

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 16 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Strengthening Biometrics Bill 2015/001) - Parliamentary Inquiry - Law Council's Submission - Programme 1.1 Border Management (Administered)**

Senator Macdonald, Ian (L&CA) Asked:

CHAIR: Can I perhaps start by referring you to the Law Council's submission. I assume the department would have had a look through that. Probably on notice, I might ask you, if you would not mind, to briefly go through the recommendations of the Law Council and indicate—simply in a brief, dot point way—whether those recommendations were in fact considered in your drafting of the bill and if they were considered but not adopted, or if you think the Law Council is wrong in its understanding of those issues. Could you just do that. A lot of its recommendations seem to have some merit, but it requires a far better lawyer than I to work through that and compare it with the bill. Perhaps you could do that on notice. Perhaps now you would not mind giving us a broad response.

Ms Noble: Thank you. I might just make a few broad remarks around some of the testimony that I have just heard, just to correct what we thought was perhaps factually a little bit askew. Just starting with the issue that was discussed earlier about fingerprint collection of Australian citizens: the foreign fighters act, which was introduced at the end of last year, actually gave us the powers to collect fingerprints and indeed other biometrics of Australian citizens upon their arrival into Australia. The material difference between—

CHAIR: Sorry, on their arrival?

Ms Noble: Into Australia, so coming back home.

CHAIR: Coming home, yes.

*Answer:*

**(a) The Bill not be passed until Parliament and the Australian community have the opportunity to consider the results of the privacy impact statement on the Bill conducted by the Privacy Commissioner**

- The Department has completed a Privacy Impact Assessment (PIA) on the measures in the Bill. A copy will be provided to the Privacy Commissioner before the Parliament next sits.

**(b) The Bill should exhaustively define the purposes for which personal identifiers are collected, the types of personal identifiers that may be collected and how identifiers must be provided**

### Purposes of Collection

- The *Migration Act 1958* (the Migration Act) and the *Migration Regulations 1994* (the Regulations) currently include a complex framework for the collection of personal identifiers. Collection is limited to a defined number of specific circumstances as set out in sections 40, 46, 166, 170, 175, 188 and 192 of the Migration Act, which apply to collecting personal identifiers:
  - when a non-citizen applies for a visa;
  - at Australia's border when a person is arriving, travelling from port to port, or departing the country;
  - where an officer reasonably suspects a person is a non-citizen and requires them to present certain evidence of being a lawful non-citizen; and
  - when a non-citizen is detained as their visa is liable to cancellation under certain provisions in the Migration Act.
- The Bill creates a single broad power that will authorise the collection of personal identifiers in all of the above circumstances, as well as provide flexibility to authorise collecting personal identifiers in circumstances that may arise in the future.
- The Migration Act will continue to have a separate power to collect personal identifiers from non-citizens who are detained in immigration detention.

### Types of personal identifiers collected

- The Bill does not amend or add to the types of personal identifiers that the Department is currently authorised to collect as defined in section 5A(1) of the Migration Act. Contrary to the submission from the Law Council of Australia, neither the Bill nor the Migration Act permits prescribing blood and saliva samples as additional identifiers.
- The definition of personal identifiers currently includes a power at paragraph 5A(1)(g) to prescribe in the Regulations additional identifiers, other than an identifier the obtaining of which would involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*. Under subsection 5A(2) of the Migration Act, before the Governor-General makes regulations prescribing additional identifiers, the Minister must be satisfied, among other things, that the identifier is an image of, or a measurement or recording of, an external part of the body. The limitations in subsection 5A(2) of the Migration Act prevents the prescribing of blood or saliva samples as additional identifiers.
- There are no additional personal identifiers prescribed for the purposes of paragraph 5A(1)(g). Should additional personal identifiers be prescribed under this provision in future, the regulation would be subject to Parliamentary scrutiny

through the Senate Standing Committee on Regulations and Ordinances and the regulation disallowance process.

#### Method of collecting personal identifiers

- The Bill maintains the current 'identification test' procedures set out in the Migration Act.
- The Government wishes to ensure flexibility to be able to collect personal identifiers where the current 'identification test' procedures are impractical or not appropriate, such as at Australia's borders.
- Currently, the Migration Act allows for collecting personal identifiers by other means than an identification test (for example, subsections 40(5) and 46(2C)). The Bill will:
  - continue to permit the current arrangements that apply to collection of personal identifiers offshore, but in a much less complex manner;
  - provide for more flexibility onshore to collect personal identifiers, particularly at Australia's borders;
  - authorise the expansion of the current consent-based verification check procedure, which is already in use at Australia's borders in a limited way to verify identity and detect persons of concern.
- Policy guidance is issued to Departmental staff on collection of biometric data that complies with the Australian Privacy Principles (APPs). Appropriate training is provided to Departmental staff to ensure that the implementation of the policy is also compliant with the APPs.
- The Department is an APP entity and acts in compliance with the APPs.

