000

Postal Address: GPO Box 5218, Sydney NSW 2001

**10.2.** For the Department: Nicole Spencer, General Manager, Supply Chain and Screening Branch

P: 02 6274 7988 M: 0434 669938 F: 02 6274 7097

Physical address: 111 Alinga Street, Canberra City ACT 2601

Postal address: PO Box 594, Canberra City ACT 2601

**10.3.** Each party will notify the other of any change in the responsible officer.

Date: June, 2010



*for* Paul Retter  
Executive Director  
Office of Transport Security  
Department of Infrastructure,  
Transport, Regional Development and  
Local Government



Karen Curtis  
Australian Privacy Commissioner



## Schedule A

Work priorities will be reviewed at least every three months during the term of the MOU. Urgent changes to the workplan can occur at any time with both parties' agreement.

DEPARTMENT – OPC WORKPLAN Development and implementation of body scanning technology in Australian airports		
Tasks	Activity	Target Dates
1 Coordinate /convene privacy issues round table	OPC will facilitate a privacy issues roundtable between the Department and relevant privacy and public interest advocacy groups.	July 2010
2 Advice on Privacy Impact Assessment (PIA)	OPC will provide advice to the Department on undertaking Privacy Impact Assessments (including, for example, commenting on proposed methodologies and draft versions of PIAs) and will provide advice and guidance on the Department's proposed measures to respond to, or implement, any recommendations from a PIA or other like process undertaken to determine potential privacy impacts.	July 2010
3 Advice on Community feedback mechanism	OPC will provide input and advice on stakeholder engagement and community consultation processes, to assist the Department develop an effective mechanism to receive and respond to privacy concerns. These would be related to the development and implementation of body scanning technologies at Australian airports.	July/August 2010
4 Input into Program Guidelines	OPC will provide advice on appropriate privacy policy settings that may assist the development of program guidelines..	July/August 2010
5 Assistance in relation to privacy statement	In conjunction with the Department OPC will provide assistance in developing an overarching privacy statement relating to the use of body scanning technologies at Australian airports.	August 2010
6 Proof of Concept	OPC will provide the Department with general advice on all privacy issues that could impact any proof of concept trial to be undertaken prior to implementation.	August/Sept 2010



**DEPARTMENT – OPC WORKPLAN**  
**Development and implementation of body scanning technology in Australian airports**

Tasks		Activity	Target Dates
7	Advice on Guidelines for Industry	OPC will provide advice on any Guidelines developed by the Department for the use of staff involved in body scanning processes.	August 2010
	Advice on staff training	Provide input/advice on the content of privacy training for all relevant staff as required, including staff employed by third parties (screening authorities and screening service providers).	Ongoing
	Advice on mechanism for handling privacy complaints	OPC will provide advice on mechanisms for handling privacy issues and complaints arising from the implementation of body scanning technologies in Australian airports	Ongoing
8	Quality Assurance Assessments	In consultation with the Department the OPC will assist in the development of a quality assurance assessment program in relation to the implementation of body scanning technologies at Australian airports. The OPC will, with the appropriate areas of the Department undertake quality assurance assessments, analyse results and recommend follow up action. Of particular relevance would be ensuring body scanning is being conducted in accordance with the processes and protocols developed to protect privacy.	March 2011

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Tuesday, 15 June 2010 12:59 PM  
**To:** 'andrew.solomon@privacy.gov.au'  
**Cc:** [REDACTED]  
**Subject:** FW: Proposed Response to Dr Clarke re body scanners [SEC=UNCLASSIFIED]  
**Attachments:** 03435-2010 Draft Ministerial reply to Dr Clarke as of 15 June 2010.docx; 03435 -2010 Incoming Correspondence - Dr Clarke.pdf

Good afternoon Andrew

As discussed, please find attached a draft response to Dr Clarke's correspondence of 17 May 2010, on behalf of civil liberties organisations, regarding the introduction of body scanning technologies. As the proposed response refers to the MoU between the Department of Infrastructure and OPC we are seeking OPC's agreement to the wording in the attached response.

It would be greatly appreciated if you could please indicate if OPC is happy with the response or provide any suggested changes in track changes format as soon as possible.

If you have any questions please do not hesitate to contact me on the details below.

Kind regards

[REDACTED]  
Assistant Director  
Security Technology Strategies  
Office of Transport Security  
Department of Infrastructure, Transport, Regional Development and Local Government  
P 02 [REDACTED]  
E [REDACTED]@infrastructure.gov.au

*Reference: 03435-2010*

Dr Roger Clarke  
Chair - Australian Privacy Foundation  
Xamax Consultancy Pty Ltd  
78 Sidaway Street  
CHAPMAN ACT 2611

Dear Dr Clarke

Thank you for your email dated 17 May 2010, in which you forwarded correspondence from the Australian Privacy Foundation, the Queensland Council for Civil Liberties, Civil Liberties Australia, the New South Wales Council for Civil Liberties and Liberty Victoria, about the introduction of body scanning technologies at Australia's international airports.

On 9 June 2010, the Department of Infrastructure, Transport, Regional Development and Local Government (the Department) entered into a Memorandum of Understanding (MoU) with the Office of the Privacy Commissioner (OPC). This MoU formalises arrangements to enable OPC to provide dedicated privacy advice and to respond to privacy matters arising from the implementation of body scanning technologies.

Under the terms of the MoU, OPC will facilitate consultative forums between my Department and relevant public interest advocacy groups.

Thank you for bringing these concerns to my attention.

Yours sincerely

ANTHONY ALBANESE

17 May 2010

The Hon. Anthony Albanese  
Minister for Infrastructure, Transport, Regional Development and Local Government  
Parliament House  
Canberra ACT 2600

Dear Minister

**Re: Consideration of Body Scanning in Australian Airports  
Your Ref. 00656-2010**

Thank you for your reply of 4 May 2010 to our follow-up letter of 16 March.

It was heartening to read your opening sentence: "The Australian Government recognises the importance of consulting with relevant stakeholders regarding privacy concerns".

Unfortunately, the rest of your letter makes clear that OTS is refusing to comply with your Government's policy.

The attempt to excuse OTS from consulting with us appears to be based on the following rationale:

- (a) "I am advised that the Office of the Privacy Commissioner works closely with a broad range of stakeholders including ... advocates, interest groups ...".
- (b) "[OTS] will continue to liaise with the [OFPC] regarding what, if any personal information will be collected, used or disclosed with the introduction of body scanning technologies".

The justification offered is untenable, for the following reasons:

- (1) even if a regulator does consult with advocates and interest groups, this does not absolve individual agencies of the responsibility to consult with relevant stakeholders;
- (2) it is not an automatic function of any regulator to consult with advocates and interest groups;
- (3) the word "consult" does not appear among the PC'er's functions:  
<http://www.austlii.edu.au/au/legis/cth/consol%5fact/pa1988108/s27.html>;
- (4) the PC'er appears to exercise her discretion under the law to consult with "peak bodies, government departments and agencies ... and other privacy authorities ...".  
But she rarely consults with advocates and interest groups, largely ignores submissions made to her, and as a result enjoys zero confidence from non-government organisations;
- (5) the OTS is in breach of the Australian Government's declared policy:  
'Government Response to the Report of the Gov 2.0 Taskforce'  
<http://www.finance.gov.au/publications/govresponse20report/index.html>

"Some key points from the Taskforce's report include:

- \* Leadership, and policy and governance changes are needed to shift public sector culture and practice to make government information more accessible and usable, *make government more consultative, participatory and transparent*, build a culture of online innovation within Government, and to promote collaboration across agencies" (emphasis added)

We request that you reconsider, and that you draw to OTS's attention their responsibility to comply with Australian Government policy, and hence to conduct consultations with the undersigned civil rights and privacy organisations.

Thank you for your further consideration.

Yours sincerely

**Dr Roger Clarke, Chair**  
**(02) 6288 1472**

**Australian Privacy Foundation**  
**chair@privacy.org.au**

**Michael Cope, Chair**  
**(07) 3223 5939**

**Queensland Council for Civil Liberties**  
**mcope@mckayslaw.com**

**Dr Kristine Klugman, Chair**  
**(02) 6288 6137**

**Civil Liberties Australia**  
**klugman@netspeed.com.au**

**Cameron Murphy, Chair**  
**(02) 9286 3767**

**NSW Council for Civil Liberties**  
**office@nswccl.org.au**

**Michael Pearce SC, Chair**  
**(03) 9225 8840**

**Liberty Victoria**  
**email@michaelpearce.com.au**

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Thursday, 17 June 2010 12:50 PM  
**To:** 'andrew.solomon@privacy.gov.au'  
**Subject:** FW: Proposed Response to Dr Clarke re body scanners [SEC=UNCLASSIFIED]  
**Attachments:** 03435-2010 Draft Ministerial reply to Dr Clarke as of 15 June 2010.docx; 03435 -2010 Incoming Correspondence - Dr Clarke.pdf

Good afternoon [REDACTED]

As per my email below, I was wondering if you have had a chance to review the Department's proposed response to Dr Clarke.

Our Minister's Office has indicated that they would like to receive a response tomorrow.

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Tuesday, 15 June 2010 12:59 PM  
**To:** 'andrew.solomon@privacy.gov.au'  
**Cc:** [REDACTED]  
**Subject:** FW: Proposed Response to Dr Clarke re body scanners [SEC=UNCLASSIFIED]

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It would be greatly appreciated if you could please indicate if OPC is happy with the response or provide any suggested changes in track changes format as soon as possible.

If you have any questions please do not hesitate to contact me on the details below.

Kind regards

[REDACTED]  
Assistant Director  
Security Technology Strategies  
Office of Transport Security  
Department of Infrastructure, Transport, Regional Development and Local Government  
P 02 [REDACTED]  
E [REDACTED]@infrastructure.gov.au

*Reference: 03435-2010*

Dr Roger Clarke  
Chair - Australian Privacy Foundation  
Xamax Consultancy Pty Ltd  
78 Sidaway Street  
CHAPMAN ACT 2611

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office@nswccl.org.au

**Michael Pearce SC, Chair**  
(03) 9225 8840

**Liberty Victoria**  
email@michaelpearce.com.au

**From:** Andrew Solomon [andrew.solomon@privacy.gov.au]  
**Sent:** Thursday, 17 June 2010 1:14 PM  
**To:** [REDACTED]  
**Cc:** Leife Shallcross; [REDACTED]; Spencer Nicole; [REDACTED]  
**Subject:** RE: Proposed Response to Dr Clarke re body scanners [SEC=UNCLASSIFIED]

At this stage we have only factored in **one** consultative forum that we are facilitating under the MoU so I think the letter should say something like "a consultative forum .... which will be attended by the Department .... in the near future"

Also, and this is entirely a matter for you – I think the main concern is actually that the organisations want an assurance that they can have direct input to the Department through consultations etc not just be assured that the Privacy Commissioner is looking at the issue.

Apart from noting the consultative forum we are facilitating I don't think it would hurt to say something along the lines that,

*'while the work to be done by the OPC under the MOU is one way that the Department will be considering privacy issues ... it will also be conducting a Privacy Impact Assessment and there will be various other opportunities for the public and interested community organisations to have input to the implementation of the program....'*

(noting that you'll need to be able to respond to any questions about what the latter might be)

You will note that, under the MoU we are to provide advice on 'community feedback mechanisms'. This is part of that advice.

Kind regards

**Andrew Solomon**  
 Director, Policy  
 Office of the Privacy Commissioner  
 t: +61 2 9284 9708 | f: +61 2 9284 9666 | m: +61 408 267 078  
 e: andrew.solomon@privacy.gov.au | w: [www.privacy.gov.au](http://www.privacy.gov.au)

Please consider the environment before printing this email

**From:** [REDACTED] [mailto:[REDACTED]@infrastructure.gov.au]  
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[REDACTED]  
Assistant Director  
Security Technology Strategies  
Office of Transport Security  
Department of Infrastructure, Transport, Regional Development and Local Government  
P 02 [REDACTED]  
E [REDACTED]@infrastructure.gov.au

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\*\*\*\*\*  
WARNING: The information contained in this email may be confidential.

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Thursday, 17 June 2010 3:27 PM  
**To:** 'Andrew Solomon'  
**Subject:** RE: Proposed Response to Dr Clarke re body scanners [SEC=UNCLASSIFIED]

Hi Andrew

Thank you for your comments.

I have included your suggestions in the response for Nicole's consideration.

Many thanks

---

**From:** Andrew Solomon [mailto:andrew.solomon@privacy.gov.au]  
**Sent:** Thursday, 17 June 2010 1:14 PM  
**To:** [REDACTED]  
**Cc:** Leife Shallcross; [REDACTED] Spencer Nicole; [REDACTED]  
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[REDACTED]

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Andrew Solomon  
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Kind regards

[REDACTED]  
Assistant Director  
Security Technology Strategies  
Office of Transport Security  
Department of Infrastructure, Transport, Regional Development and Local Government  
02 [REDACTED]  
[REDACTED]@infrastructure.gov.au

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transmission, disclosure, dissemination or other use of, or taking of any action in reliance upon, this information t  
or entities other than the intended recipient is prohibited and may result in severe penalties.  
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the sender immediately and delete all copies of this email, together  
with any attachments.

\*\*\*\*\*

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Friday, 2 July 2010 2:27 PM  
**To:** 'Leife.Shallcross@privacy.gov.au'  
**Cc:** [REDACTED]  
**Subject:** RE: Invitations for roundtable [SEC=UNCLASSIFIED]  
**Attachments:** 2010-06 Draft email re body scanner roundtable (2).docx; 2010-06 Body scanner Community stakeholder forum DRAFT.docx

Hi Leife,  
 Thank you for forwarding the documents for review.

