

28 September 2010

Mr George Thomas
A/General Manager, Supply Chain & Screening Branch
Office of Transport Security
George.Thomas@infrastructure.gov.au

cc. Mr Andrew Solomon
A/g Assistant Commissioner, Operations
Office of the Australian Privacy Commissioner
Andrew.Solomon@privacy.gov.au

Dear Mr Thomas

Re: Body Scanners

The signatories to this letter are the Chairs of the country's primary public interest organisations concerned with civil liberties and privacy.

We refer to our previous correspondence with the Minister on this matter.

We note that a Roundtable was held at the Office of the Privacy Commissioner in Sydney, on Wednesday 22 September.

Two of the five signatories were able to participate, and have reported to the other three that the event was of value in several ways. These included the presence of a significant number of staff from the Department, appreciation by OTS staff of the concerns of various segments of the public and of the complexities and subtleties of those concerns, and your unequivocal statement that a PIA will be performed.

The positive aspects of the Roundtable would be undermined, however, if the PIA process were to be undertaken without the ongoing involvement of the interest groups.

We accordingly attach an outline of the key characteristics of a PIA process that we submit will ensure that your Office gains a clear understanding of the concerns of civil society, and reflects that in decisions made about the project.

We request your response to these proposals.

Thank you for your consideration.

Yours sincerely

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Body Scanners in International Airports

Key Aspects of an Effective PIA Process

Clarity about the Process and Its Purposes

Civil society needs:

- information about how the PIA will be conducted
- information about the opportunities that advocacy groups will have to learn about, consider, and provide input concerning, the emergent proposals
- clarity that the outcomes of the PIA process will be reflected in decisions about the project

Consultation as Part of the PIA Process

Agencies gain most from PIAs when they engage with the relevant representatives of and advocates for the interests of civil society. A best practice guide dealing with the specifics of consultation is published by the UK Information Commissioner's Office, at pp. 32-38 of: http://www.ico.gov.uk/upload/documents/pia_handbook_html_v2/files/PIAhandbookV2.pdf

In this case, the cluster of NGOs brought together by the OAPC on behalf of OTS provide a good cross-section of both the general interests (civil rights and privacy) and the specific-segment interests (including the sight-impaired, the mobility-impaired, trans-gender and inter-gender groups, youth and two religions).

The best interests of the Office and civil society alike are served by utilising this now-established cluster as the Consultative Group for the PIA to be conducted by OTS.

Background Information on the Project

Effective consultation processes depend on:

- sufficient information being provided to the PIA Consultation Group
- in writing, and
- sufficiently long in advance of each interactive session with OTS staff

Where options exist (which it is understood may remain the case for some time yet), sufficient information is needed about each of the options.

Appendix 1 contains an outline of the information needed to support effective consultation. Appendix 2 identifies issues that have been surfaced by the discussions to date.

Publication of the Outcomes

A PIA Report needs be published, at least to the participating public interest groups, which reflects:

- the information provided to them
- the analysis undertaken
- the submissions made, and
- the conclusions reached about privacy issues, and avoidance and mitigation measures.

Governance

If the project proceeds, measures are needed to ensure that the design, implementation and operation reflect the outcomes of the PIA process, and the undertakings provided. To be credible to the civil society participants, it is necessary that those measures be transparent.

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Appendix 1: Information Needs

The 2008 PIA Report

Reference was made to a PIA having been previously conducted. It appears that involvement of civil liberty and privacy organisations during that process was very limited.

Although the specifics may no longer be directly relevant, the PIA Report has clearly influenced thinking on the matter, and it will therefore be valuable input to the process.

A Sufficient Description of the Proposal

- The technology/ies under consideration, including:
 - features, including:
 - radiation characteristics
 - data forms
 - display forms (image; and 'stick-figure'/'generic image' with anomaly indications)
 - variants and options
 - limitations (e.g. body cavities, liquids, body suits)
- The procedures whereby the technology/ies would be applied, including variants. It is understood that these may be referred to within OTS as methods and techniques, and that they are under discussion in a parallel forum involving authorised screening authorities
- Exception-handling and criteria for determining exceptions
- The scope for selective usage, such as specific destinations, alert-level, targeted individuals e.g. based on risk-profiles, 'random and continuous', etc.
- The budget available (half of \$28.5 million?)
- Physical layouts, options and constraints
- Data format and display format options
- Staffing aspects such as training, controls, sanctions and enforcement mechanisms
- Data storage, data retention and data destruction options
- Concomitant changes to existing technologies and procedures (e.g. metal detection, chemical residue detection, frisk/pat-down)

Threat Management

- The threat model (e.g. non-metallic/low-metallic objects, secreted close to the body). It is essential that the threat be understood, to enable judgement of justification and proportionality
- How the proposal addresses the relevant threat(s)
- The effectiveness of the technology and procedures in practice, especially in the case of a determined adversary
- Test designs and results – by independent laboratories, not suppliers or pre-committed users

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Appendix 2: Impact Management

- **Issues Register:**
 - health
 - human dignity
 - privacy of the person
 - visibility of body-parts / modesty / standards of various religions
 - privacy of personal behaviour
 - breach of freedom of movement through 'no scan, no fly' policy
 - constraint on freedom of movement for some categories of people
 - privacy of personal data
 - display of a stripped image
 - forced disclosure of sensitive facts (such as a stoma, pregnancy)
 - the possibility of image data capture, storage, retention and disclosure
 - discrimination against particular categories of people
 - compliance with rights, laws and Standards for the disabled
- **Special Categories of People**, including:
 - children
 - adolescents
 - pregnant women
 - inter-gender, trans-gender and uni-sex people, who do not fit the conventional male/female dichotomy
 - people with superficial prostheses, especially non-obvious prostheses such as stomas, urinary bags and genitalia
 - people with deformities, such as additional fingers or toes
 - the sight-impaired
 - the mobility-impaired
 - the wheelchair-dependent
 - the mentally-impaired
 - the mentally ill
 - people who can't raise their arms above their heads
 - people whose religious beliefs place great stress on modesty, especially Muslims
- **Measures**
 - avoidance and mitigation measures for each negative impact
 - controls over technology, procedures, staff and contractors
 - controls over data collection, use, disclosure, retention
 - controls over function creep
 - criminal offences for breaches by staff and contractors
 - enforcement
 - governance, including community participation in the oversight processes, to ensure that the controls are established and sustained
 - complaints-handling, investigation and resolution, and resulting action, by an independent body with sufficient scope, resources, and powers