#### **(c) The Bill should be amended so that one or more personal identifiers can only be required from an individual where the Minister or DIBP/ACBPS officer reasonably believes that the person has or will breach or potentially breach an Australian law or the individual may pose a threat to national security**

- The existing collection powers in the Migration Act and Regulations do not require an officer to reasonably believe that an individual has or will potentially breach an Australian law or pose a threat to national security before a requirement to provide personal identifiers is issued.
- The Law Council's recommendation would prevent the use of SmartGates, which permit the automated clearance of travellers (citizens and eligible non-citizens) at Australia's border.

- If adopted, the Law Council's recommendation would significantly put at risk the integrity of Australia's visa programme. The Department's offshore biometrics collection programme currently collects personal identifiers from visa applicants in 23 higher risk countries to support visa decision making. Personal identifiers are collected from visa applicants in these higher risk countries in order to conduct identity checks as well as criminal, security and immigration history checks prior to the grant of a visa.
- The Law Council's recommendation would also significantly impact on the Department's existing onshore biometrics collection programme, where biometrics are already collected from certain higher risk cohorts in certain circumstances.

**(d) The Privacy Commissioner should conduct a review as to whether current obligations to store biometric data securely are sufficient or whether increased security for the data is required**

- The Bill does not amend Part 4A of the Migration Act. Part 4A creates a series of rules and offences that govern the access, disclosure, modification and destruction of identifying information. These provisions will apply to personal identifiers collected under the new section 257A.
- The Department has conducted Privacy Impact Assessments (PIA) of its current management of personal identifiers, including its collection, access and storage measures.
- The Parliamentary Joint Committee on Intelligence and Security (PJCIS) Advisory Report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 recommended that the Privacy Commissioner finalise a Privacy Assessment by 30 June 2015, with specific regard to the collection, storage, sharing and use of biometric data (recommendation 34).
- The Privacy Assessment undertaken by the Privacy Commissioner will involve consideration of the current obligations to store biometric data securely.

**(e) The Bill be amended to require the DIBP to encrypt retained biometric information**

- The Bill does not amend current provisions in Part 4A of the Migration Act. The provisions that currently apply under Part 4A will continue to apply to personal identifiers collected under the new section 257A.
- The Department complies with the APPs, including APP 11 – security of personal information. This requires an APP entity that holds personal information to take such steps as are reasonable in the circumstances to protect the information:

- from misuse, interference and loss; and
- from unauthorised access, modification or disclosure.
- The Department uses encryption and authorisation procedures to ensure data protection, security, confidentiality and integrity of personal identifiers it collects. Facial images and fingerprints are stored on secure departmental databases that comply with:
  - the Protective Security Policy Framework, administered by the Attorney-General's Department, which imposes mandatory requirements on Government agencies to develop protective security policies, plans and procedures, and
  - the Australian Government Information Security Manual, which is produced by the Australian Signals Directorate (ASD), and sets out standards that govern the security of government ICT systems.

**(f) Current provisions allowing for the indefinite retention of certain identifying information should be removed**

- The Bill does not alter current provisions in the Act relating to the retention of personal identifiers.
- The Department retains personal identifiers in accordance with the Migration Act and the *Archives Act 1983* (the Archives Act). Facial images are retained indefinitely. Other personal identifiers are authorised to be retained for varying periods in accordance with the Migration Act and the Archives Act.

**(g) The Privacy Commissioner and the public should be consulted on appropriate periods of time for the retention of biometric data**

- The Bill does not amend the current framework relating to the retention of personal identifiers.
- The Department complies with existing provisions in the Migration Act and the Archives Act relating to retention periods for personal identifiers.

**(h) The Bill be amended to provide for additional security measures reflecting the sensitivity of the information collected and expressly address the requirement to notify the individual and Privacy Commissioner for data breach notification in the event of a breach.**

- The Bill does not amend the current security measures that apply to the handling of personal identifiers.
- Part 4A of the Migration Act creates a series of rules and offences that govern the access, disclosure, modification and destruction of identifying information

(including personal identifiers). These provisions will continue to apply to personal identifiers collected under the Bill.