We have made some suggested changes to the draft invitation (attached).

In regards to the draft agenda, at this point we have not confirmed participation by aviation industry participants. Rather than have a series of separate OTS and industry presentations we envisage that OTS will lead the background discussion and draw in industry input as required to highlight aspects of practical equipment deployment. Your draft agenda has been modified accordingly (also attached).

OTS will confirm participation of two industry participants and advise you as soon as possible. In the meantime we are comfortable with the agenda (with our revisions) being sent to the OPC stakeholder group that is to be invited.

Regards

[REDACTED]

[REDACTED]

A/g GM, Supply Chain and Screening  
 Office of Transport Security  
 Department of Infrastructure, Transport, Regional Development and Local Government  
 GPO Box 594 CANBERRA ACT 2601  
 Phone 02 [REDACTED] I Fax 02 6274 7097 I Email [REDACTED]@infrastructure.gov.au  
 URL [www.infrastructure.gov.au](http://www.infrastructure.gov.au)

---

**From:** [REDACTED]  
**Sent:** Friday, 2 July 2010 10:46 AM  
**To:** [REDACTED]  
**Subject:** FW: Invitations for roundtable [SEC=UNCLASSIFIED]

---

**From:** Leife Shallcross [mailto:Leife.Shallcross@privacy.gov.au]  
**Sent:** Thursday, 1 July 2010 3:02 PM  
**To:** [REDACTED]  
**Subject:** Invitations for roundtable [SEC=UNCLASSIFIED]

Hi [REDACTED]

Further to our conversation, please find attached the invitation and draft agenda the Office is proposing to send. If you could let me know if you are happy with it, we will send asap.

Regards

Dear

**Re: Privacy and the use of body scanners for security purposes in Australian international airports**

On behalf of the Office of the Privacy Commissioner (the Office) I would like to invite your organisation to send a representative to a roundtable discussion on 28 July 2010 for community advocacy groups on privacy issues associated with the introduction of body scanners into Australian international airports.

As you may be aware, on 9 February 2010 the Australian Government announced a package of measures to strengthen aviation security. This package will assist the aviation industry to introduce a range of optimal screening technologies at international passenger screening points, including body scanners, next generation multi-view X-ray machines, bottle scanners capable of detecting liquid-based explosives and increased use of explosive trace detection.

Following this announcement, the Office has entered into a Memorandum of Understanding with the Office of Transport Security to provide advice on privacy matters arising from the development and implementation of body scanning technologies in Australian airports.

The Office would value your organisation's contribution in helping to identify privacy issues that may be of concern to the Australian community and that will need to be considered in implementing the Strengthening Aviation Security Optimal Technologies at International Gateway Airports Program.

Please find attached a copy of the proposed draft agenda for the roundtable. A light lunch will be provided for participants following the roundtable.

Please RSVP to [privacy.consultation@privacy.gov.au](mailto:privacy.consultation@privacy.gov.au) by 21 July 2010. Please advise the Office if you have any dietary or other requirements that need to be accommodated. If you would like further information, please contact Leife Shallcross, Deputy Director, Policy, at the Office on (02) 9284 9800.

Regards

Andrew Solomon  
Director, Policy  
Etc ....

Attached: Agenda



# **Privacy and the use of body scanners for security purposes in Australian international airports**

**Event:** Roundtable discussion with community advocacy groups  
on privacy issues

**Date:** Wednesday 28 July 2010

**Time:** 9.30 am – 1 pm

**Venue:** Level 8, 133 Castlereagh Street, Sydney  
(Stockland's Piccadilly Tower)

**Facilitator:** Office of the Privacy Commissioner

9.00 – 9.30	Tea & coffee	
9.30 – 9.45	Introduction	OPC
9.45 – 10.30	Program background, policy and implementation aspects	OTS
10.30 – 10.45	Morning tea	
10.45 – 12.45	Privacy issues discussion	All
12.45 – 1.00	Wrap up and next steps	OPC
1.00 – 1.15	Break	



# Privacy Roundtable - Body Scanning

22 September 2010

## Minutes

- [Meeting commenced at 9:35am]
- **Andrew Solomon (OPC)** delivered opening remarks.
- Attendees introduced themselves (list attached).
- **Andrew Solomon (OPC)** noted that two members of the Security Technology Advisory Group (STAG) were present – **Ron Elliott (Sydney Airport)** and **Roberta Stumpo (Qantas)**. Andrew asked whether attendees would object to the minutes of the meeting being distributed to the STAG. The attendees did not object.
- [REDACTED] delivered short presentation on body scanning technology.

## Questions

- **Cameron Murphy (NSW Council for Civil Liberties)** asked whether the operator and the 'scanee' would be physically proximate, rather than the operator being remote:
  - **George Thomas (OTS)** confirmed that the operator and the scanee would be physically proximate.
- **Peter Dodd (PIAC)** made the point that stakeholders needed to have more information on the types of technology proposed to be used.
  - [REDACTED] – There are two main types:
    - X-ray backscatter (which uses small levels of ionising radiation), or
    - millimetre wave (non-ionising).
  - Both can be configured for remote viewing or automatic threat detection.
  - Both types of machine can provide various display options:
    - 'Raw image' – shows anatomical detail and needs an operator. Other jurisdictions have dealt with privacy concerns by having the operator in a remote location, and employing gender segregation (i.e., male travellers

only viewed by male operators). New technology now allows for auto-threat detection on raw images.

- Generic/'stick man'/'gingerbread man' avatar – no anatomical detail, no remote operator: uses automatic threat detection. Identifies areas of a traveller's body which require further inspection, e.g., by super-imposing a yellow square over the relevant area.
- **Cameron Murphy (NSWCCL)** stated that his understanding was that raw images are 'crystal clear', and the machine adds 'modesty measures', i.e. a filter which transforms the image into, e.g., the stick figure avatar.
  - [REDACTED] (OTS) responded that the equipment can do 'anything' – it is all about the settings.
- **Phinn Borg (Gender Centre)** asked whether body scanning machines would pick up prostheses?
  - [REDACTED] (OTS) confirmed that they would.
- **Phinn Borg (Gender Centre)** concluded that the Gender Centre's clients (inc. transgender and transsexual people) will be singled out every time. He stated that that outcome would be a huge problem for their clients.
- **Chris Connelly (APF)** made the following statements:
  - OTS says that the current proposal is because of the 'Christmas day bomber'.
  - The APF welcomed the news that OTS was leaning towards a stick figure/'gingerbread man' style avatar, as that would address a number of concerns.
  - The National Aviation Security review didn't make any mention of body scanning: the proposal does seem to be quite reliant on the 'Christmas day bomber'.
- **Chris** sought to add the following information about the Christmas day bomber:
  - the man involved was on one of the terrorist watchlists,
  - his visa had been revoked for fraud,
  - he had known link to terrorist organisations,

- his own father 'dobbed him in' to the US embassy in Nigeria,
  - President Obama called the incident a 'monumental screw up in intelligence',
  - UK intelligence services tipped off the US authorities regarding the risk,
  - there are question marks as to whether body scanners would have picked up the bomb, as it was a non-metallic, powder-based explosive,
  - US authorities stated to US Congress that scanners would not have picked up that kind of bomb.
- **Andrew Solomon (OPC)** made the point that the Government's decision is not up for discussion, and the group was convened to discuss privacy issues relating to the implementation of body scanning technology.
- **Roger Clarke (APF)** stated that the justification of the decision to implement the body scanning technology is essential to the discussion. Specifically, he would like to know:
  - what is the threat model?
  - how is the security measure in question intended to address the threats?
  - how effective will that measure be in addressing the threats?
- [REDACTED] (OTS) stated that there is a significant amount of work in relation to the intelligence received that underlies the decision and that the review also encompassed a comprehensive review of how the intelligence system works.
- [REDACTED] (OTS) stated that:
  - the OTS doesn't have a dedicated testing laboratory,
  - the OTS relies on their international partners in that regard; they have been doing this type of testing for many years and OTS has confidence in the relevant information sharing arrangements in that regard,
  - OTS has confidence in the data.
- **Roger Clarke (APF)** stated that there are problems with the independence of overseas testing, as it is conducted by industry and organisations already committed to the technology; there is therefore a conflict of interest.
- [REDACTED] (OTS) stated that:

- the Australian National Security Advisor considers that the technology is appropriate,
  - Australia's intelligence community considers that there is an enduring threat,
  - the threat level is at medium and has been for some time,
  - the best approach is a layered approach, including body scanning technology.
- **Dougie Herd (Disability Council of NSW)** stated that OTS had mentioned that no decision has been made as to whether body scanning would be compulsory for all travellers, and asked, if it were not compulsory, what would be the alternative measure?
- **[REDACTED] (OTS)** stated that if they doesn't want to degrade the security outcome, there are limited options:
  - 'no scan, no fly' rule (as in the UK),
  - the other option is to have the person go through an alternate screening technique,
  - the best advice that OTS has is that the alternative measure would have to be a physical frisk,
  - however, OTS recognises that there are a range of circumstances in which a body scan is not practical or undesirable,
  - OTS does not see any other options based on the UK and US experience,
  - the Minister will consider exemptions and alternatives, and OTS is looking for input on those issues today.
- **Elizabeth Ciessman (Gender Centre)** asked whether operators can identify gender from the scans?
  - **[REDACTED] (OTS)** stated that:
    - it is a difficult question,
    - the machine (millimetre wave, auto threat detection, stick figure avatar) requires an operator to identify whether the passenger is male or female,
    - the machine applies an algorithm based on the standard anatomical details for each gender,

- it may be that passengers will be asked to identify their own gender (by selecting 'male' or 'female' on the machine) but those issues are still being worked out.
- **Gina Wilson (OII Australia)** asked whether the body scanning machines will pick up implants:
  - [REDACTED] (OTS) stated that they would not as the scanning was limited to objects at the surface of the skin.
- **David Vaile (APF)** asked whether, in the context of an invasion of privacy being a trade off against security, whether body scanning would be the technology most likely to be effective against the kind of bomb used by the Christmas day bomber.
  - [REDACTED] (OTS) stated that:
    - there are a range of variables,
    - it is not simple to reconstruct that event and give a definitive answer,
    - the technology and the algorithms used continue to develop,
    - other authorities continue to test the equipment, and have made some conclusions that this technology is the best chance of detecting a low metal or low metal device.
- **Peter Dodd (PIAC)** sought clarification on what the Government's decision actually is. In his opinion, the 'options' given were not actually options – scanning is compulsory. Peter suggested that authorities could adopt the position that body scanning could be used as a secondary measure (i.e., when there is reasonable suspicion...etc).
  - [REDACTED] (OTS) stated that the decisions on policy and process have not been made yet, however, that making scanning voluntary would degrade the security outcomes.
- **Dougie Herd (Disability Council of NSW)** stated that reference has previously been made to the potential for the permanent storage of images. He asked whether:
  - decisions have been made,
  - the technology is capable of receiving and storing an image in perpetuity,
  - the decision has been made as to whether that will be the operating mode.

- [REDACTED] (OTS) stated that:
  - it is the intention of OTS that the equipment must, by default, be set not to store images,
  - there is no intention to store any images,
  - the value in storing 'stick figure' images is low,
  - there may be tensions with law enforcement, but it is the Minister's view that storage should not be an option.
- **Cameron Murphy (NSWCCL)** asked whether there was any intention to introduce criminal offences for unauthorised storage of body scans?
  - [REDACTED] (OTS) stated that OTS hasn't reached that level of detail yet.

[Break for morning tea].

- **Roger Clarke (APF)** asked whether the 'operational details' include the procedures...etc?
- [REDACTED] (OTS) confirmed that it did.
- **Cameron Murphy (NSWCCL)** stated that:
  - despite what's been said, he thinks that it is imperative that the community understand the level of the threat, and be given enough information to allow them to judge whether the measures proposed to be taken are justified,
  - the community is afraid that the level and the boundaries of privacy are being eroded,
  - there is a comprehensive lack of adequate privacy protections, and that is what is making the use of such technologies difficult,
  - there are few legal protections,
  - there should be legal remedies and rights afforded,
  - it is imperative that there are criminal offences in place, for individuals and directors of corporations involved in such misuse,
  - the fundamental problem with the use of body scans is that there are particular groups that will consistently fall foul of the scanning technology – disabilities, trans-people, intersex...etc.,

- the technology should have more than two gender options, and should not discriminate (either deliberately or constructively), otherwise it doesn't work.
- **Bruce Maguire (Vision Australia)** stated that, as a general point, for people who are blind/low vision, airports are very difficult and intimidating places.
  - People who are blind or have low vision almost always have to rely on others.
  - There is already a high level of stress.
  - This technology will 'quadruple' that level of stress.
  - That is a not a reason for not using the technology, but is a reason for community engagement and forethought.
  - 'Stick image' means nothing to blind people. Will it show prosthetic eyes? Malformed eyes? No eyes?
  - People may refuse to go through body scanners because of lack of knowledge. Such people may effectively be prevented from flying.
  - Will assistance to be provided to the blind to use the machines? Will a person providing assistance have access to the images?
  - Can they take canes in? Will guide dogs be scanned?
  - How will the information about the machine be provided?
  - Will the machine have any user interface? Will it be accessible?
  - How will the processes manage blind people if a threat is detected?
  - This technology is potentially the most stressful technology in terms of its effect on blind people introduced in the last 100 years.
- **Dr Amas (Muslims Australia)** stated that:
  - Australian National Imams Council has expressed concern.
  - The Government is free to make rules and regulations to preserve security as long as it does not affect the privacy and dignity of its people and offend morality.
  - In terms of the government's decision to make this technology compulsory, it should only be used on 'suspected people'.



