

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

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