- For example, section 336C of Part 4A of the Migration Act makes it an offence for a person to access identifying information if the person is not authorised to access it under section 336D. Under section 336E of the Migration Act, a person commits an offence if their conduct causes the disclosure of identifying information and the disclosure is not a permitted disclosure. The permitted disclosures are set out in subsection 336E(2).
- Section 336H of the Act makes it an offence for a person to cause any unauthorised impairment of the reliability of identifying information or the security of the storage of identifying information, or the operation of a system by which identifying information is stored.
- These provisions in Part 4A of the Act ensure the Department complies with the requirements of APP 11 in relation to identifying information. That is, those provisions protect such information from misuse, interference and loss, and from unauthorised modification, access and disclosure.
- In the event of the unauthorised disclosure of personal information, including identifying information, the Department's usual practice is to consult with the Privacy Commissioner in relation to the breach and comply with the recommendations of the Privacy Commissioner about notifying individuals of the breach.
- The Privacy Commissioner's recommendations may vary depending on the nature of the breach, and do not always require that individuals be notified of a breach in every instance.
- Information in the Department's privacy policy is available on the Department's publicly accessible website at:  
<http://www.immi.gov.au/About/foi/Pages/privacy.aspx>

**(i) The Migration Act should include a requirement to notify individuals affected as to how the biometric information may be handled and for what purposes it may be used**

- The Department currently provides individuals with comprehensive information through its Privacy Policy and other Departmental forms about matters such as the authority of the Department to collect personal identifiers, why personal identifiers can be collected, how they may be used, how they are protected and for what purposes they may be disclosed.

- The Privacy Commissioner's recommendations may vary depending on the nature of the breach, and do not always require that individuals be notified of a breach in every instance.
- The Department's privacy policy, which provides this information is available on its website –

<http://www.immi.gov.au/About/foi/Pages/privacy.aspx>

**(j) The DIBP should liaise with the United Nations High Commissioner for Refugees about the appropriate safeguards that could be employed to ensure that the protection of biometric information for asylum seekers and refugees under Australia's jurisdiction**

- The Migration Act currently contains provisions that limit the disclosure of personal identifiers of persons claiming protection. Section 336F of the Migration Act does not permit the disclosure of identifying information (which includes personal identifiers) to a foreign country or body of that country where the person is claiming protection, and the disclosure would be:
  - to a foreign country or body in respect of which the claim for protection is made; or
  - to a foreign country where the officer making the disclosure reasonably believes that the country or body to which the disclosure is made will disclose the information to a foreign country or body in respect of which the claim for protection is made.
- The Bill does not amend the current safeguards that apply to protections for asylum seekers and refugees in relation to disclosure of personal identifiers.

**(k) Specific guidelines should be implemented and published in relation to obtaining biometric information from children, to ensure that information is obtained in a respectful way, including that younger children are not separated from their parent, guardian or independent person unnecessarily**

- The Migration Act authorises the collection of personal identifiers in a dignified and respectful manner. Use of force or other form of coercion to collect personal identifiers under the new broad power is not authorised under amendments in the Bill.
- The Department will implement additional policy guidelines that provide guidance to officers on how the new power to collect personal identifiers is to be exercised. The policy guidance will cover how personal identifiers are to be collected from minors and it will ensure that this is done in a respectful way. The policy guidance will be publicly available through the LEGENDcom database.

**(l) The Explanatory Memorandum should be amended to clarify the number of children and the threat younger children may pose which justifies the amendments to no longer require the consent and presence of a parent, guardian or independent person and to change the age for consent from 15 to 5 years of age**

- Under the Migration Act currently the consent of a parent/guardian or independent person is not required when collecting personal identifiers from a minor or incapable person at Australia's border on arrival or departure, or in transit from port-to-port. Currently, a parent/ guardian or an independent person is required to be present during collection at the border.
- The Bill will assist to protect minors who may be at risk of trafficking or exploitation. The Bill will also assist to detect minors who may have been involved in terrorist activities or extreme violence. These reasons are already outlined in the Explanatory Memorandum and Statement of Compatibility with Human Rights for the Bill.
- It is anticipated that the Bill will impact on only a small number of minors in specific circumstances, including:
  - offshore to protect minors from people smugglers and traffickers;
  - at the border, on entry and departure to detect minors who may be a security concern; and
  - applicants from the Refugee and Humanitarian caseload.
- The Bill will not change the age of consent for minors. Rather the Bill removes the need for consent by a parent/guardian or independent person when personal identifiers are to be collected under the new section 257A.