- **Oishee Alam (Muslims Australia)** advised Islamic modesty dictates that only a spouse should see between the navel and the knee; a lot of their concerns will be regarding what is actually seen in the images; the 'stick figure/gingerbread man' image seems fine. However, she noted that:
  - if the images are being transmitted they will at least be temporarily stored,
  - how people feel (i.e., public perception) is important; people might not necessarily understand the technology and that might make people fearful. That in turn might restrict their freedom of movement by preventing them from flying.
- **Ashraf Usman (Muslims Australia)** stated that notable issues include:
  - whether the images are being stored, and who is going to view those images,
  - will there be separate lanes for male and female?,
  - from their perspective, as soon as the word 'scanner' is mentioned, people will think that their anatomical details will be visible; there is a public education issue,
  - scanning should only be carried out where there is suspicion - otherwise, there will be some unrest.
- **Elizabeth Ceissman (The Gender Centre)** stated that:
  - there's a lot to be said on behalf of transgender people,
  - if trans people have to out themselves by selecting M or F on the machine, there will be problems,
  - a person's gender as indicated on their passports will not necessarily match their apparent gender,
  - if trans people are required to out themselves, someone (i.e., security staff) will invariably blurt it out no matter how much training they receive,
  - in her opinion, the biggest issue is that OTS will be putting trans people in the position where they will be forced to out themselves every time they go through an airport.
- **Andrew Cummings (Australian Youth Affairs Coalition)** stated that:
  - they strongly supports the issues raised in the letter from Chris Connelly (attached),

- adolescence is a time of heightened body issues,
- it is especially heightened for youth coming to terms with gender and sexuality issues...etc.,
- even minor, offhand comments [by security staff viewing body scans] could be quite traumatic,
- the second issue is about health risks and radiation concerns:
  - children and young people have a heightened risk and are more likely to be exposed more than older demographics over the course of their lives,
- there is also an issue of discrimination and how decisions are made about who gets scanned; young people are often discriminated against and more likely to be targeted in terms of law and order issues,
- as a general comment on privacy – what they would be calling for would be strong penalties for inappropriate storage and transmission of images, inappropriate comments and behaviour by staff.
- **Mary Joseph (Australian Catholic Bishops Conference)** stated that the main concern of the Catholic church is to protect the dignity of the human person:
  - they are not opposed to the use of this technology, per se,
  - however, they do have concerns - the technology should be employed in a way that protects the dignity of the human person,
  - the church would support exemptions from compulsory body scanning – children, pregnant women, those wearing prostheses for medical and social reasons,
  - they would also support having strong penalties against misuse,
  - in the view of the Church, you can't protect human life without protecting human dignity (sic).
- **David Vaile (Cyberspace Law and Policy Centre)** reiterated that the attendees had been provided with inadequate information to assess the issues:

- they don't have enough information before them to form an opinion on the justification for the use of the technology, nor for what the risks are or what the usefulness might be,
- the decision that has been made is also relatively unclear,
- whether the previous PIA has any ongoing relevancy, or what technology might actually be employed, is also unclear
- there are therefore questions about the privacy risks, health risks and effectiveness of the proposal.
- He thanked the OPC for hosting. However, he stated that the OPC needs to be careful to not be seen to endorse a particular proposal or technology – there may be a perceived conflict with the OPC's position of independence, e.g., the Commissioner may be called upon to review a complaint made in relation to body scanning.
- He further stated that:
  - there is not enough information on justification for the decision to use body scanning technology,
  - intelligence services 'have not covered themselves in glory' before - they have been known to use incidents to justify intrusive measures; 'we cannot take their view as gospel',
  - our understanding is that the technology does create a full detailed image, but that a filter is applied – the potential to store and transmit is there, but there is discretion to turn it off,
  - there may be function creep - could OTS resist the demands from law enforcement for body scanning data?
  - there is the potential for people at an airport to see such technology and be sceptical of it - abusive treatment is meted out to people who joke or show scepticism [about airport security measures], including criminal charges,
  - in his view, this is one of the most intrusive and potentially most intimidating and dignity challenging technologies that he has ever seen,
  - we should all keep in mind, that this is a very major step from where we are now - 'reaching under your clothes and seeing under your skin' - it can only be justified by a very robust analysis of whether it is required,

- is the technology effective now? If so, how long will it be effective for?,
- no doubt the technology will improve, but so will the countermeasures.
- **Roger Clarke (AFP)** stated that:
  - he has process concerns,
  - he notes the statement that OTS intends to do a Privacy Impact Assessment (PIA),
  - they [the AFP] are looking for an unequivocal statement that OTS will do one,
  - they also need information on the process,
  - they also need clarity that the outcomes of the PIA will be reflected in the project,
  - it is crucial that there be sufficient information, that it be in writing, that it be provided in advance of meetings,
  - at the end of a PIA consultation process there needs to be some kind of report – it is important that a document be published and it reflect the information that has been provided and the analysis that has been undertaken,
  - the design and the implementation of the project must reflect the consultation and PIA.
- **Chris Connelly (APF)** stated that:
  - he was concerned about the retention and potential disclosure of 'personal information', e.g., will a record be made that a person had a prosthetic, or of a person's gender, physical attributes, disabilities, if they disclose those details as the reason for refusing to undergo body scanning?
  - if recorded, such information could be 'personal information' or health or sensitive information within the meaning of the Privacy Act – this needs consideration,
  - he has great concerns about the retention of the images – the same promises [that images wouldn't be stored] were made in the USA and the US Marshals and the TSA broke those promises; there should be legislation on the issue,
- **Chris** also asked:

- will there be external images, i.e., will airport staff being banned from using phone cameras?,
- what about CCTV images of body scan displays?,
- will pregnant women be forced to reveal that they are pregnant [to avoid being scanned and exposed to radiation]?,
- re: children – it is unclear whether it would be mandatory for children or not to be body scanned - consent is an issue - would a child be asked for consent or would it be the parents' consent? In his opinion, children would be intimidated by personal frisking.
- Re: governance – he expects that there will be complaints (see media reports about complaint lodged by a pregnant woman forced to go through body scanning in the US) - who will the complaints body be?
- Chris further stated that:
  - they want an independent organisation (not OTS or the Department) to be the complaints body – rather, they want community oversight, speedy responses, published public statistics, the addressing of systemic issues, and the collection of demographic information to identify discrimination,
  - they don't think that it is appropriate to rely on the OPC – the OPC is not strong enough, not fast enough, and not transparent enough.
- Gina Wilson (OII Australia) stated that:
  - the algorithm that uses the gingerbread man avatar might trigger a threat warning on an intersex person every time,
  - she is concerned that technology is only skin deep,
  - in her personal experience – she is intersex, and lives as a woman with a cissexual<sup>1</sup> partner - she has been through the international airport and domestic airport several times this year and has been pulled out for explosive testing 5/6 times on international flights, 3/4 times on domestic flights,

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<sup>1</sup> 'Cissexual' is an adjective used in the context of gender issues to describe people who have only ever experienced their mental and physical sexes as being aligned.

- she worries about being outed, about being persecuted – if she is outed by security to fellow travellers, she could also be outed at her destination,
- she is worried about unusual body shapes in general – will the scanners pick up extra fingers, extra toes...etc. [and identify them as threats]?
- **Peter Dodd (PIAC) stated that:**
  - PIAC has not come to a final view on the proposal,
  - they are leaning towards some sort of opt out system,
  - the alternatives are not palatable, i.e. don't fly or be frisked – frisking is as intrusive as scanners,
  - exemptions are not appropriate as the claiming of an exemption could still require people disclose that they belong to an exempt category – there should just be an opt out system,
  - isn't the alternative the current system of metal detectors...etc.?
  - he suggests that body scanning not be compulsory unless there is probable cause - in that case body scanning could be used; PIAC does not consider that to be an inappropriate balance,
  - there should be protections to make sure that image storage is not legal – but there still is enormous potential for illegal image storage,
  - body scanning could cause stress in certain vulnerable groups, including those with intellectual disabilities and the mentally ill – they can sometimes be paranoid – he is not convinced that the stress that would be caused is necessary,
  - this proposal highlights the need for a legislative charter of rights in Australia.
- **Phinn Borg (Gender Centre) stated that:**
  - there are fundamental problems for the transgender community – they will be singled out every time whether they wear a prosthesis or not,
  - he can see that in the long term, the transgender community will be fearful of travelling,
  - they will cease travelling because of being singled out – being outed to an airport of complete strangers is highly stressful,

- there needs to be some really big safeguards rolled out.
- **Dougie Herd (Disability Council NSW) stated that:**
  - he wanted to make it clear that they have a certain degree of reluctance and scepticism on giving advice on lower order questions when there are higher order questions to be answered,
  - they will provide comments but it should not be taken as endorsement of the Government's decision,
  - there are at least two decisions to be considered:
    - what are the consequences of the technology if and when it is used?
    - should the technology be used?
  - the question of balance between privacy and safety does enter into these questions.
- In his personal experience, every time he flies he is frisked – wheelchairs do not go through scanners because they beep – even if there is a body scanner that is wheelchair accessible – it will light up too, as will incontinence equipment.
- He advised that a:
  - very sizable amount of the population will have a little yellow envelope light up on them,
  - that begins to move into the area of the unintended [constructive] discrimination
  - all the photographs indicate all passengers raising both arms in the air - he is unable to do that, so are lots of people; that calls into question the efficacy of the scan.
  - the largest demographic in the country is older people - by the time they are 85, 85% of people will have a disabling condition,
  - he thinks that the idea that this would be a mandatory policy on all travelling members of the public will be an unsustainable policy in the longer term - "As a matter of fact, my right to privacy will be invaded every time I fly. There is no dignified way of dealing with that. The more privacy protections, the fuzzier the

image – the more questions that will be asked of someone like me. ‘No scan, no fly’ is not an alternative, it is an operational consequence”.

- the guys who do these bad things are probably intelligent enough to work out ways around it,
- so if we produce an exemption climate, those exemptions may be exploited [people in wheelchairs may smuggle contraband, e.g. Vic Finkelstein in South Africa during apartheid].
- **Andrew Solomon (OPC)** stated that:
  - The Office of the Privacy Commissioner is an independent statutory office. One of the roles of the Office under the Privacy Act is to give policy advice on privacy issues to agencies and organisations.
  - The Office is aware of the potential tension between this role and its role in monitoring compliance with the Act. The provision of advice to an agency or organisation concerning a proposal does not suggest endorsement of that proposal. The Office has considerable experience in managing these tensions and does not allow its policy advice role to affect its compliance responsibilities.
- [REDACTED] (OTS) thanked attendees for their comments and advised that OTS would carefully consider them.
- **Ron Elliott (Sydney Airport)** stated that:
  - Sydney Airports will be an Authorised Screening Authority responsible for operating body scanning equipment.
  - There will be challenges involved in operating the equipment and it will be important to strike the right balance.
- **Roberta Stumpo (Qantas)** stated that:
  - Qantas’ aim today was to understand the issues. Qantas wants passengers to have a positive experience.
  - If raw images were displayed to a remote operator, passengers would not need to select a ‘gender button’, and that would eliminate the issues raised by some attendees.



- **Phinn Borg (Gender Centre)** asked whether using the raw images would address the issue of scanners raising an alert in relation to prostheses.
  - **Roberta Stumpo (Qantas)** acknowledged the use of raw images would not address this issue.
- **Peter Dodd (PIAC)** asked about the role of 'authorised screening authorities', and how many such organisations exist.
  - **Roberta Stumpo (Qantas)** explained that:
    - OTS puts guidelines in place and Qantas and other screening authorities apply them. Qantas is the screening authority at Terminal 3 of Sydney Kingsford Smith Airport. Qantas does not screen international passengers but is involved in this consultation because in the future it may become necessary for Qantas to scan passengers to facilitate their overseas travel.
    - There are many screening authorities around Australia but only three labour suppliers.
- **[REDACTED] (OTS)** made the following points:
  - At this stage it is intended that body scanning would be conducted on a random, continuous basis.
  - As far as he is aware, where 'gender buttons' are used overseas, they are not used by individuals to self-select their own gender.
  - The consequences of not pressing a 'gender button' need to be explored. The use of gender-based algorithms to scan bodies optimises accuracy, but it may be that an acceptable degree of accuracy could be achieved without the use these algorithms. Also, the technology is continually improving and there may soon be other options available to explore.
  - OTS will undertake another PIA in relation to body scanning.
  - OTS has been tasked by the Government to implement this policy. However, in relation to justification, he is not an intelligence expert but understands that the threat to security is real and ever-changing. Terrorists are adapting to current security measures and this is why we need to implement new measures.
  - Raw images are not the Minister's preferred option.

