

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

Group: 3

Program: 1.7

Question No. BE15/009

Senator Wright asked the following question at the hearing on 27 and 28 May 2015:

Senator WRIGHT: Let's go back to the first one that I mentioned: aspects of the foreign fighters bill, which was the Attorney-General's Department's responsibility. I am interested to know, first of all, whether a PIA was in fact conducted.

Ms Lowe: That particular bill was a whole-of-government effort that captured amendments to a whole range of portfolio legislation. The provisions that you are talking about are matters that are the responsibility of the immigration department and Customs. What we did not do, however, was to conduct a privacy impact assessment on the bill as a whole. Different policy processes were undertaken, depending on which particular provisions were being amended. As to the process that was undertaken by the Department of Immigration and Border Protection, that would be a matter best put to them—about their process of developing their provisions. But there was not a PIA done on the bill as a whole.

Senator WRIGHT: Was there any PIA done on the aspects of the bill that were within the responsibility of the Attorney-General's Department?

Ms Lowe: No.

Senator WRIGHT: It sounds to me like no PIA was started at all, but I would need to confirm that I suppose?

Ms Lowe: I think you would need to confirm that.

Senator WRIGHT: In which case I have missed the boat for these estimates, I think. I might have to ask if that can be taken on notice. Can that be forwarded to them, please?

Ms Lowe: Yes.

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

In its *Advisory report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014* (October 2014), the Parliamentary Joint Committee on Intelligence and Security noted that the Privacy Commissioner submitted an overview of the interaction between the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 and the *Privacy Act 1988*. The Privacy Commissioner submitted that he did not have any concerns with Schedules 5, 6 and 7 of the Bill.

The PJCIS made two recommendations in relation to Privacy Impact Assessments:

- Recommendation 34 - The Committee recommends that the Privacy Commissioner undertake a Privacy Impact Assessment of the data collected and stored by the Department of Immigration and Border Protections and Customs, and report to the Attorney-General by 30 June 2015, with specific regard to the collection, storage, sharing and use of that data by the government agencies within the remit of the Commissioner's jurisdiction.

The Government's response supported Recommendation 34. The Government noted in its response to the recommendation that it will ensure a PIA is undertaken and provided to the Attorney-General in relation to data collected and stored by the Department of Immigration and Border Protection and Customs in accordance with schedules 5-7 of the Bill. The assessment will have regard to the collection, storage, sharing and use of that data by the government agencies within the remit of the Commissioner's jurisdiction.

- Recommendation 36 - The Committee recommends the Government consult with the Privacy Commissioner and conduct a privacy impact statement prior to proposing any future legislative amendments which would authorise the collection of additional biometric data such as fingerprints and iris scans.

The Government's response supported Recommendation 36, noting that if the Government proposes future legislative amendments to authorise collection of additional biometric data by the Department of Immigration and Border Protection, a PIA will be conducted.

The Department of Immigration and Border Protection (DIBP) worked closely with the Attorney-General's Department during the drafting of legislation amendments to the *Migration Act 1958* under the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (Foreign Fighters Act). Schedules 5, 6 and 7 of the Foreign Fighters Act related to strengthening border protection. DIBP advise that they have completed a PIA on Schedule 5, 'Identifying persons in Immigration Clearance'. The PIA has been provided to the Office of the Australian Information Commissioner (OAIC) and incorporates feedback received from the OAIC during drafting.

DIBP did not complete a PIA on Schedule 6, 'Mandatory Outward Advance Passenger Processing', as no additional personal information is collected to that already collected from existing sources on departure.

DIBP is scheduled to complete a PIA in 2015/16 on the privacy implications of the potential collection of biometric data as part of future changes to the Advanced Passenger Processing system.

DIBP is currently finalising a draft PIA on Schedule 7, 'Seizing bogus documents', and will also provide this to the OAIC. A draft was provided to OAIC and they have provided comments. A meeting is to be scheduled between DIBP and OAIC to discuss the OAIC's comments. A date has yet to be confirmed.

The OAIC will provide a report to the Attorney-General outlining any PIAs and/or other risk assessment activities that have been undertaken by DIBP in relation to these schedules and the OAIC's views on these.