**(m) An independent guardian should be appointed to an unaccompanied minor if biometric information is required to be taken from a minor under the Migration Act**

- The Bill removes the requirement for the presence of a parent/guardian or independent person during collection at the border to ensure that the collection of personal identifiers is not prevented by a parent/guardian/independent person refusing to be present during collection of personal identifiers. Such a refusal is contrary to the lawful purpose of collection, and the primary aim of the Bill, which is to implement measures to detect identity fraud and conduct appropriate security, law enforcement and immigration checks.
- Where an individual refuses to provide a personal identifier by way of an identification test, including a parent/guardian/independent person who refuses



on behalf of a minor or incapable person, the personal identifiers will not be collected.

- The Bill will authorise personal identifiers to be collected by way of a verification check, which involves a quick scan of 2-4 fingers in public. Conducting verification checks in public is consistent with other checks conducted in public at airports, such as airport security bag checks and the explosives trace detection test.

**(n) Guidance be provided in the Bill on what criteria need to be satisfied before a person is assessed as ‘incapable’ and that the Government consult with stakeholders in the disability and trauma sector on what criteria should be used**

- An ‘incapable person’ is defined in the Migration Act to mean: “a person who is incapable of understanding the general nature and effect of, and purposes of, a requirement to provide a personal identifier”. The Bill does not change this current definition.

**(o) Safeguards should be provided in the Bill to ensure adequate protection of all people affected by the legislation, including vulnerable groups. Policy guidance should then be issued to departmental officers as to how to ensure compliance with the legislative provisions.**

- Existing safeguards in the Migration Act will continue to provide robust protections for all people affected by amendments in the Bill, including vulnerable groups.
- The Bill will amend existing consent and presence requirements for minors and incapable persons to protect vulnerable individuals from trafficking and exploitation, and detect radicalised individuals who may seek to harm the Australian community.
- Amendments in the Bill about the method of collecting personal identifiers will provide needed flexibility to respond to new threats that have emerged in recent years, and new challenges that are anticipated to arise in the future.
- The existing identification test process is retained in the Act, but it is impractical and unnecessary to undertake the identification test process in all cases, especially when new technology provides a more effective and efficient way to conduct higher integrity identity and other security checks. The verification check process is less intrusive and quicker for individual travellers and less disruptive to the smooth operation of airports and seaports than either current manual checks of paper-based documents or collecting personal identifiers by way of an identification test.

- The robust framework in Part 4A of the Migration Act, which creates a series of rules and offences that govern the access, disclosure, modification and destruction of identifying information (including personal identifiers) are not amended by the Bill. These provisions will apply to personal identifiers collected under the new section 257A.
- Detailed policy guidance will be issued to Departmental officers setting out how to comply with the new legislative framework.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 16 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Strengthening Biometrics Bill 2015/002) - Parliamentary Inquiry - Children Carrying Drugs - Programme 1.1 Border Management (Administered)**

Senator Lines, Sue (L&CA) written:

Senator LINES: I think you said—and I do not want to put words in your mouth—'for some of the biometrics'. If there is some other kind of test you need to perform that you cannot do in this public open space, what happens then?

CHAIR: What happens, using Senator Lines's example, if you are searching a seven-year-old female to make sure they are not carrying drugs? How is that done?

Mrs Geddes: My understanding—and we would probably have to take that on notice and provide you the full detail—is that is done at the moment in the presence of a guardian or an independent person and it would be done with a female.

CHAIR: That is standard practice, as I understand it. Perhaps we can come back to Senator Lines's question—

Senator LINES: It still has not been answered because this bill is giving—

CHAIR: I think the answer was that they would take it on notice.

*Answer:*

- Searching a seven-year old for drugs.

A minor is a person under 18 years of age. Minors who travel through Australian international airports are required to present a valid passport, a passenger card, and boarding pass.

Airline representatives can escort unaccompanied minors through the inwards and outwards process points in Australian international airports. If an unaccompanied minor is suspected of carrying an item in contravention of a Commonwealth Act a frisk search may be conducted if consent is provided by a parent, guardian or representative (such as an airline staff member).

A frisk search must be carried out by an officer of the same sex as the unaccompanied minor.

If consent is not provided, or the unaccompanied minor chooses not to cooperate, a request for a search can be referred to a Justice of the Peace. A Justice of the Peace can provide consent for an external search to be conducted. An external search must be carried out by an officer of the same sex as the unaccompanied minor.

In November 2014, the introduction of the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* amended the *Customs Act 1901* (Customs Act) to enhance detention powers of Australian Customs and Border Protection Service (ACBPS) officers.