- It is a fact that there are going to be circumstances in which it is not possible or desirable to scan people. The question for consideration is how this will be dealt with.
- **Ashraf Usman (Muslim Association of Australia)** asked what guarantees can be given that raw data will not be used to create a nude image.
  - [REDACTED] (OTS) advised that there was no intention to store data and that only generic images could be seen. The default position would be that a detailed image could not be viewed.
  - **Andrew Solomon (OPC)** said that he thought the question some attendees were asking was whether the default position could be changed to allow viewing or storage of detailed/raw images.
- **Roger Clarke (Australian Privacy Foundation)** stated:
  - He was pleased to hear that OTS would carry out another PIA.
  - Some organisations have used the OPC or another organisations to shield themselves from interaction with stakeholders. He would like to see ongoing engagement with stakeholders.
- **Andrew Solomon (OPC)** stated that where the Office's advice is sought in relation to PIAs, its role is only to comment on the identification of privacy issues, methodology etc. The Office does not conduct or 'approve' PIAs.
- [REDACTED] (OTS) advised that when OTS has a draft PIA prepared, he would like to meet with attendees again.
- **Roger Clarke (Australian Privacy Foundation)** said he would prefer continuous engagement throughout the PIA process, not just the opportunity to comment on draft documents.
- **Dougie Herd (Disability Council NSW)** asked:
  - whether OTS could clarify the policy options being considered for scanning. He heard OTS mention 'random and continuous scanning'. OTS need to clarify what the default policy will be, as this will determine attendees' responses. He understands that the responses given by OTS have been that 'everyone will be screened', then 'some will be scanned and some people will not be screened or scanned'. If that is the case then the policy may be able to be tweaked in a

sophisticated way so that people with particular concerns can be screened in other ways.

- How random will 'random' selection be? This issue raises some difficult issues, so attendees need to know the details of OTS' planned policy.
- **Dr Mohamed Amas (Muslims Australia)** stated that if the image was like an x-ray and showed bone and flesh, rather than skin, that would be acceptable to members of his organisation. However, health and privacy issues would still be there.
- **Peter Dodd (PIAC)** asked OTS to clarify the risks involved and their intended policy for the use of scanning.
- [REDACTED] (OTS) advised that their best assessment was that scanning needs to be random and continuous. It will not be feasible to scan everyone. The question is then, if a person is not scanned, or can't be scanned, what process will they undergo?
- **Peter Dodd (PIAC)** asked if a person's destination might be a factor that determines whether they will be scanned or not. For example, if a person is travelling to the US or to a 'high risk' destination, will they be more likely to be scanned?
- [REDACTED] (OTS) advised that at present, destination is not a factor that will be considered, although that could change in future. Sometimes standards are imposed by other countries and airports may be required to meet those standards, but that is a separate issue.
- **David Vaile (Cyberspace Law and Policy Centre)** reiterated that it was important to weigh the degree of intrusion against the threat. Attendees need to know the specific threats faced and the specific technology to be used.
- **Ashraf Usman (Muslim Association of Australia)** asked how random selection would be guaranteed. He has concerns about the randomness of selection if it is made by an individual.
- [REDACTED] (OTS) advised that no policy has been set yet. This is part of the package of equipment, policies and techniques that is yet to be developed. He is aware of one overseas example where selection is automated so that it is a truly random process.
- **Andrew Cummings (Australian Youth Affairs Coalition)** noted the different perspectives of embarrassment and shame that had been expressed by attendees. He noted some seemed to prefer a detailed image as this could prevent the need for questions and explanations, while others preferred the less detailed image as it provided

more privacy and modesty. He asked whether it might be possible to allow people to select the level of detail of their own scanned image. He recognised this might be complex.

- [REDACTED] (OTS) acknowledged this approach could address the different perspectives of attendees, but advised that it would be too complex to implement and there were not sufficient resources available to allow both types of scanning to take place.
- **Peter Dodd** pointed out this would also create risks, as if both options were available to operators, people who requested the generic image could not be confident that a detailed image would not be created. **Ashraf Usman (Muslims Australia)** also pointed out that people might not understand the choice being offered.
- **Chris Connelly (APF)** stated that:
  - there have been a number of complaints made about scanning overseas,
  - although the technology used overseas differs from OTS' preferred option, some of the overseas complaints have related to the behaviour of the operators,
  - that highlights the importance of the attitude of the operators, particularly when dealing with people who refuse to be scanned,
  - it will be important to put in place an appropriate complaint handling body - given the wide range of possible issues, it is hard to see what existing body would be equipped to handle these complaints,
  - a PIA will only look at privacy issues and there are many other issues involved in the proposal,
  - he understands that overseas, the only people who have refused to be scanned and refused permission to fly so far have been Muslims - this suggests there may be some discrimination involved.
- **Andrew Solomon (OPC)** stated that he believed that very few of the complaints relating to body scanning could be dealt with by the OPC.
- **Peter Dodd (PIAC)** asked whether a body scan image could be 'personal information' as it is defined in the Privacy Act.

- **Andrew Solomon (OPC)** stated that such an image may not be 'personal information' as it is defined in the Privacy Act, as it may not be possible, from the image alone, to ascertain the identity of the individual, but this would depend on the circumstances.
- **David Vaile (Cyberspace Law and Policy Centre)** said it's not clear. If you are talking about images, individuals may be identifiable in person as they are scanned, but if you looking at the data, it depends on identifiability. He would be concerned if such images were found not to be 'personal information' under the Privacy Act and would like OPC to take the policy position that they are.
- **Andrew Solomon (OPC)** concluded the meeting, and asked whether the attendees would be comfortable with the OPC:
  - circulating their contact details amongst the attendees, and
  - forwarding some inquiries to the Australian Human Rights Commission for comment and advice.
- The attendees agreed.
- [Meeting concluded at 12:48pm]



## Privacy Roundtable - Body Scanning

22 September 2010

### Attendee List

Organisation	Representative(s)	Contact details
Australian Catholic Bishops Conference	Mary Joseph Research and Project Officer Life, Marriage and Family Centre Catholic Archdiocese of Sydney	<a href="mailto:mary.joseph@sydneycatholic.org">mary.joseph@sydneycatholic.org</a>
Australian Federation of Islamic Councils (Muslims Australia)	Ashraf Usman Dr Mohamed Anas Oishee Alam	C/o - Uzma Husaini <a href="mailto:admin@afic.com.au">admin@afic.com.au</a>
Australian Privacy Foundation	Dr Roger Clarke, Chair Chris Connolly	Dr Roger Clarke <a href="mailto:Roger.Clarke@xamax.com.au">Roger.Clarke@xamax.com.au</a> Chris Connolly <a href="mailto:chrisc@galexia.com">chrisc@galexia.com</a>
Australian Youth Affairs Coalition	Andrew Cummings, Executive Director	<a href="mailto:andrew@ayac.org.au">andrew@ayac.org.au</a>
Cyberspace Law and Policy Centre UNSW	David Vaile, Executive Director	<a href="mailto:d.vaile@unsw.edu.au">d.vaile@unsw.edu.au</a>
Disability Council NSW	Dougie Herd, Executive Officer	<a href="mailto:DisabilityCouncil@dadhc.nsw.gov.au">DisabilityCouncil@dadhc.nsw.gov.au</a>
NSW Council for Civil Liberties	Cameron Murphy Felix Traore	Cameron Murphy <a href="mailto:Cameron.Murphy@nswccl.org.au">Cameron.Murphy@nswccl.org.au</a> Felix Traore

		<a href="mailto:Felix.Traore@nswccl.org.au">Felix.Traore@nswccl.org.au</a>
Office of Transport Security	<p>[REDACTED] - A/g General Manager, Supply Chain &amp; Screening Branch, OTS</p> <p>[REDACTED] - Program Manager, Optimal Technologies, OTS</p> <p>[REDACTED] - Assistant Director, Optimal Technologies, OTS</p> <p>[REDACTED] - Assistant Director, Security Technology Strategies, OTS</p> <p>[REDACTED] - Director, Media &amp; Publishing, Community Engagement Branch</p> <p>[REDACTED] - A/g Senior Campaign Manager, Community Engagement Branch.</p>	<p>[REDACTED]@infrastructure.gov.au</p> <p>[REDACTED]@infrastructure.gov.au</p> <p>[REDACTED]@infrastructure.gov.au</p> <p>[REDACTED]@infrastructure.gov.au</p> <p>[REDACTED]@infrastructure.gov.au</p> <p>[REDACTED]@infrastructure.gov.au</p>
Organisation Intersex International	Gina Wilson Karen Dopschalk	<a href="mailto:oii australia@bigpond.com">oii australia@bigpond.com</a>
Public Interest Advocacy Centre	Peter Dodd, Solicitor - Health Policy & Advocacy	<a href="mailto:pdodd@piac.asn.au">pdodd@piac.asn.au</a>
Qantas	Roberta Stumpo, Manager Security Projects	<a href="mailto:robertastumpo@qantas.com.au">robertastumpo@qantas.com.au</a>

Sydney Airport Security	Ron Elliott	<a href="mailto:Ron.Elliott@syd.com.au">Ron.Elliott@syd.com.au</a>
The Gender Centre	Elizabeth Ceissman, Senior Case Manager Phinn Borg, Manager	Elizabeth Ceissman <a href="mailto:casemanager@gendercentre.org.au">casemanager@gendercentre.org.au</a>  Phinn Borg <a href="mailto:manager@gendercentre.org.au">manager@gendercentre.org.au</a>
Vision Australia	Bruce Maguire, Policy Officer Sue Crane, Advocacy and Research Office	Bruce Maguire <a href="mailto:bruce.maguire@visionaustralia.org">bruce.maguire@visionaustralia.org</a>  Sue Crane <a href="mailto:sue.crane@visionaustralia.org">sue.crane@visionaustralia.org</a>





Australian Government

Department of Infrastructure and Transport

File Number: 10-8038

Contact: (02 6274 7406)

Dr Roger Clarke  
Chair  
Australian Privacy Foundation  
[chair@privacy.org.au](mailto:chair@privacy.org.au)

Mr Michael Cope  
Chair  
Queensland Council for Civil Liberties  
[Micope@optusnet.com.au](mailto:Micope@optusnet.com.au)

Dr Kristine Klugman  
Chair  
Civil Liberties Australia  
[klugman@netspeed.com.au](mailto:klugman@netspeed.com.au)

Mr Cameron Murphy  
Chair  
NSW Council for Civil Liberties  
[office@nswcccl.org.au](mailto:office@nswcccl.org.au)

Mr Michael Pearce, SC  
Chair  
Liberty Victoria  
[email@michaelpearce.com.au](mailto:email@michaelpearce.com.au)

Dear Dr Clarke, Dr Klugman and Messrs Cope, Murphy and Pearce

**PRIVACY IMPACT ASSESSMENT (PIA) FOR THE USE OF BODY  
SCANNERS AT AUSTRALIAN INTERNATIONAL GATEWAY AIRPORTS**

Thank you for your letter of 1 November 2010, and further correspondence to Ms Nicole Spencer of 2 February 2011, about the development of a PIA for the implementation in Australia of body scanning technologies. Following your most recent letter (sent by email), I have requested that Ms Spencer's Out of Office email response be updated with my contact details as the ongoing acting general manager. I apologise for the delay in replying.

OFFICE OF TRANSPORT SECURITY

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As outlined in my response of 28 October 2010, the Department of Infrastructure and Transport (the Department) is committed to considering privacy questions carefully through the PIA process and is working with the Office of the Australian Information Commissioner (OAIC) to this end. Members of my team met with the OAIC on 29 October 2010 to discuss the development of a PIA and we consult with them regularly on this and other issues. The information you provided ("Key Aspects of an Effective PIA Process") in your letter of 28 September 2010 has been a useful tool for us in the initial development of a PIA. My team met again with the OAIC on 7 February 2011 to discuss an initial draft of the PIA and plans for the next stakeholder roundtable meeting.

The Department is continuing to address the issues identified by stakeholders at the roundtable discussion of 22 September 2010 and has also taken into account the information you subsequently provided. Rather than comment on your proposals by separate correspondence, we have sought to address and consolidate these in the draft PIA so that all of the roundtable stakeholders might benefit from consideration of the proposals you outlined. We will be seeking further representation from your organisations and advocacy groups at another roundtable discussion we expect to hold in March 2011. A draft PIA will be provided to all roundtable participants prior to this meeting to inform discussion and enable stakeholders to comment on the draft. We welcome your contribution to this process.

The Department will continue to consult with stakeholders, including the OAIC, about how the application of new screening technologies can be best managed to achieve the intended security outcome and take into account a range of sensitivities surrounding privacy. Should you have queries in advance of the planned roundtable discussion, we would be pleased to meet with you or a representative from your organisations. Please contact [redacted] Section Head, Optimal Technologies Program, by email to [redacted]@infrastructure.gov.au or at telephone 02 [redacted] to make such arrangements.

Yours sincerely



Acting General Manager  
Supply Chain and Screening

9 February 2011



**Australian Government**  
**Office of the Australian Information Commissioner**

**Contact Report**

<b>Author:</b>	Tim de Sousa
<b>Copies:</b>	Angelene Falk, Leife Shallcross, Andrew Solomon
<b>Contact with:</b>	[REDACTED]
<b>Organisation:</b>	Office of Transport Security (OTS)
<b>Phone:</b>	
<b>File:</b>	P08/75
<b>Date:</b>	27 June 2011
<b>Subject:</b>	MOU meeting – Body Scanning MOU

**Attendees:**

**OAIC:**

Andrew Solomon (AS)  
Angelene Falk (AF)  
Tim de Sousa (TS)

**OTS:**

[REDACTED]

- **MEETING OPENED – 11:10am**
- AF asked if this meeting could be taken to be a meeting for the purposes of the MOU.
  - MH and FC agreed.
- MH advised that he joined the project approx. 2 months ago.
  - MH previously spent 3 years in the Airport Branch.
  - MH is working on stakeholder management with FC, including the launch of the body scanning project, the Privacy Impact Assessment (PIA), stakeholder consultation, and a communications package for the airports.
- AS asked about the status of the body scanning project from a policy perspective.
  - FC advised that the enabling legislation (re power to carry out body scans, consent...etc.) was anticipated to be tabled in Parliament in the winter sittings, i.e., September 2011. The legislation has been granted *T Status* (urgent).

