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

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Question No. SBE14/066

Senator McKenzie asked the following question at the hearing on 11 December 2014:

Mr Minogue: This is probably something the Privacy Commissioner would be better able to answer, but in any event, the Privacy Act sets up the regime for consumers to make complaints about the use of their privacy. The Privacy Commissioner has a range of statutory powers but the first option is to conciliate those, to work with the service provider and the consumer. Failing an acceptable outcome, the Privacy Commissioner has regulatory powers including making of determinations which then become enforceable by courts.

Senator McKENZIE: Are you aware of the debate currently in Europe about the right to delete?

Mr Minogue: Following the Spanish decision? I then have to say yes.

Senator McKENZIE: Have we done any sort of preliminary work around that issue?

Mr Minogue: Only very preliminary, in all honesty Senator. Certainly our privacy area is aware of it and the implications it might have for Australia. It is one that does not sit on all fours with our regime and of course there is—

Senator McKENZIE: Did you say 'on all fours'?

Mr Minogue: Yes, on all fours. The European legislation does not necessarily equate to ours. So some of the concepts the Spanish court took into consideration about the particular actions or processes that Google undertakes do not necessarily have a comparator in Australian legislation. There are, however, some similarities in relation to how the Privacy Act works, including the obligation for information holders to maintain accurate information and the capacity for people to access information that is held about them. Again, it can go into the machinery administered by the Privacy Commissioner about how issues or controversies are resolved. One of the issues that would be fundamental to any resolution in Australia is: is the information held in Australia?

Senator McKENZIE: Private data is flowing across borders. Do we have an understanding of what happens to that private data once it leaves our borders and what sort of confidence we can give citizens about the use of that data?

Mr Minogue: I think we do. I can only talk in general terms. In relation to credit related information in particular, that was a key feature of the 2012 reforms. A lot of effort was put into working with industry and consumer groups about how information relating to debt is handled and processed offshore. There are strong controls around that. More generally, I would have to take that on notice.

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

Commonwealth Government agencies and private sector organisations that are not otherwise exempt must comply with the Australian Privacy Principles (APPs) in the *Privacy Act 1988*. The APPs provide general rules that deal with the management, collection, use, disclosure, and handling of personal information. While APP 8 deals specifically with cross-border disclosures of personal information by entities, entities must ensure that they comply with all other relevant APPs, including APP 1 (which requires the entity's privacy policy to include whether it is likely any personal information will be disclosed to overseas recipients), APP 5 (which requires notice to be given to individuals, including of any cross-border disclosures), and APP 6 (which sets out the general circumstances in which personal information can be used or disclosed). The Privacy Act provides individuals with a right to complain to the Privacy Commissioner who can investigate the complaint and exercise the full range of powers available.