Under the new powers, ACBPS officers can detain a person who is known or believed to be a minor, however, they must inform the minor of the right for a parent or guardian to be notified of their detention. ACBPS officers must take all reasonable steps to inform the person of the reason for the minor's detention unless the minor is detained for national security purposes.

- Collecting personal identifiers from a seven year old.

The presence of a parent/guardian or an independent person is not required to collect a personal identifier from a minor when the Minister or an officer exercises their power under new section 257A of the Bill. Collecting fingerprints by way of a verification check from any traveller (adult or minor) is no more intrusive than other checks currently conducted in public, such as an airport security bag check or explosives trace detection test.

Under this new power in the Bill, collecting personal identifiers by way of an identification test without the presence of a parent/guardian or an independent person will be authorised. Detailed policy to departmental officers will be developed to cater for such a scenario.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 22 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Strengthening Biometrics Bill 2015/003) - Parliamentary Inquiry - Children Carrying Drugs - Programme 1.1 Border Management (Administered)**

Senator Lines, Sue (L&CA) written:

Senator LINES: So you have not developed the policy despite the bill saying the child has no independent person?

Ms Noble: That is right, because it is only in the proposal stage.

CHAIR: But you do have arrangements already in place at Border Protection if you are dealing with a seven-year-old female in any way?

Ms Noble: That is right.

Senator LINES: But there are rights currently of an independent oversight. You are taking that away—sorry, the government is taking that away—with this bill.

Ms Noble: We will need to take on notice your question, Senator Macdonald, of: what do we do today at the border if we are concerned that a seven-year-old girl is carrying drugs? That was your comparative question to Senator Lines.

CHAIR: And then perhaps you could add to that, would it not be an extension to that, to allay Senator Lines's fears, that the same arrangements and policy direction apply in the case of biometrics being required by a similar sort of—

*Answer:*

- Searching a seven-year old for drugs.

A minor is a person under 18 years of age. Minors who travel through Australian international airports are required to present a valid passport, a passenger card, and boarding pass.

Airline representatives can escort unaccompanied minors through the inwards and outwards process points in Australian international airports. If an unaccompanied minor is suspected of carrying an item in contravention of a Commonwealth Act a frisk search may be conducted if consent is provided by a parent, guardian or representative (such as an airline staff member).

A frisk search must be carried out by an officer of the same sex as the unaccompanied minor.

If consent is not provided, or the unaccompanied minor chooses not to cooperate, a request for a search can be referred to a Justice of the Peace. A Justice of the Peace

can provide consent for an external search to be conducted. An external search must be carried out by an officer of the same sex as the unaccompanied minor.

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Under the new powers, ACBPS officers can detain a person who is known or believed to be a minor, however, they must inform the minor of the right for a parent or guardian to be notified of their detention. ACBPS officers must take all reasonable steps to inform the person of the reason for the minor's detention unless the minor is detained for national security purposes.

- Collecting personal identifiers from a seven year old.

The presence of a parent/guardian or an independent person is not required to collect a personal identifier from a minor when the Minister or an officer exercises their power under new section 257A of the Bill. Collecting fingerprints by way of a verification check from any traveller (adult or minor) is no more intrusive than other checks currently conducted in public, such as an airport security bag check or explosives trace detection test.

Under this new power in the Bill, collecting personal identifiers by way of an identification test without the presence of a parent/guardian or an independent person will be authorised. Detailed policy to departmental officers will be developed to cater for such a scenario.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 16 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Strengthening Biometrics Bill 2015/004) - Parliamentary Inquiry - Migration Act. - Programme 1.1 Border Management (Administered)**

Senator Macdonald, Ian (L&CA) Asked:

Ms de Veau: The second matter to highlight, which we will do on notice as well, is that the Migration Act already has some very specific rules around how personal identifiers that are obtained need to be stored, managed and all those sorts of things. Those rules are not changing and will apply if the bill is passed.

CHAIR: Are they rules by regulation?

Ms de Veau: No, they are on the face of the act.

CHAIR: I would have assumed there would be some arrangement for length and means of storage of information. If you could clarify that. Are there any other matters you wanted to raise that have come before the committee so far today?

Ms Noble: No, thank you.

*Answer:*

Retention (and disposal) of identifying information (including personal identifiers) is set out in the *Migration Act 1958* and *Archives Act 1983* and as provided for by the relevant associated departmental Records Authority (RA).

The Department retains some personal identifiers indefinitely:

- a measurement of a person's height and weight
- a photograph or other image of a person's face and shoulders or
- a person's signature
- 

Other personal identifiers are destroyed as soon as minimum retention periods have elapsed.

