

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Program: 1.4 Justice Services

Question No. SBE16/122

Senator Fawcett asked the following question at the hearing on 12 December 2016:

Senator FAWCETT: Mr Moriatis, could I ask you or the Attorney—whoever would like to take the question. The civil law unit reidentification offence bill was passed recently. I had a few people query the retrospectivity of that. Could you give us an outline of the purpose of the bill and why the retrospectivity was important?

Mr I Anderson: Senator, the person who is the best person to speak about that, the SES officer in charge of the Civil Law Unit, is now in another committee, which is looking at section 18C of the Racial Discrimination Act.

CHAIR: I am sorry, Mr Anderson. I am having trouble hearing you. Could you repeat that?

Mr I Anderson: The officer who would be best placed to answer in any detail about that bill is actually now before another committee which is this afternoon looking at section 18C of the Racial Discrimination Act.

Senator FAWCETT: We can put that on notice, then, and perhaps you could get back to us with an answer on those two.

Mr I Anderson: Certainly.

Senator FAWCETT: That would be great....

The answer to the honourable senator's question is as follows:

The Attorney-General introduced the Privacy Amendment (Re-identification Offence) Bill 2016 in the Senate on 12 October 2016 but it is yet to pass. The Bill is part of the Government's endeavours to ensure the considerable benefits associated with the release of public sector datasets (for example, increasing the evidence base available to policy makers) can be realised while protecting individual privacy. The Bill will amend the *Privacy Act 1988* to introduce prohibitions on the intentional re-identification of de-identified information in public datasets and the intentional disclosure of such re-identified information. The Bill also introduces an obligation to notify the agency responsible for the dataset of any re-identification and to comply with directions from that agency.

The offences of intentionally re-identifying de-identified information and intentionally disclosing re-identified information operate retrospectively from 29 September 2016, which is the day after the Attorney-General announced the Government's intention to introduce the Bill. The *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* provides that offences may be made retrospective where there is a 'strong need to address a gap in existing offences, and moral culpability of those involved means there is no substantive injustice in retrospectivity'. The Government considers that the narrowly prescribed offences meet these requirements.

The recently identified vulnerability in the Medicare and Pharmaceutical Benefits dataset alerted the Government to a gap in privacy legislation, which the Government sought to remedy immediately by introducing the Bill. Applying the offences to conduct occurring from the day after the Attorney-General announced the Government's intention to introduce the Bill provides a strong disincentive to entities who, upon hearing of the gap in the legislation and the

Government's intention, may have been tempted to attempt re-identification while Parliament considers the Bill.

Further detail is available in the department's submission to the inquiry into the Bill by the Senate Legal and Constitutional Affairs Legislation Committee. The submission is available [on the Committee's website](#).