- AS pointed out that, from the perspective of stakeholders, if we seek consultation, but the legislation has already been passed, the implementation of the project may appear to be a fait accompli. This could create tension in the consultation process – stakeholders must feel that they have the option to influence the implementation of the project through the consultation process.
- MH noted that [REDACTED] will be replaced as branch head by Peter Robinson, on 1 July 2011.
- FC advised that the draft PIA is with the OTS General Manager for review. MH presented a proposed timetable for the consultation process and the Proof of Concept process (**attached**). The timetable is provided on an 'in confidence' basis and is requested to be kept within Government.
  - MH advised that OTS proposed to open the PIA (once released) for public comment for approx. 35 days. MH asked whether that period was sufficient. AS agreed that it was.
- AS asked how long the POC demonstrations would take.
  - MH advised that, including time to locate parking, acquire visitors passes, move around the airport, receive the introductory and technical briefing, the demonstration itself, and time for questions, OTS anticipated that the process would require about 1.5 hours.
- AS noted that OTS proposes focus groups of stakeholder members on 19 and 20 July 2011, then attendance at the POC on 3 August 2011, and then a further roundtable in September.
  - AS advised that many stakeholders, being NGOs, have limited funding and may not be able to commit the necessary resources to attend all three proposed events. AS recommended that the focus groups be combined with the POC demonstrations, on a single day (i.e., 3 August 2011), in 2 sessions.
  - AS recommended that the sessions be divided as follows:
    - Religious groups + disability groups.
    - Privacy advocates + transgender/intersex groups.
      - This is to maximise the opportunity for stakeholder groups to present their views.
  - MH and FC agreed.
  - **MH advised he would explore the possibility of combining the focus groups and POC sessions.**
- MH advised that OTS could accommodate a maximum of 15 people in each POC group.
  - AF advised that there were approximately 30 people in attendance at the roundtable, and that some groups had multiple delegates. Accordingly, it was

unlikely that the numbers of the roundtable stakeholders attending the POC would exceed 30 people.

- AF noted that the members of the Privacy Advisory Committee (PAC) have expressed an interest in attending the POC. As the PAC members are located across the country, members would variously like to attend in both Sydney and Melbourne.
  - MH advised that the preference was for the PAC to attend in Melbourne. If this presented a difficulty, the OAIC should raise this again with the OTS to see if it can be accommodated.
- FC asked whether the Information or Privacy Commissioners propose to attend the launch of the body scanning project at Sydney Airport.
  - AS advised that he did not consider that this would be appropriate, as the OAIC's involvement in the project is ongoing.
- MH asked what involvement the OAIC proposed with respect to the Quality Assurance Assessment (QAA) mentioned in the MOUS. The MOU workplan provides:
  - *In consultation with the Department the OPC will assist in the development of a quality assurance assessment [QAA] program in relation to the implementation of body scanning technologies at Australian airports [emphasis added].*
    - MH questioned the meaning of the phrase 'will assist'.
    - AF stated that OAIC had understood that it was to conduct an audit-like examination of the body scanning project based on the audit process which OAIC Compliance carries out with respect to agencies – i.e., and audit of the process and procedures.
    - MH advised that he thought that the QAA process would be carried out later in the development process.
    - AF advised that the OAIC was happy to provide assistance in a different form. AF undertook to provide MH with a copy of the OAIC's audit manual and an overview of what a QAA might entail for information.
    - AS noted that it was his initial understanding that the QAA would be undertaken soon after the implementation of the project.
    - TS and AF noted that it could be useful for Compliance staff to attend the POC and provide initial (verbal) comments, so that any glaring issues (if any) could be rectified prior to implementation, and finalise the QAA report after a further examination of the process post-implementation.
    - AS agreed that this could be useful.
- AF noted that after the release of the PIA, but prior to the focus groups/POC, the OAIC and OTS should discuss the PIA.
  - FC agreed that OTS would contact the OAIC in the week commencing 18 July 2011.
- AF asked whether there would be another STAG meeting prior to the POC.
  - FC advised that the STAG would be meeting on 15 August 2011, and would be attending the POC on that date.

- AF noted that OTS had recently inquired about contacting the Australian Human Rights Commission (AHRC), and that the OAIC had provided some advice on that issue.
  - AF asked whether OTS had contacted the AHRC.
  - **FC advised that she would check.**
- MH asked about the Privacy Authorities Australia (PAA) meeting and whether OTS would address PAA.
  - AF advised that although the body scanning project lay within the Federal jurisdiction, the State Privacy Commissioners and authorities still had an interest.
  - AF advised that the next PAA meeting has been set for 22 September 2011 and will be held at the OAIC's Sydney office.
  - AF asked whether she should put OTS's address to PAA on the agenda.
  - MH advised that he would confirm shortly. OTS proposes to attend with MH, FC and possibly one technical expert.
  - AS advised that it would be best to have a senior OTS staff member – having regard to the seniority of PAA delegates.
- MH advised that OTS have prepared a letter in response to the OAIC's letter dated regarding the extension of the MOU. Broadly speaking, the OTS agrees to the conditions set out in the OAIC's letter

- **Next steps**

- **OAIC to provide OTS with a copy of the Compliance Audit Manual and associated material re audits.**
- OTS to confirm whether it will seek to combine the focus groups with the attendance of roundtable stakeholders at the POC.
- OTS to confirm dates for roundtable stakeholders to attend the POC.
- OTS to provide some text on the logistics for the roundtable stakeholders' attendance at the POC, to facilitate OAIC preparing invitations.
- OTS to confirm if it will address PAA, and which specific staff members will attend.
- OTS to advise whether they have made contact with the AHRC.

- **MEETING CLOSED – 12:47pm**



Australian Government  
Department of Infrastructure and Transport

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**COPY**

original posted 24/8  
b/s

Contact: [REDACTED]

Professor John McMillan  
Australian Information Commissioner  
Office of the Australian Information Commissioner  
Level 3 175 Pitt Street  
SYDNEY NSW 2000

Dear Professor McMillan

**Variation to Memorandum of Understanding (MOU) between the Office of Transport Security and the Office of the Australian Information Commissioner**

Thank you for your letter dated 13 May 2011 regarding the above matter. I am happy to advise you that OTS has agreed to your request to extend the term of the MOU until 31 December 2011 and to vary the work plan.

As you would be aware the draft Privacy Impact Assessment (PIA) for the implementation of body scanners was made available for public comment on 2 August 2011. The draft PIA will then be finalised after further consultation with the privacy roundtable. The following dates for the consultation process are proposed.

Week commencing 19 September 2011 - second privacy roundtable  
Friday 30 September 2011 - public comment period closes  
Early November 2011 - release of final PIA

If you have any questions regarding any of the above please contact [REDACTED] on 02 [REDACTED] or at [REDACTED]@infrastructure.gov.au

Yours sincerely

Paul Retter, AM  
Executive Director

22 August 2011

OFFICE OF TRANSPORT SECURITY

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**From:** OII Australia [oiaustralia@bigpond.com]  
**Sent:** Wednesday, 31 August 2011 17:51  
**To:** 'Phinn Borg'  
**Cc:** [REDACTED]  
**Subject:** RE: Feedback from your visit to Sydney International Airport and Body Scanner Demonstration [SEC=UNCLASSIFIED]

Dear [REDACTED]

We were generally satisfied with the layout of the device and the availability of the image to the searched person. We continue to favour devices that are not sex specific none the less I thought that the one we were shown was reasonably good.

The trial device on show by Smiths industries seemed better than the one that was in use.

Of more concern to us was the apparent ignorance that staff might have in regard to Intersex and Trans individuals. I think, as a part of your introduction program, contractors need to demonstrate Intersex and Trans inclusion as a part of their training procedures.

In respect of gel and aerosol searches: the most likely item that might be found in intersex persons baggage is personal lubricant to aid in dilation or sexual intercourse. I suspect many non-Intersex might likewise be found with the same products. I see no reason why they would be in a person's carry-on luggage and suppose if they were the same explanations as given by anyone else would suffice.

Other creams and gels that might be carried would be of a medical nature and should carry prescription information in the same way as prescription drugs are carried by other people. Some sensitivity about their use and the reason for prescribing would need to be shown by the searching officer.

Likewise with the body searches conducted after an alert with the body scanners. We found the procedures good but note that the person doing the search was aware of the sensitivities and was on "best behaviour". We recommend awareness training in respect of Intersex clients for all people engaged in personal searches.

I include absolutely everyone in this including federal police, though I know that you have limited ability to influence how that might be done.

In truth nearly any search technology's acceptability is dependant on how it is used and who is using it. Individuals who have a certain perspective on people with differences can always embarrass and humiliate us. There needs to be training protocols in place, methods of redress in the event of an incident and a deselection process for those who cannot conduct themselves in an absolutely professional manner when faced with unusual situations.

I might make the somewhat tongue in cheek point that no Intersex person in history is known to have committed a single act of terrorism or to have been convicted of the illegal importation of drugs, firearms or explosive devices. We are despite being about 2% of the population "squeaky clean".

More seriously I note that despite this I can relate to you that I have been selected for bag search and explosives on about 85% of the flights I have been on in the last two years. My partner who accompanies me has been searched only once. I do not think this is random chance.

I have posted your mail onto our board for further comment and will pass them on if there should be any.

Kind regards

Gina

**From:** [REDACTED]@infrastructure.gov.au  
**Sent:** Wednesday, 31 August 2011 4:36 PM  
**To:** 'oiaustralia@bigpond.com'; 'Phinn Borg'  
**Cc:** [REDACTED]  
**Subject:** Feedback from your visit to Sydney International Airport and Body Scanner Demonstration [SEC=UNCLASSIFIED]

Dear Gina and Phinn,

I wanted to touch base with you both to seek some feedback from your visit to Sydney International Airport and the demonstration of the body scanner on 4 August 2011.

I am interested in any general comments you may have but in particular, your thoughts and observations on the generic image, the screen set up and the general visibility of both these items in the screening area. Also, if you have any feedback from your members that you can share with us about their experiences with random Liquid Aerosols and Gels (LAGs) searches. The information you provide us will assist greatly in developing Screening Practice Guidelines to provide guidance materials for screening staff at airports. Use of the Guidelines will promote awareness of people who may require assistance with the security screening process and encourage a nationally consistent approach when dealing with all persons at the screening point.

Alternatively, you may wish to meet with us (either in person or by telephone) or raise any concerns or comments you have at the next privacy round table.

I appreciate your assistance with this request and I hope to see you both at the next round table on 21 September 2011 in Sydney.

Kind regards,

[REDACTED]  
 Project Officer  
 Office of Transport Security  
 Department of Infrastructure and Transport



GPO Box 594  
CANBERRA ACT 2601

☎ 02 [REDACTED]  
☎ 02 6274 7097

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24v

**From:**  
**Sent:** Thursday, 8 September 2011 07:44  
**To:**  
**Cc:** John.McMillan@oaic.gov.au; timothy.pilgrim@oaic.gov.au;  
Kieran.Colreavy@oaic.gov.au  
**Subject:** Privacy Advisor Committee (PAC) Visit - Body Scanning Trail

Dear

Just a quick note to send a sincere thank you for the opportunity yesterday to view the Body Scanning technology and receive an update on this project..

Your overview highlighted a considered strategic approach to the project with a genuine focus on stakeholder engagement. It was also pleasing to hear of the ongoing assistance and input you have received from the Office of the Australian Information Commissioner, and I am sure this pro-active collaboration will be reflected in the quality of the Privacy Impact Assessment (PIA).

As discussed I will be sharing my insights with the fellow PAC members and also look forward to providing further input into your program (for example via the PIA consultation process) as appropriate.

Thanks again

Kind regards



**Australian Government**

**Office of the Australian Information Commissioner**

## **2<sup>nd</sup> Privacy Roundtable - Body Scanning**

**21 September 2011**

### **Minutes**

#### **Attendees**

##### **Office of the Australian Information Commissioner (OAIC)**

Angelene Falk - Facilitator

Leife Shallcross

Tim de Sousa

##### **Office of Transport Security (OTS)**



##### **Sydney Airport**

Kyle Whyte – Sydney Airport Security Operations Manager

##### **Australian Privacy Foundation**

Roger Clarke

##### **NSW Council for Civil Liberties**

Lesley Lynch

##### **Muslims Australia**

Ashraf Ali (by teleconference)

##### **Vision Australia**

Bruce Maguire

Sue Crane

#### **Apologies**

 , OTS

Gina Wilson, Organisation Intersex International

Phinn Borg, Gender Centre

Peter Dodd, Public Interest Advocacy Centre

**MEETING OPENED 9:30am**

**Overview since the last roundtable (22 September 2010)**

- **Angelene Falk (OAIC)** discussed what has occurred since the last privacy roundtable.
  - Some interest groups have had their requirements met, although there are still some issues to be resolved.
  - The OTS has released its Privacy Impact Assessments (PIA), which is open for comment until 30 September 2011.
  - Scanning trials have taken place in Sydney and Melbourne airports.

### **Role of the OAIC**

- **Angelene Falk (OAIC)** clarified the role of the OAIC regarding the body scanning project.
  - The OAIC does not approve or endorse Privacy Impact Assessments (PIA) or projects.
  - The role of the OAIC with respect to this project is to provide guidance on privacy matters.
  - The OAIC has issued a PIA guide that provides guidance on the PIA process.
  - The OAIC is pleased that the OTS was able to take into account some of its advice, including specifically addressing the issues raised by stakeholders at the last roundtable.