Under the Archives Act it is an offence to destroy a Commonwealth record (including personal identifiers), unless the destruction is:

- required by law;
- done with the permission of the National Archives of Australia (NAA); or
- in accordance with a normal administrative practice, other than a practice of a Department which the NAA has notified the Department that it disapproves.

The NAA has issued a Records Authority for detention and migration management that bases retention periods on a range of factors, including accountability requirements, ongoing business need and community interest. In summary, retention periods vary between five years and indefinitely depending on factors such as whether the collection was onshore or overseas, and the purpose of collection (personal identifiers collected from an immigration detainee are retained indefinitely as permitted under section 336L of the Migration Act).

Robust systems are in place to ensure the security of any personal information the Department collects. The Department uses encryption and authorisation procedures to ensure data protection, security, confidentiality and integrity of its disclosure practices.

Facial images and fingerprints are stored on secure departmental databases that comply with:

- the Australian Government Protective Security Policy Framework, which imposes mandatory requirements on Government agencies to develop protective security policies, plans and procedures, and
- the Australian Government Information Security Manual, which is produced by the Australian Signals Directorate (ASD), and sets out standards that govern the security of government ICT systems.

The Department complies with the Australian Privacy Principles and other domestic law in how it manages the personal identifiers it collects.



## **QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 16 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Strengthening Biometrics Bill 2015/005) - Parliamentary Inquiry - Border Protection Officers Powers - Programme 1.1 Border Management (Administered)**

Senator Macdonald, Ian (L&CA) Asked:

CHAIR: This may be too broad a question but why did the draughtsmen simply not say we will give Border Protection officers the same powers that police currently have? Are they different? This is really a question to you, Ms Noble, rather than to Dr Walsh.

Ms Noble: We would have to take that on notice to make a direct comparison between the Crimes Act and the Migration Act, bearing in mind that this bill has no proposition to change either act in regard to those issues.

*Answer:*

Officers of the Department of Immigration and Border Protection exercise specific powers delegated under the Migration Act only. These powers are very limited compared to the general powers afforded to police officers to enforce Australia's criminal law.

The Bill will authorise Departmental officers to collect personal identifiers as people cross Australia's border, but also in other circumstances, such as offshore in refugee camps, at departmental offices in Australian capital cities, and during compliance visits in a broad range of rural and remote locations.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 16 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Strengthening Biometrics Bill 2015/006) - Parliamentary Inquiry - Agencies access to Biometric data - Programme 1.1 Border Management (Administered)**

Senator Lines, Sue (L&CA) Asked:

Senator LINES: So which agencies?

Ms de Veau: Generally you would find that law enforcement agencies would be enabled under these provisions, particularly if it is for a permitted disclosure.

Senator LINES: We have established law agencies. Who else?

Ms de Veau: Can I take that on notice just for a moment? I will continue to look at the act and get some specifics for you.

*Answer:*

The Bill amends the Migration Act only in relation to the collection of personal identifiers, and will not alter the current framework that applies to the disclosure of personal identifiers.

The Department's Privacy Notice, which is publicly available on its website, details the organisations personal information may be disclosed to, see <http://www.immi.gov.au/About/foi/Pages/privacy.aspx> . The form 'Your Personal Identifying Information' is also publicly available on the Department's website and details the purposes for which personal identifiers may be disclosed, see <http://www.immi.gov.au/forms/Documents/1243i.pdf> . Personal identifiers may be shared with some of the agencies listed in the Privacy Notice if it is for a disclosure that is permitted under the Migration Act.

The Migration Act authorises disclosure of personal identifiers for specific purposes, including:

- for data matching purposes - to Australian law enforcement agencies, CrimTrac, and the Five Country Conference partners (Canada, New Zealand, United Kingdom and United States);
- to prescribed investigatory bodies;;
- for the purpose of data-matching in order to inform foreign governments to make arrangements for removal of a non-citizen from Australia
- for the purpose of the extradition of a person to and from Australia;

- to specified foreign governments, law enforcement or border control bodies of foreign governments, or specified international organisations (eg., Interpol); and
- to obtain or give international assistance in criminal matters by the Attorney-General.

Under the Migration Act, it is an offence to disclose identifying information unless the disclosure is permitted under the Act. There will be no changes to disclosure practices under the Bill.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 16 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Strengthening Biometrics Bill 2015/007) - Parliamentary Inquiry - Access to Biometrics data - Programme 1.1 Border Management (Administered)**

Senator Lines, Sue (L&CA) Asked:

Senator LINES: Okay. If you have a private contractor doing the data collection, is there anything that prevents that data from being stored in a cloud, in China or somewhere else?

