

Questions on Notice to the Attorney-General's Department

Privacy Amendment (Re-identification Offence) Bill

1. In relation to the retrospective application of this bill, the Committee has considered the information provided in the Explanatory Memorandum, the second reading speech, the Attorney-General's response to the Scrutiny of Bills Committee, and the Attorney-General's Department's submission to the Bill; alongside concerns raised by the Scrutiny of Bills Committee, Joint Committee on Human Rights, and submissions to this bill. Can the Attorney-General's Department provide any further information that would assist to explain the policy rationale of the offences applying retrospectively, rather than prospectively?

Further to the information provided in the documents above, retrospective application was deemed necessary due to the fact that some previously published Government data, though now withdrawn from publication, may be vulnerable to re-identification in the hands of entities that have already obtained copies of the data. Retrospective application is intended to deter such entities from attempting to re-identify vulnerable data they may possess while Parliament considers the Bill.

2. What is the policy rationale for introducing criminal offences to the *Privacy Act 1988*, which has traditionally been an area which focuses on investigation and the imposition of civil penalties?

The department notes that the Privacy Act does contain some criminal offences. For example, in the credit reporting context there are offences for the disclosure of false or misleading credit reporting information by credit reporting bodies (section 20P) and credit providers (section 21R). The Act also provides for imprisonment in limited circumstances. For example, failure to attend a conference when directed to by the Information Commissioner (section 46).

As explained in the department's submission, de-identification of data is not without risk as it is not possible to provide an absolute guarantee that de-identified information could never be re-identified. The Government needs to balance this risk against the public benefit that the release of de-identified data presents. Accordingly, the Bill provides for re-identification offences at sections 16D and 16E as they are an appropriate mechanism to deter entities from doing considerable harm by re-identifying and/or disclosing re-identified personal information.

3. Has there been consideration as to whether the exemption provision in proposed paragraph 16D(3)(a) should be extended to sub-contractors? Please explain the policy rationale for not including sub-contractors into the exemption in paragraph 16D(3)(a).

Sub-contractors are already captured in the definition of 'contracted service provider' at section 6 of the Privacy Act. Sub-contractors will therefore be captured by the exemption.