### **Role of the OTS**

- **[REDACTED] (OTS)** stated that OTS is tasked with the implementation of a government decision to introduce body scanning technology in Australian international airports.
  - In previous consultation, he has understood that there was some disappointment and frustration that OTS could not discuss the Government's decision – but inquiring into the merits of the decision is beyond the scope of the OTS's role.
  - The announcement to introduce body scanners into international airports was made on 9 February 2009. The Government is expecting that OTS will be moving ahead early next year to implement. OTS is still trialling the technology in Melbourne. It is the intention of OTS that the lessons learned from the Proof of Concept trials in Sydney and Melbourne, and the feedback received during the consultation process, will be integrated into the PIA.
  - OTS is still working to address a number of issues, including the processes by which alarms (from the body scanner) are resolved.
- **[REDACTED] (OTS)** stated that body scanning technology is currently being used in a number of countries – especially in the USA. At a recent international conference, indications were that some 30 countries were either using or looking at using body scanning technology.
- **[REDACTED] (OTS)** stated that senior management in the Department of Infrastructure have instructed that they want as many stakeholders as possible to see body scanning technology in action.
  - OTS has devoted considerable resources to identifying interested stakeholders.

- OTS has made a major effort with consultation, including arranging for a number of stakeholders in different sectors to visit and view the trials, including the Privacy Advisory Committee, the Commonwealth Ombudsman and the Disability Commissioner – Graeme Innes.
- OTS also consults with the Aviation Access Working Group, a specialist consultation group that examines the accessibility of airport facilities. The AAWG includes Graeme Innes. OTS staff have attended AAWG meetings as part of the consultation process.
- OTS has also consulted with a variety of Federal and State Government agencies (VIC, NSW) in the health cover and work cover areas. OTS was not certain how much general public interest there would be in the technology. But due to recent media re mobile phones/radio frequencies and cancer links, agencies have reported a sharp increase in interest.
- OTS is in the process of gathering comments.
- [REDACTED] (OTS) stated that the *Aviation Transport Security Act 2004* governs the way the OTS and Australian Airports operate.
  - In the USA, all screening staff are USA Government employees.
  - Australian legislation establishes 'screening authorities'.
  - In Australia's international airports, the airport leaseholders are usually the screening authorities.
  - Qantas is a screening authority in Sydney, where it has its own terminal.
  - In smaller airports, it might be a local government.
  - Actual screening officers are generally supplied by contracted screening providers – SNP, ISS, MSS.
  - This is referred to as a 'devolved model' of screening.
- [REDACTED] (OTS) stated that OTS has a compliance section.
  - That section checks that screening procedures are working properly, conducts testings and audits...etc.
  - The results are not made public because of security concerns – but the OTS ensures that there is regular testing of screening procedures and technology.
- [REDACTED] (OTS) advised that, for the trials, OTS has only used the millimetre wave (mm wave) body-scanning machines. Those machines operate in the radio frequency spectrum – accordingly OTS had to obtain a licence from the Australian Communications and Media Authority to operate the machines.
- OTS have consulted with Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). ARPANSA advise that the machines used in the trial do not use ionising radiation and are well within the relevant limits - the emissions from the machines in the trial are equivalent to 10,000 less that of a mobile phone call.
- The Government has still not made the decision to rule out the x-ray backscatter technology.

- The role of OTS is to provide specifications to screening authorities – generally, OTS allows the screening authorities to decide how they will meet those specifications (specific models of machines, processes...etc.).
  - However, if the Government decides to use x-ray backscatter machines, it will have to justify to ARPANSA and other radiation regulators why it need to use ionising radiation for non- medical use.
  - [REDACTED] (OTS) advised that the Government would have to go through a number of steps in order to implement x-ray technology, and it has not begun that process.

### **Mm wave and X-ray backscatter technology**

- **Tim de Sousa (OAIC)** asked if the privacy implications of using X-ray technology would be different to those of the mm wave systems.
  - [REDACTED] (OTS) stated that they would not be.
  - **Roger Clarke (APF)** stated that that was not for OTS to decide: civil society should make that decision.
  - **Leife Shallcross (OAIC)** stated that it was her understanding that mm wave technology was both the Government and industry's preferred solution, on the basis of a range of issues, such as potential controversy regarding the possible health effects of ionising radiation, licencing requirements etc.
  - **Lesley Lynch (NSWCCL)** noted that it appears to be preferred, but the X-ray technology had not been conclusively ruled out.

### **Standardisation**

- **Bruce Macguire (Vision Australia)** asked if there had been any move to standardise the technology and processes used for body scanning, internationally.
  - [REDACTED] (OTS) stated that the USA is moving towards the use of Auto-Threat Recognition (ATR) technology, similar to the systems trialled in Australia.
  - He is not sure about the UK.
  - The USA have started trials of ATR technology.
  - The software used in the Australian trials was certified in July by the USA Transport Security Authority (TSA). The technology does not, at any stage, produce a 'raw image' – it operates entirely in a digital fashion.

### **Capabilities of body scanning machines**

- **Lesley Lynch (NSWCCL)** stated that there was some confusion over the capabilities of the body scanning technology.
  - The PIA says in a number of places that images cannot be stored.
  - However, during her attendance at the POC trial, she understood that OTS stated that images would be stored by the manufacturer, and then that some of the

images would be stored, but not for very long. There are similar inconsistencies in the PIA.

- [REDACTED] (OTS) stated that OTS has been assured that the machines will not store images or data.
- [REDACTED] (OTS) further stated that, ultimately, the government is providing funding to the airports so that they can purchase the machines. OTS can require that the machines purchased not be capable of storing or transmitting images – this is OTS's intent
- [REDACTED] (OTS) noted that, for clarity, the machines do hold scan data in Random Access Memory (RAM), which is strictly short term. The machine's Ram can hold the data of 2 scans – one of the person who has just been scanned and who is being resolved, and a second scan of the person who is currently in the machine and is awaiting resolution. The machine cannot take a further scan until the previous scan data has been cleared from the RAM.
- **Kyle Whyte (Sydney Airport)** also noted that, when the screeners log out of the machine, the scan data held in the RAM is cleared.
- **Lesley Lynch (NSWCCL)** stated that these details must be absolutely clear in the PIA.
- **Kyle Whyte (Sydney Airport)** noted that the confusion is probably due to a lack of clarity of expression in the PIA, rather than inconsistent information.
- [REDACTED] (OTS) noted that the relevant sections of the draft PIA were written earlier this year, prior to the trials – the terminology could be clarified.
- **Lesley Lynch (NSWCCL)** stated that OTS needs to make sure that the PIA is able to be understood by an audience that does not have relevant specialist technical expertise.
- **Lesley Lynch (NSWCCL)** and **Roger Clarke (APF)** stated that there is a clear need for independent verification of claims made by OTS. The assurance of the manufacturers and foreign government agencies are insufficient.
- **Ashraf Ali (Muslims Australia)** asked who would be conducting audits to ensure than images are not being stored.
- [REDACTED] (OTS) stated that OTS has a compliance section whose role includes the conduct of rigorous audits. The airports themselves also conduct internal audits.
- **Kyle Whyte (Sydney Airport)** stated that Sydney Airport has its own division of security that have a clear understanding of the technology. He also stated that Sydney Airport is committed to complying with the National Privacy Principles (schedule 3 of the *Privacy Act 1988* (Cth)), and conduct audits on a regular basis. SNP Security (Sydney Airport's contracted screening provider) also conducts audits, as does the Government.

## Resolution of alarms

- **Bruce Maguire (Vision Australia)** asked whether the generic image/avatar/stick figure display used by the ATD technology is one image, with different overlays?
  - [REDACTED] (OTS) confirmed that it was. For every person that is scanned, the machine displays the same figure – potential threats are identified by boxes overlaid on that figure.
  - **Leife Shallcross (OAIC)** asked if it would be fair to say that the technology is not generating an image, but is generating an overlay on a generic representation.
  - [REDACTED] (OTS) confirmed that it was. He explained that the representation was the same for males and females and did not identify any specific body features, such as the height of the person being screened.
  - **Kyle Whyte (Sydney Airport)** stated that, for example, the algorithm is able to allow for individual heights and overlays the generic image so that it is in proportion to the individual. That is, an alert on the right wrist area will show up in the same place for a person 140cm tall as for a person 180cm tall.
- [REDACTED] (OTS) noted that for some people, there may be an advantage in having technology that produced a 'raw' image to be viewed by a remote operator – for example, transgendered and intersex people, people who have prosthetics or implanted medical equipment. In those circumstances, a remote operator would likely be able to look at the scanned image and determine that the items detected, such as a prosthetics, were not a security threat. But the Government has ruled out the use of remote operators.
- [REDACTED] (OTS) spoke about the resolution of alarms. Basically, the methods of resolution that are currently used will not change with the introduction of body scanners. Screening officers are guided by a small coloured box appearing on the generic representation, which indicates the general area on a traveller's body where a problem has been detected.
  - The screening officer makes the decision as to what measures are required to resolve an alarm.
  - In the vast majority of situations, a visual inspection will be sufficient.
  - Travellers also have the option of going to a private room for resolution.
  - Travellers are not required to remove any clothing.
  - Screening officers can use a handheld metal detector, or use indirect explosive trace detection (ETD), i.e., the person runs their hands over the area that needs to be resolved, and the screening officer scans their hands.
  - These are methods that are already used. What is new is that the body scanner will pick up more anomalies/potential threats than current scanning methods such as walkthrough metal detectors.
- **Ashraf Ali (Muslims Australia)** asked whether the pins used to secure hijabs and niqabs will be detected by the body scanners.



- [REDACTED] (OTS) stated that one of the female representatives from Muslims Australia went through the body scanner wearing a hijab, and it did not alarm on the pins.
- Lesley Lynch (NSWCCL) noted that the scanner did alarm on small metal components in her clothing.
- [REDACTED] (OTS) stated that when further resolution (i.e., beyond a visual inspection) of an alarm is required, the screener is always the same sex as the traveller. Travellers always have the option to go to a private screening room, where resolution can be conducted in privacy by screening officers of the same sex.
- Ashraf Ali (Muslims Australia) stated that he thought that the majority of Muslim women would want to use the private room, but that it seemed to be an acceptable process.
- Roger Clarke (APF) noted that the APF and state Civil Liberties Councils have had a number of problems considering and analysing the project because the PIA does not sufficiently describe the information flows involved.

### Scope of implementation

- Roger Clarke (APF) sought clarification that the number of travellers going through the body scanner would represent a subset of the total number of travellers screened.
- [REDACTED] (OTS) advised that the intention is that body scanners will replace every second metal detector currently in use.
- The proportion of travellers screened using the body scanners, however, would not be 50%, as the body scanning process takes longer to go through than the existing walk-through metal detectors. It would be less than 50%.
- After the experience of the trials, it is probably reasonable to say that about 30% of travellers could be screened using the body scanners.

### Selection for body scanning

- [REDACTED] (OTS) advised that at Sydney Airport, they trialled a random selection mat to automate selection for the body scanner. Where an automated method was not used, in practice it would work similar to the way ETD works – as soon as a person is screened, the screener would select the next person in line.
- Kyle Whyte (Sydney Airport) advised that Sydney Airport supports the ability to opt in for a body scan – there are people who would prefer to use the body scanner rather than metal detector – e.g., people with internal prosthetics such as hip replacements, which would cause an alarm with metal detectors, but not with the body scanners.
- [REDACTED] (OTS) stated that OTS has been considering that option – it is a new concept to security to have people opting in to a security screening method.
- Kyle Whyte (Sydney Airport) stated that what is required is a balance between security outcomes and facilitation of the screening of travellers.

- Part of the purpose of the trial was to see what technologies were available to facilitate truly random selection for body scanning.
- The aviation security industry is aiming for consistency all across Australia. They believe it is possible to be consistent. The industry is subject to the same legislative regime.
  - For the trials, Sydney Airport cooperated with Melbourne Airport and ISS (a screening provider).
  - Ultimately, consistency will assist the travelling public, and the industry.
- **Ashraf Ali (Muslims Australia)** asked, for the purpose of clarity, whether it was the machine deciding on selection, rather than an actual screening officer. For example, if a male traveller had a beard or a turban, or a woman was wearing a hijab or burka, could a screening officer specifically select them to go through the body scanner? Or will it be random.
  - [REDACTED] (OTS) stated that the point of using the randomising mat, is that it will be random.
  - **Lesley Lynch (NSWCCL)** and **Roger Clarke (APF)** asked whether OTS was still looking at giving screenings officer the option to select specific travellers for body scanning.
  - **Kyle Whyte (Sydney Airport)** stated that the technology, like any technology, is not 100%. It has a way to go to see if it can be made to work effectively. Sydney Airport, and other airports, are limited by land space. The randomising mat was included in the trial to see if it could be made to work.
  - **Lesley Lynch (NSWCCL)** stated she would hope, as a citizen, that there would be some discretion.
  - **Kyle Whyte (Sydney Airport)** stated that Sydney Airport has 47 nationalities in their pool of screening officers, their views will vary. How we can make it work long term, is to test out the different available technologies.
  - **Lesley Lynch (NSWCCL)** states that she presumed that would not preclude the discretion for screening officers to direct someone through the body scan.
  - **Kyle Whyte (Sydney Airport)** advised that it probably would not.
  - **Lesley Lynch (NSWCCL)** noted that that should be made clear in the PIA.
  - [REDACTED] (OTS) noted that some people who are randomly selected will not be able to be body scanned due to disabilities...etc. Those travellers would have to be screening by existing alternative means.
- [REDACTED] (OTS) advised that OTS has not decided whether it will prescribe the method by which travellers are selected for a body scan. OTS is not certain that this would be productive, and the industry stakeholders are unlikely to support such a move.
  - **Roger Clarke (APF)** stated that advocates seeking to comment on the PIA were hamstrung because of the lack of clarity on such issues.