Ms de Veau: They would be bound by part 4A, which addresses all of those issues, just as anyone else would.

Senator LINES: It outlaws that?

Ms de Veau: Yes, it actually makes disclosure an offence. That is the starting proposition.

Senator LINES: I was not suggesting they would disclose it; I am saying storage.

Ms de Veau: I think we might take that on notice as well.

Senator LINES: So you are not sure whether data can be stored offshore.

Ms de Veau: I would not think it could be. I think it has to be stored—

Senator LINES: So you are not sure. I am asking about the current bill, let's be very clear about this, and I am happy for you to take it on notice.

Ms de Veau: And the current bill does not change the existing arrangements, so it is the existing arrangements that we would need to confirm.

Senator LINES: Alright, so you are not sure about the existing arrangements.

Ms Noble: We can take on notice to provide you more information about existing arrangements.

*Answer:*

The Department has a number of service delivery partners (SDPs) that collect personal identifiers from visa applicants who apply to travel to Australia in 23 higher risk countries. Contracts with these SDPs specify standards for the collection and handling of personal identifiers.

Personal identifiers collected by SDPs on behalf of the Department are transmitted to the Department in an encrypted form. Personal identifiers are deleted from SDP data holdings once receipt of the data by the Department is confirmed through an automated process. The transfer process from the SDP to the Department usually occurs within 24 hours of personal identifiers being collected.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 16 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Strengthening Biometrics Bill 2015/008) - Parliamentary Inquiry - Biometrics Testing - Programme 1.1 Border Management (Administered)**

Senator Lines, Sue (L&CA) Asked:

Senator LINES: It is in a contracting situation where you have contracted out that service. Okay.

There was a reference made to the biometric data you already are able to collect on noncitizens. Would one scenario be that that biometric testing is done in another country where a visa is applied for?

Ms Noble: Yes, that is right.

Senator LINES: So that data is then held by a doctor. I know you usually have a list of prescribed medical practitioners or whatever that you require. What happens to that data? What are the provisions around retaining that data if I go to a private doctor in the UK and do the biometric testing that is required by the visa?

Ms Noble: Again, to be very clear, the new bill makes no changes to what happens currently. I will have to take on notice to get to you what happens to the doctor doing that on our behalf for a visa application offshore.

*Answer:*

The Department has established a 'panel' of physicians/doctors in many countries to provide immigration medical examinations to visa applicants. Panel physicians do not collect personal identifiers. At the time of the medical examination, panel physicians take a photograph of the visa applicant for identity verification purposes. These photos are stored by the Department either electronically, or in the case of a paper-based visa application, photos are stored in hard copy format affixed to the visa application form.

As set out in response to QoN2015/007, the Department has entered into contracts with a number of service delivery partners (SDPs) to collect personal identifiers from visa applicants who apply to travel to Australia in 23 higher risk countries. SDPs destroy personal identifiers they have collected after the data has been transmitted to Australia for processing, which usually occurs within 24 hours after collection. The Department retains the personal identifiers as set out in response to QoN2015/004.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 16 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Strengthening Biometrics Bill 2015/009) - Parliamentary Inquiry - Access to Biometrics Data - Programme 1.1 Border Management (Administered)**

Senator Lines, Sue (L&CA) Asked:

Senator LINES: Sure. I am not sure if you were here when I asked the Law Council the question this morning. In the case of a child who is the subject of a custody dispute where you do some biometric testing, whatever that might be, the Law Council said that data on that child is stored indefinitely under the new bill. Is that correct?

Ms Noble: Again, the new bill makes no change to what we can do currently. We will need to get back to you on notice if there are under current law limitations on the time frame for which we can store that data. It is very complicated, but we can provide that to you

*Answer:*

Retention (and disposal) of identifying information (including personal identifiers) is set out in the *Migration Act 1958* and *Archives Act 1983* and as provided for by the relevant associated departmental Records Authority (RA).

The Department retains some personal identifiers indefinitely:

- a measurement of a person's height and weight
- a photograph or other image of a person's face and shoulders or
- a person's signature or
- 

Other personal identifiers are destroyed as soon as minimum retention periods have elapsed.

Under the Archives Act it is an offence to destroy a Commonwealth record (including personal identifiers), unless the destruction is:

- required by law; or
  - done with the permission of the National Archives of Australia (NAA); ; or
  - in accordance with a normal administrative practice, other than a practice of a Department which the NAA has notified the Department that it disapproves.
- .

