

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

**Group: 3**

**Program: 1.7**

**Question No. BE15/010**

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

Senator WRIGHT: What is your understanding of who has responsibility to determine, in relation to a piece of legislation, whether a PIA should be conducted or not?

Ms K Jones: Broadly, in terms of any recommendations that come out of parliamentary committee inquiries—

Senator WRIGHT: I am not talking about a parliamentary committee. I need to be very clear: I am talking the Information Commissioner guidelines.

Ms K Jones: It would be a matter for the lead agency to be consulting on. If another department had responsibility for the relevant provisions, in the general course of consultation that would be a matter of discussion. But in terms of specific responsibility for directing or taking up Office of the Australian Information Commissioner recommendations, it is ultimately a matter for the department to which it is directed.

Senator WRIGHT: So, in this case, was that general discussion had by the Attorney-General's Department with the immigration department?

Ms K Jones: I need to take that on notice. In the course of developing the legislation and going through the parliamentary inquiries, working with the Office of the Australian Information Commissioner, we engaged with a whole range of relevant agencies. I would need to take that on notice for you.

Senator WRIGHT: And what the process was, if there was any process. Thank you. Those are my questions, thank you.

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

The Department's privacy law and policy section is consulted on policy changes and legislative amendments which provide for collection, storage, use or disclosure of personal information. In particular, the Office of the Parliamentary Counsel has internal guidance to refer privacy policy issues to the Department. The purpose of this consultation process is to assess the impact of any proposed changes on obligations under the *Privacy Act 1988*, not to provide legal advice. The *Privacy Act* regulates the handling of personal information about individuals and sets out the Australian Privacy Principles which govern how Australian Government agencies and certain private sector organisations handle personal information.

The Department regularly consults with the OAIC, particularly in relation to legislative proposals referred from OPC, and encourages agencies to consult directly with the OAIC as well.

Depending on the nature of the proposal and how much impact the Department considers the proposal is likely to have on privacy, the Department or the OAIC may suggest that instructing agencies consider undertaking a privacy impact assessment (PIA). It is then a decision for instructing agencies whether to undertake a PIA.

The Department or the OAIC also regularly brings the OAIC's APP Guidelines <http://www.oaic.gov.au/privacy/applying-privacy-law/app-guidelines/> to the attention of instructing agencies. It is then a matter for instructing agencies whether to make any changes as a result of considering the APP Guidelines.

#### *Consultation with DIBP on the Foreign Fighters Bill*

The Department's privacy law and policy section was taken into consideration in the preparation of the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014.

#### *Privacy Impact Assessments*

Under Part IV of the Privacy Act, the OAIC has statutory functions including monitoring compliance with the Privacy Act. The OAIC also has the function of making guidelines for the avoidance of acts or practices that may or might be interferences with the privacy of individuals, or which may otherwise have any adverse effects on the privacy of individuals.

The OAIC has developed guidelines regarding Privacy Impact Assessments, available at <http://www.oaic.gov.au/privacy/privacy-resources/privacy-guides/guide-to-undertaking-privacy-impact-assessments>. These Guidelines suggest that Australian Government agencies and other APP entities consider whether to undertake a PIA for any project that will involve the handling of personal information, such as policy proposals, new or amended legislation or changes to how information is stored. In addition to compliance with the Privacy Act's principles, a PIA also considers other privacy-related legislative requirements such as secrecy provisions, industry codes or state legislation, as well as more general public or private sector obligations. It will also be necessary for agencies to undertake a PIA if directed to do so by the OAIC. Under the Privacy Act, the OAIC can direct an agency to provide a PIA about an activity or function involving the handling of individuals' personal information.