- **Roger Clarke (APF)** asked whether travellers would have to go through a body scanner and then a metal detector?
  - [REDACTED] (OTS) stated that they would not – travellers will have to be scanned by either a body scanner or a walk through metal detector, not both.
- **Bruce Maguire (Vision Australia)** asked where a traveller is randomly selected for a body scan, but cannot be scanned on the basis of other criteria (e.g. disability), would they know that? If a person has a guide dog and therefore can't go through the body scanner, do they have to go somewhere else – will they be told where to go?
  - **Kyle Whyte (Sydney Airport)** stated that Sydney Airport has set up specific dedicated lanes for people with special needs. Staff manning those lanes have special training. There is still a lot of work to be done – the Government only sets the criteria, but the airports must implement it. Including the issues relating to random selection.
  - **Bruce Maguire (Vision Australia)** asked whether these arrangements for the special screening lanes will be made public at some point? He, personally, was not aware of them, but he would use the special screening lanes if he was. **Bruce Maguire (Vision Australia)** noted that some blind people would be concerned about going through body scanners.
  - **Kyle Whyte (Sydney Airport)** stated that he was not sure – it is still early in the implementation of the special screening arrangements, but when there was more clarity on the issue, Sydney Airport would likely publicise it.
- **Roger Clarke (APF)** stated that the APF's policies on this issue are clear, but if there are specific issues that are confidential, then the APF and other advocates are happy to discuss those issues on confidential basis.
- **Roger Clarke (APF)** stated that he, personally, cannot recall ever seeing a sign that indicated where he needed to go for a frisk search (as opposed to a body scan or metal detector).
  - **Kyle Whyte (Sydney Airport)** stated that, in terminal 1 of Sydney Airport (the international terminal), the centre lane (lane 7) is the special needs lane. The staff will guide anyone with special needs into the lane.
  - **Roger Clarke (APF)** asked if travellers with non-apparent special needs be able to find it?
  - **Kyle Whyte (Sydney Airport)** stated that they would - there are signs. But there are a lot of special needs that screening officers cannot identify – pacemakers, for example. If travellers identify themselves, screening officers will put them through the appropriate process – they don't have to join another queue.
  - [REDACTED] (OTS) noted that some airports don't run a special needs lane – like Melbourne Airport. Another issue is if there is a special needs lane, should it include a body scanner?
- **Roger Clarke (APF)** asked what happens when a traveller declines body scan.
  - [REDACTED] (OTS) stated that, as is currently the case, if you don't want to go through the walk-through metal detector or body scan, you can elect to not to.

Screening officers will call the supervisor – the traveller can then go to a private room for a frisk search. No one is allowed into the secure area without being cleared.

- **Roger Clarke (APF)** stated that the APF was happy with that. However, opting out requires a traveller to declare that they are special.
- **[REDACTED] (OTS)** stated that travellers did not have to give a reason for opting out.
- **Lesley Lynch (NSWCCL)** stated that her understanding is, if you don't want to go through the metal detector, or the body scanner, you can have a frisk.
- **Roger Clarke (APF)** asked where that could be done
  - **Kyle Whyte (Sydney Airport)** responded that travellers could opt out in any lane.
  - If you opt out of the body scanner, or the walk through metal detector, there are alternative screening processes. Travellers who opt out do not need to join another line, or go through a specific lane.

#### **[Morning tea break]**

- **Roger Clarke (APF)** advised that the APF would likely make a submission on issues relating to resolution.
  - **Lesley Lynch (NSWCCL)** stated that she thought that the Government has required that body scanning be 'random and continuous'.
  - **[REDACTED] (OTS)** confirmed that was correct. However, OTS has not fleshed out how that should be implemented at the physical screening points. OTS has not mandated a particular method, and is unlikely to do so.
  - **Kyle Whyte (Sydney Airport)** advised that the airports in general would not be supportive of the prescription of a particular selection method. Every airport is different, and some technologies will not work in every environment. The aviation security industry would not want that kind of requirement.
- [REDACTED] (OTS)** advised that OTS is aiming to finalise the PIA and release it before the end of this calendar year.

#### **Preliminary findings from trials**

- OTS has a number of preliminary findings from the trials in Sydney and Melbourne.
  - What OTS has found so far is that around 40% of travellers going through the body scanner cause it to alarm.
  - That indicates that the body scanners are working well – they are picking up more potential threats than the existing methods.
  - Based on the analysis of the early data – collected by a private data collection organisation that is tracking a sample of travellers for what items have caused the alarms – OTS has found that about 25% of travellers going through the body scanners have items that they cannot divest, typically items of clothing. For

example, cargo pants – the extra fabric and pockets create an alarm. Slightly more females than males – embroidery, studs and other items that can cause alarms may be more prevalent in women's clothing than in men's.

- OTS is not really privy to how the software is set up and tested. The body scanners used in the trials were tested by the US government. There are clearly set up for American traveller.
- The vast majority of alarms are quite readily resolved by a visual inspection or a localised frisk.
- A lot of the other alarms are the result a failure to divest items in pockets...etc.
- OTS anticipates that the statistics obtained from the trials will assist with the communications strategy for the rollout for the body scanning machines.
- **Ashraf Ali (Muslims Australia)** noted that not every Muslim woman will be willing or able to remove a jilbab...etc.
  - [REDACTED] (OTS) stated that it will not be a requirement for anyone to remove an item of (base) clothing.
  - [REDACTED] (OTS) noted that hooded shirts and sweatshirts can also cause alarms – a number of women can't remove them if they are not wearing other clothing underneath. In those cases, travellers are not required to remove any clothing in order for the alarm to be resolved by other screening methods – such as handheld metal detectors or ETD.
  - If more resolution is required, the alarm can always be resolved in a private room.
- **Lesley Lynch (NSWCCL)** asked why there was such a huge discrepancy in the number of scans carried out in the Sydney trials and the Melbourne trials (Sydney – approx. 4,500 scans, Melbourne – approx. 20,000 scans)
  - [REDACTED] (OTS) and [REDACTED] (OTS) stated that the Sydney trial period was shorter, and because it came first, started slower. Melbourne Airport has also kept the body scanner lane open for longer hours. Melbourne is also using a different baggage screening technology which is faster.
  - **Kyle Whyte (Sydney Airport)** stated that there were a lot more stakeholder 'tour groups' in Sydney than in Melbourne, which required the body scanner lane to be shut down
  - [REDACTED] (OTS) stated that Sydney lost a day from the trial period due to the launch of the trials.
  - **Kyle Whyte (Sydney Airport)** stated the Melbourne was able to take the procedures drafted by Sydney Airport and commence full scale operations immediately.
- **Roger Clarke (APF)** asked whether, if there is only one body scanner lane in the trial lane, does that mean it is not voluntary?
- [REDACTED] (OTS) stated that it was still voluntary, as the lane also includes a walkthrough metal detector.

- [REDACTED] (OTS) stated that the key issues are that the vast majority of alarms are quickly and readily resolved.
  - Overall, the process takes a few seconds longer than the metal detector.
  - So far, they have not had many people with implanted medical devices, but it's a trial - people with difficult issues may have opted out.
  - OTS did follow up with Organisation Intersex International and the Gender Centre.
- [REDACTED] (OTS) stated that the image on the screen that the operator sees is visible to the public – there may be some issues relating to that.
  - OTS has wondered whether the visibility of the screen is a problem. The response from the public had been quite good. After being scanned, the scanned traveller will look at the screen with the screening officer. OTS is interested in the views of stakeholders as to whether the screen should be viewable by the public. On one hand, the process is transparent. On the other hand, anyone walking past can see if someone has alarmed in the groin area...etc.
- [REDACTED] (OTS) stated that training for screening officers on issues of stakeholder concern, particularly transgender and intersex issues, is important. OTS are working on vocational training for transgender and intersex issues.
  - Further information is available on the OTS on the website.
  - Deadline for submissions on the PIA is 30 September 2011.

### **Need for public information**

- **Ashraf Ali (Muslims Australia)** stated that Muslims Australia was particularly concerned with communication. They need materials to be made available to put on their websites or to be published in their regular publications to educate their constituents and the general public. Unknowns can create paranoia.
  - [REDACTED] (OTS) stated that OTS has released the consultation draft PIA, health and safety fact sheets, and FAQs on body scanners (in PDF and MS Word formats).
  - **Ashraf Ali (Muslims Australia)** stated that if people are not educated on the issue, they will be less able to comment.
- [REDACTED] (OTS) responded that it would be interesting if stakeholders could make suggestions about what else OTS could publish. Once the project is implemented, there may be more material published.
- **Tim de Sousa (OAIC)** asked whether OTS would permit the republishing of their public education materials
- [REDACTED] (OTS) confirmed that it would.

### **Training for screening officers**

- **Bruce Maguire (Vision Australia)** stated that:



- one of the main issues for Vision Australia is about getting the information out there – for example, he did not know before today that there is a special needs lane;
- this new technology must be supported by adequate information;
- he would also like to discuss training more - on the basis of his experience, if screening officers are trained in how to deal with the vision impaired, it is not reflected in his interactions with airport staff. For example, when he attended the trial, instead of providing verbal instructions, screening officers pushed and prodded and pulled.
- **[REDACTED] (OTS)** noted that Graeme Innes (Disability Commissioner) said some similar things. OTS works with another industry group on those issues (the Aviation Access Working Group), and will continue to push the training issue.
  - **Angelene Falk (OAIC)** asked whether the development of training uses a consultative model – the OAIC is aware that the OTS intends to consult the Gender Centre regarding gender sensitivity training, but Vision Australia would also have particular expertise regarding training requirements relating to vision impaired travellers.
  - **[REDACTED] (OTS)** responded that OTS has developed the screening practice guidelines through the AAWG. The Gender Centre and OII have also stated that they are available to assist with training.
  - **[REDACTED] (OTS)** noted that the OTS compliance section audited the private sector training provider, but that OTS could consider further audit activities.
- **Roger Clarke (APF)** asked whether there was recurring training?
  - **Kyle Whyte (Sydney Airport)** stated that in the current model, once a screening officer was deemed competent, there is no recertification.
  - However, the industry is considering the training issue. Sydney Airport runs a twice yearly refresher for screening officers – but this is not recertification.
  - Each airport does it differently.
  - **[REDACTED] (OTS)** stated that what OTS is hoping to do is set a criteria and a pattern to drive consistency across all international airports. There has been some movement towards establishing vocational training for Security Screening Operator (as distinct from Security Guards).
- **[REDACTED] (OTS)** notes that Ron Elliot (Sydney Airport Security) is a strong advocate of having airports employ more customer service oriented staff to run the screening process.
- **Kyle Whyte (Sydney Airport)** noted that it is difficult to find screening officers who are registered security guards and also have good customer service skills. Sydney Airport is focused on taking screening out of the (exclusive) security sphere, to make it efficient, effective, and comfortable.
- **Angelene Falk (OAIC)** asked what it would take to facilitate that shift.

- [REDACTED] (OTS) stated that there is a whole other committee looking at that. But OTS is committed to facilitating the shift. It would require a change to OTS' governing legislation, and consultation with the States.

### **Need for information on the effectiveness of the body scanning technology**

- **Lesley Lynch (NSWCCL)** asked whether OTS had any sourced, authenticated, information that shows that body scanning is an effective security method. She noted that there is considerable inconsistency on the effectiveness of the technology in the international media.
  - [REDACTED] (OTS) said that OTS does not have any information that it can release, because that information is classified. OTS must rely on overseas governments and agencies to that that testing. He noted that Australia is using the most up-to-date software in the world.
  - **Kyle Whyte (Sydney Airport)** notes that early software created a lot of false alarms and higher alarm rates, but that the newer software is much improved – some of the international media reports refer to older software.
  - **Lesley Lynch (NSWCCL)** asked whether OTS could provide some firm information on what other countries are doing.
  - [REDACTED] (OTS) noted that the USA TSA has just committed to buying another 1000 body scanning machines.
  - **Kyle Whyte (Sydney Airport)** noted that there are some countries and airports who are not interested in the technology.
- **Lesley Lynch (NSWCCL)** noted that a Wikileaks cable suggests that the body scanning technology is not accurate or sufficiently effective.
  - [REDACTED] (OTS) stated that the cable is over 2 years old, and that the technology has moved on considerably since then.
- **Lesley Lynch (NSWCCL)** stated that, ultimately, advocates have to rely on what the PIA says. She does not have confidence in what the PIA says, because she is seeing conflicting media reports. The PIA must clearly establish the effectiveness of the technology.
- **Lesley Lynch (NSWCCL)** stated that the PIA should also include more detail on the complaint process. In particular, the complaints process must include some sort of independent oversight.
- [REDACTED] (OTS) noted that complaints can be made to the Ombudsman if they are not satisfied or unhappy with a complaint that they have made to a particular body.
  - **Lesley Lynch (NSWCCL)** noted that the PIA did not state that.
- **Roger Clarke (APF)** asked whether the OAIC's complaints function was constrained to the IPPs and NPPs.
  - **Angelene Falk (OAIC)** confirmed that, together with the credit provisions, it was.