The NAA has issued a Records Authority for detention and migration management that bases retention periods on a range of factors, including accountability requirements, ongoing business need and community interest. In summary, retention periods vary between five years and indefinitely depending on factors such as whether the collection was onshore or overseas, and the purpose of collection (personal identifiers collected from an immigration detainee are retained indefinitely as permitted under section 336L of the Migration Act).

Robust systems are in place to ensure the security of any personal information the Department collects. The Department uses encryption and authorisation procedures to ensure data protection, security, confidentiality and integrity of its disclosure practices.

Facial images and fingerprints are stored on secure departmental databases that comply with:

- the Australian Government Protective Security Policy Framework, which imposes mandatory requirements on Government agencies to develop protective security policies, plans and procedures, and
- the Australian Government Information Security Manual, which is produced by the Australian Signals Directorate (ASD), and sets out standards that govern the security of government ICT systems.

The Department complies with the Australian Privacy Principles and other domestic law in how it manages the personal identifiers it collects.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 16 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Strengthening Biometrics Bill 2015/010) - Parliamentary Inquiry – Biometrics Data - Programme 1.1 Border Management (Administered)**

Senator Lines, Sue (L&CA) Asked:

Ms de Veau: I am just trying to answer the question. It is only where there is a concern in relation to identity as a matter of process that you are going to want to seek further biometrics to verify. I do not know whether there would be necessarily an alert in the system—and I do not mean that in any derogatory way, but something in the system that says, when you scan your passport, 'We also have some other information.' I do not know whether it would work in that way. It may well. That does not necessarily mean, because we have some other information about you, we would then go to collect any further biometrics from you, particularly if we are satisfied as to your identity. These sections, the powers that generate and enliven it, are all about determining whether the person coming back into the country is a citizen or a noncitizen and, particularly, establishing identity. That is really the framework that we are working in. Even though the power might lay a framework to collect it, as a matter of practice you are not going to be collecting it in every circumstance.

Senator LINES: No, but I am asking about the circumstance where it was collected. The Law Council said this morning—and you have taken the question on notice—that this biometric data is held indefinitely. So I am asking you about if I am not a person of interest—I happen to be a child that was at the heart of a custody battle—but my biometrics were taken. As an adult, when I go to leave the country, I want to know what comes up at that point. Maybe you need to take that on notice if you are not able to answer that.

Ms Noble: We can absolutely take that on notice.

*Answer:*

Any alert that is placed in our border system on a minor, such as a child who is subject of a custody dispute, expires on the individual's 18<sup>th</sup> birthday, unless removed earlier.



## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 16 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Strengthening Biometrics Bill 2015/011) - Parliamentary Inquiry – Access to Biometrics Data - Programme 1.1 Border Management (Administered)**

Senator Lines, Sue (L&CA) Asked:

Senator LINES: I am unaware of that because I am young and I forget. I do not know. But it is there in my record. Can I make an investigation and ask if you hold that biometric material? If so, in the case of a custody battle, presumably once a child is 18 that is null and void. Can that biometric material then be destroyed?

Ms Noble: We are certainly happy to provide you with that level of detail, but I just want to re-emphasise again that that would be informing you about our current practices and processes at the border, which this bill does not propose to change.

*Answer:*

Australian Privacy Principle 12 (Access to personal information) stipulates that individuals may seek details about their personal information, including personal identifiers, held by the Department. That identifying information could be disclosed to the person in accordance with section 336E of the *Migration Act 1958*.

As set out in response to QoN 2015/004, if a child provided a personal identifier consisting of an image of their face and shoulders, that personal identifier could lawfully be retained by the Department indefinitely.

The Bill will amend the Migration Act only in relation to the collection of personal identifiers, and does not alter the current requirements relating to the retention periods as specified in the Migration Act and the *Archives Act 1983*.

Please refer to QoN 2015/004 for additional information.

## **QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 16 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Strengthening Biometrics Bill 2015/012) - Parliamentary Inquiry – Access to Biometrics Data - Programme 1.1 Border Management (Administered)**

Senator Lines, Sue (L&CA) Asked:

Senator LINES: All right. How come you know that but the other two officers do not?

Ms Noble: Linda is describing the action of the officer, but I think you are going to a much deeper question of not what is actually checked at the border, but what can the officer see in the deep system that might hold records for your lifetime?

Senator LINES: That is right.

Ms Noble: Yes, we will have to take that on notice.

Senator LINES: Thank you.

*Answer:*

Personal identifiers are retained by the Department for future use in order to verify identity and provide information that would be relevant to the grant of a future visa or travel to and from Australia.