

Attachment A

Senate Legal and Constitutional Legislation Committee Inquiry into the Australian Citizenship Bill 2005 and the Australian Citizenship (Transitionals and Consequential) Bill 2005

PUBLIC HEARING MONDAY, 6 FEBRUARY 2006

Question 1 - Ms Ellis - Department of Immigration and Multicultural Affairs (p.34. Proof Hansard)

Ms Ellis— ... The department is bound by the 11 information privacy principles that are set out in section 14 of the Privacy Act, and that, together with the provisions in the legislation, we regard as covering those aspects.

CHAIR—Where is there a cross-reference in this bill to the Privacy Act and the binding nature of the privacy principles?

Ms Ellis—There is not specific reference in that legislation, but we are nevertheless bound.

CHAIR—Would it be unreasonably onerous to insert it in the legislation, given the serious nature of the material which the bill concerns—particularly if you are going to talk biometrics as well?

Ms Ellis—That I something I would need to take on notice. I would need to consult with the drafters as to whether they regard that as redundant.

Question 2 - Ms Ellis - Department of Immigration and Multicultural Affairs (p.34. Proof Hansard)

Ms Ellis—Clause 43 talks about permitted disclosures, and there are references there that say, ‘for the purposes of this act’. Subclause (3) says that a disclosure is not a permitted disclosure if it is for the purposes of investigating an offence against an Australian law or prosecuting a person for such an offence.

CHAIR—So you do not envisage that it would be possible under, for example, clause 43(2)(e)—which refers to the exchange of identifying information ‘under an arrangement entered into with an agency of the Commonwealth, or with a state or territory or an agency of a state or territory’—for that to end up being the case, that personal identifiers might end up being released under that sort of clause to the tax office or to Centrelink, for example?

Ms Ellis—It is my understanding that that provision is, for example, to cover arrangements that we have with the passports office for when they are verifying that a person is a citizen and verifying identity for the purposes of the Passports Act and other similar provisions. I would have to take on notice any further provision that that would be, but we would regard (3) as, if you like, a rider on (2).

Question 3 - Ms Ellis - Department of Immigration and Multicultural Affairs (p.35. Proof Hansard)

CHAIR—Under clause 10(2)(c), it seems to me that material collected under section 42 can be accessed for other purposes which are not about identifying the individual but, under clause 10(2), are about ‘combating document and identity fraud in citizenship matters and

complementing'—whatever that means—'anti-people-smuggling measures'. What does that mean, and how is that within the privacy principles? The Privacy Commissioner certainly does not seem to think it is.

Question 4 - Ms Ellis - Department of Immigration and Multicultural Affairs (p.37. Proof Hansard)

Senator BARTLETT—This might be outside your expertise, but I would have thought that, if people were here on any sort of visa, were not citizens and had a negative ASIO security assessment, there would be some consideration given to cancelling their visa as well. Is that not automatic?

Ms Ellis—I would expect that that would be the case. However, the issue is one of timing. It is entirely possible that someone might have applied for citizenship and then come to notice and there is an assessment by ASIO. We still need to deal with the citizenship application, regardless of what might or might not happen in respect of the person's visa and any consideration as to cancellation of the visa.

Senator BARTLETT—Would you be able—perhaps on notice, because I appreciate it is not in the citizenship area—to clarify whether or not there would be an automatic flow-on to have a cancellation of a visa?

Ms Ellis—Yes.

Senator BARTLETT—A qualified assessment could stay in place for a very long time and I am curious about how it could impact over a long period of time if people were still in the country.

Question 5 - Ms Ellis - Department of Immigration and Multicultural Affairs (p.37. Proof Hansard)

Senator BARTLETT ... It is now clearly established and, I think, widely supported policy and law for Australia to be comfortable with dual or even triple citizenship. The question has come up a few times in other contexts, but do we know the total number of Australian citizens?

Ms Ellis—The total number of dual citizens?

Senator BARTLETT—Firstly, just Australian citizens.

Ms Ellis—I would need to take that on notice. I would need to go to the ABS statistics. It would be the latest data, which was the 2001 census because the department has statistics on those people who have become Australian citizens but of course does not have records on those people who have acquired citizenship automatically by birth in Australia unless they have approached the department and have sought evidence of their citizenship. Then there are those who may have lost their citizenship but have not come to notice for whatever reason. That would be a smaller subset but it is not a figure that we would be able to derive from our databases. We would rely on the ABS data.

Senator BARTLETT—With regard to how many of those are dual citizens, we do not have anything?

Ms Ellis—That is equally as difficult because there are those who we know are dual citizens but, for example, we do not keep track of the citizenship laws of a whole range of countries.

Additional Questions on Notice

6. Proposed paragraph 10(1)(f) and subsection 10(2) enable the executive to prescribe by regulation 'any other identifier' for the purposes of the Act. The future expansion of the types of personal identifiers will therefore not follow the parliamentary procedures applied to principle Acts.

- (i) How is this consistent with Commonwealth legislative policy that provisions which prima facie infringe personal rights and liberties should be dealt with by statute rather than regulation?

7. With reference to question 3 above, would the Department specifically detail how proposed section 10(c)(iii) constitutes the collection of personal information that is 'necessary' for or 'directly related' to the identification of a person for the purpose of establishing eligibility for or proof of citizenship as required by IPP 1?

8. Proposed paragraph 42(4)(h) empowers the Minister to authorise access to personal identifying information for the purpose of 'complying with Australian laws'. What is the justification for including paragraph 42(4)(h) in the Bill?

9. Similarly, proposed paragraph 43(2)(f) permits disclosure of personal identifying information for the purpose 'of a proceedings, before a court or tribunal, relating to the person to whom the identifying information in questions relates.' Paragraph 43 (2)(f) is not limited to proceedings relating to citizenship or migration matters.

- (i) What is the justification for including paragraph 43(2)(f) in the Bill?
- (ii) What type of proceeding does the Department envisage will be covered by paragraph 43(2)(f)?
- (iii) How does this conform to the requirements of Commonwealth Privacy Principles?

10. Proposed subsection 42 (5) prohibits access to personal identifying information for the purpose of investigating an offence against an Australian law, or prosecuting a person for such an offence. The prohibition only applies 'if the identifying information in questions relates to a personal identifier of a type prescribed by the regulations for the purposes of this section'. Subsection 43 (3) is expressed in similar terms and applies the same prohibition to the disclosure of personal identifying information.

- (i) Can the Department clarify how these provisions will operate? For example, is it correct that the scope of the prohibition depends on future regulations made for the purpose of these sections?
- (ii) If so, what personal identifiers will be included in the regulations for the purpose of these provisions?
- (iii) What is the definition of 'investigating an offence'?
- (iv) Do these provisions prevent personal identifying information being provided to CrimTrac?

11. The Bill envisages the ongoing retention of biometric information in a Departmental database.

- (i) Can the Department explain why it is necessary to retain such information once it has served the purpose of confirming the identity of a person seeking Australian citizenship?
- (ii) What rules apply to the destruction of personal identifying information?

12. The development and ongoing management of a biometrics database is a significant undertaking that will involve the collection and storage of sensitive information for many thousands of people.

- (i) What research or expert and public consultation has the Department engaged in to inform the development of its policy on the use of biometrics in the context of citizenship?
- (ii) What concrete steps will be taken to prevent misidentification of people?