- **Lesley Lynch (NSWCCL)** stated that the PIA required more clarity on the storage of images or scan data.
  - [REDACTED] (OTS) stated that the body scanning machines do not have any ability to save and retrieve any scan results. However, it does store statistics – time of scan, number of areas with an alarm, where they were.
  - **Lesley Lynch (NSWCCL)** noted that the PIA should be clear on what information the machines can and will collect.
  - [REDACTED] (OTS) noted that the machines do not store scan data or communicate that data to the manufacturers. Rather the manufacturers have staff on site that observe the scanning process, and manually collect data with which to further develop the algorithm used by the machines. They also download the statistics.
  - **Angelene Falk (OAIC)** noted that it would be helpful if this was noted in the PIA.

### **Need for clarity of terminology**

- The participants agreed that the PIA would benefit on some clarity on the definition of the term 'image'. Or the terminology used to discuss the way in which the information from a body scan is displayed (e.g., avatar, outline, overlay...etc.)

### **Publically viewable screen**

- **Angelene Falk (OAIC)** asked the participants to respond to the question of whether the screen should be publically viewable.
  - **Lesley Lynch (NSWCCL)** stated that she, personally, did not have a problem with it. However, transgender and intersex groups might have an issue with it. She would support their view.
  - **Bruce Maguire (Vision Australia)** stated that people with low vision would have concerns – other people would be able to see something vision impaired travellers themselves could not. Vision impaired travellers could be unknowingly subjected to privacy breaches.
  - **Kyle Whyte (Sydney Airport)** noted that options to block others from viewing the images, such as visors, would depend on the space and facilities of each airport.

### **Need for justification of the need for body scanning**

- **Roger Clarke (APF)** stated that the PIA did not clearly articulate:
  - the problem that has to be addressed,
  - how the use of body scanning technology will address that problem,
  - how the anticipated benefits will be achieved, and how effective the proposed solution will be in addressing the problem,
  - in particular, the PIA does not include independent reports or quality assurance, including statistics on false negatives.

- [REDACTED] (OTS) noted that only about 1% of detected possible threats cannot be identified. I.e., the false positive rate is very low.
- [REDACTED] (OTS) stated that the introduction of body scanners was a response to an attempt that was made on 25 December 2009 to blow up an aircraft, and an attempt to reduce the chances of similar incidents occurring.
- [REDACTED] (OTS) noted that OTS could provide more information in the PIA on the process by which the body scanning technology is certified, noting that there would be security considerations that would prevent the release of some information.
  - Lesley Lynch (NSWCCL) and Roger Clarke (APF) agreed that this would be useful.
- Roger Clarke (APF) stated that the APF would have to draw the conclusion that the justification for the implementation of body scanning technology hasn't been stated in the PIA, and that the information provided in that regard is insufficient. However, the APF considers that there has been some good work done on the issues raised by specific interest groups.
- [REDACTED] (OTS) stated that OTS has been encouraged by the level of participation by stakeholders, and that OTS can proceed knowing that it has kept the public as up to speed as it possibly can.

**MEETING CLOSED 1:05pm**

## Appendix

### Issues identified for discussion by stakeholders, and possible solutions

(transcribed from whiteboard)

Issue	Possible solution
Need for adequate information to be made available to the public about body scanning	OTS to send links to stakeholders to distribute to members
Adequate info available during body scanning process	Training for screening officers
Position of display screen	If possible restrict view of screen to screening officer & scanned passenger only – e.g., by position of screen, or by hood over screen.
Need for PIA to include information about the effectiveness of the technology	Include information on the overseas experience with body scanning, including experience with ATR, in PIA  Also include further info on alarm rates, false negatives...etc. in PIA.
Need for clarity on complaint process	Include further information on available independent complaints avenues in PIA.  Prepare a fact sheet/FAQ for public distribution.
Training for screening officers and monitoring that appropriate practices are implemented (especially with respect to disability access, gender sensitivity)	Introduce 'recertification' – e.g. Sydney Airport's refresher training.  Consult with specific affected stakeholder groups such as Vision Australia, OII, Gender Centre for assistance of developing relevant training.
Confusion re use of the term 'image' in the PIA, and the precise nature of the information collected by body scanning machines.	Clarify terms used the in PIA – use alternative language. Clearly state the different kinds of information involved in the body scanning process.  Map the information flows.
Confusion re whether information is collected and stored during body scanning	Clarify in PIA. Map the information flows.

process.	
Possible expansion of project/variation in technology	Conduct new PIA, or develop existing PIA
Stakeholders need a better understanding of current screening process	Include information about current screening process in PIA
Gender specific algorithm is problematic - binary gender construction marginalises gender diverse individuals.	Manufacturer working on gender neutral algorithm
Stakeholders require a clearer articulation of the problem body scanning are intended to solve/address.	Include clarification in PIA or acknowledgement that some information may not be able to be published (security reasons).



Our reference: P08/78

Mr Paul Retter  
Executive Director  
Office of Transport Security  
GPO Box 594  
CANBERRA ACT 2601

Dear Mr Retter,

**Further variation to Memorandum of Understanding re the implementation of body scanning technology in Australian International airports**

I refer to the emails from [REDACTED] of the Office of Transport Security (the OTS) to Tim de Sousa, Policy Advisor of the Office of the Australian Information Commissioner (the OAIC) on 19 September and 17 October 2011.

**Request to omit Item 8 from the Memorandum of Understanding workplan**

The Department of Infrastructure, Transport, Regional Development and Local Government (the Department: now the Department of Infrastructure and Transport) and the Office of the Privacy Commissioner (the OPC; now the OAIC) entered into a Memorandum of Understanding (the MOU) on 9 June 2010 regarding the implementation of body scanning technology in Australian international airports.

Item 8 of the MOU workplan is as follows:

8. Quality Assurance Assessments	In consultation with the Department the OPC will assist in the development of a quality assurance assessment program in relation to the implementation of body scanning technologies at Australian airports. The OPC will, with the appropriate areas of the Department undertake quality assurance assessments, analyse results and recommend follow up action. Of particular relevance would be ensuring body scanning is being conducted in accordance with the processes and protocols developed to protect privacy.	March 2011
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The OAIC understands that the OTS no longer requires that the OAIC complete Item 8 of the MOU workplan, and proposes that it be omitted.

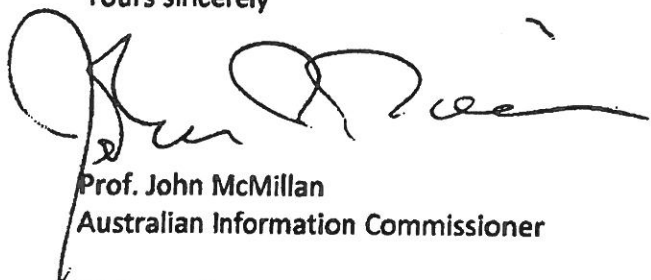
The OAIC agrees to omit item 8 from the MOU workplan.

### **Outstanding workplan items**

The OAIC requests that the OTS advise whether there are any outstanding items on the MOU workplan. This will assist the OAIC in planning for any further assistance that the OTS requires, noting that the term of the MOU expires on 31 December 2011.

If you have any questions regarding any of the above, please contact Angelene Falk, Director – Policy, on (02) 9284 9651 or at [angelene.falk@oaic.gov.au](mailto:angelene.falk@oaic.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'John McMillan', written over a horizontal line.

Prof. John McMillan  
Australian Information Commissioner

16 November 2011



Australian Government

Department of Infrastructure and Transport

Contact: [REDACTED]

Professor John McMillan  
Australian Information Commissioner  
Office of the Australian Information Commissioner  
Level 3 175 Pitt Street  
SYDNEY NSW 2000

Dear Professor McMillan

**Memorandum of Understanding (MOU) re the implementation of body scanning technology in Australian international airports.**

Thank you for your letter dated 16 November 2011 regarding your agreement to vary the abovementioned MOU by omitting item 8 from the MOU workplan.

I consider that there are now no outstanding items on the work plan and am happy for the MOU to be finalised on 31 December as scheduled. I would like to take this opportunity to thank you and your staff for the valuable assistance that has been provided in handling the complex privacy issues associated with the body scanner policy.

I note that the Department has not yet released its final Privacy Impact Assessment (PIA). It is expected that the PIA will be finalised in the first half of next year when the body scanner operational policy settings are confirmed. It is possible that the Department will release a further consultation draft prior to releasing a final PIA. If so, the Department will keep you informed and you would be most welcome to send a representative to any further consultations that may be undertaken.

If you have any questions regarding any of the above please contact [REDACTED] on 02 [REDACTED] or [REDACTED]@infrastructure.gov.au [REDACTED]

Yours sincerely


Peter Robertson  
A/Executive Director

22 December 2011

OFFICE OF TRANSPORT SECURITY

Australian Government  
Department of Infrastructure and Transport

## Introduction of Body Scanners at Australia's International Gateway Airports



## Scope

- Background
- Consultation
- Proof of Concept Activity (PoC)
- Technology
- Privacy enhancements
- Resolution of Alarms
- Implementation
- Demonstration program
- Privacy Impact Assessment

## Background

- 9 February 2010 Strengthening Aviation Security Initiative announcement
- \$28.5M Optimal Technologies Program:
  - approx \$6M for body scanners
  - also includes next generation multi-view X-ray machines, bottle scanners capable of detecting liquid-based explosives and additional explosive trace detection units
- Ministerial directive that body scanners have:
  - privacy enhancements; and
  - only use stick figure images

## Stakeholder Consultation

**Privacy/Health**

- Privacy stakeholders
- Office of the Australian Information Commissioner (OAIC)
- Aviation Access Working Group (AAWG)
- Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)

**Industry/Other**

- Security Technologies Advisory Group (STAG)
- Airports and airlines
- Federal and State Government agencies
- Security providers
- Australian Communications and Media Authority (ACMA)
- Employee organisations

## Proof of Concept (PoC) Activity

- The dates for the proof of concept (PoC) activity are:
  - Sydney – 2 -19 August 2011
  - Melbourne – 5 -30 September 2011
- Participation in the PoC is voluntary

## Proof of Concept (PoC) Activity (cont)

- The objectives for PoC activity are to:
  - introduce the public to the latest technology enhancements Automatic Threat Recognition(ATR);
  - optimise procedures associated with technology;
  - assist airports establish operational configuration of screening technologies;
  - evaluate the effect on passenger waiting times; and
  - inform the communications strategy for the rollout.



### Technology

- L-3 ProVision millimetre wave body scanner.
- Non-ionising radio frequency energy
- Emits energy levels thousands of times lower than an average mobile phone call.



A screenshot of the type of L-3 ProVision that will be used at the airport.  
The image is a black and white scan of a person's body.

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### Privacy Enhancements

- Automatic Threat Recognition (ATR)
- This means:
  - no naked images
  - only a generic human or "stick figure" image.



A screenshot of the type of L-3 ProVision that will be used at the airport.  
The image is a black and white scan of a person's body, showing a stick figure representation.

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### Resolution of Alarms

- Screening officers will be required to resolve any alarms in line with current screening arrangements
- Resolution methods may include:
  - a frisk search, explosive trace detection test, hand-held metal detector and/or a visual inspection
- For sensitive areas
  - Screening officers will not interfere with a passenger's medical or health aids
  - Current arrangements for special circumstances screening still apply
  - Passengers can always ask for a private screening

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### Implementation

- Introduced from late 2011
- Australia's eight international gateway airports:
  - Adelaide, Brisbane, Cairns, Darwin, Gold Coast, Melbourne, Perth and Sydney
- Selection of passengers is anticipated to be random and continuous

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### Demonstration

- Please wear your Visitors Identification Pass at all times
- You will be escorted as a group to the screening area for a demonstration of the body scanner
- No photography is permitted
- On completion of the demonstration, we will return here for a Q&A session

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### Questions?

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## Privacy Impact assessment

- A PIA is a method for determining privacy impact issues associated with the collection, use and disclosure of personal information
- This PIA addresses privacy issues associated with the introduction of body scanners
- A PIA is not compulsory but it is good public policy

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## PIA (cont) - Process

- Roundtable - September 2010
- Stakeholders were consulted on a range of issues such as:
  - technology and operational issues;
  - images of body features;
  - storage and transmission;
  - people with disabilities; and
  - persons carrying medical equipment.

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## PIA (cont)

- Office of the Australian Information Commissioner (OAIC):
  - provided advice on the development of the PIA; and
  - extensive feed back and discussion with OAIC

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## Key Outcomes

- Collection of Information:
  - Requirement for Automatic Threat Recognition ATR Software
  - The image produced by the body scanner does not identify individuals
  - No storage and transmission of data
- POC resolution methods are consistent with current requirements
- Training of screening officers has a strong focus on:
  - customer service; and
  - dignity and respect of passengers
- Aviation Security Screening Forum

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## Where to from here

- The PIA is open for public comment throughout the PoC and comments are sought by 30 September 2011
  - Comments on the PIA can be sent to [pia@infrastructure.gov.au](mailto:pia@infrastructure.gov.au)
  - After all comments are received a final PIA is expected to be released in early November 2011
- Second privacy round table is scheduled in Sydney for 21 September 2011

Australian Government  
Department of Infrastructure and Transport

- Thank you for visiting today
- For further queries please email:
  - [bodyscan@infrastructure.gov.au](mailto:bodyscan@infrastructure.gov.au)
  - or
  - [pia@infrastructure.gov.au](mailto:pia@infrastructure.gov.au)

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