

Committee recommends passage of data retention legislation

Parliament's Intelligence and Security committee has today presented its bipartisan report on the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014.

The Data Retention Bill will implement a mandatory telecommunications data retention regime. It contains measures to require telecommunications suppliers in Australia to retain certain data for two years, with web-browsing history and the contents of communications excluded. The Bill also seeks to limit the organisations able to access telecommunications and stored data to those with a demonstrated need and with appropriate internal procedures to protect privacy, and expands the role of the Commonwealth Ombudsman in overseeing the exercise of these powers.

The report recommends that the Bill be passed by the Parliament, and makes 38 further recommendations aimed at strengthening the regime and improving oversight and safeguards. These include:

- Including the proposed data set in the Bill rather than in regulations as proposed (Recommendation 2);
- Listing all criminal law enforcement agencies and enforcement agencies in legislation (Recommendation 17 and 21);
- Establishing emergency declaration powers, subject to safeguards, for

the Attorney-General to include items in the data set, or declare an additional agency able to access data (Recommendations 3, 17 and 21);

- Prohibiting civil litigants, with appropriate exceptions, from accessing telecommunications data being held solely in compliance with mandatory data retention requirements (Recommendation 23);
- Strengthening the safeguards around the use of telecommunications data for the purpose of determining the identity of a journalist's sources by requiring agencies to provide a copy to the Commonwealth Ombudsman or the Inspector-General of Intelligence and Security (IGIS) of any authorisation for access to such data. The Ombudsman or IGIS would then be required to notify the Committee as soon as practicable and provide a briefing accordingly (Recommendation 27);
- A separate review by this Committee of safeguards relating to the use of telecommunications data for the purpose of determining journalist's sources to be undertaken within three months (Recommendation 26);
- Additional funding for the Commonwealth Ombudsman commensurate with the Office's expanded oversight role (Recommendation 29); and
- Privacy and data security measures, including a mandatory breach notification scheme (Recommendations 35 to 38).

The Committee has recommended that the Government make a substantial contribution to the upfront capital costs incurred by service providers in implementing their data retention obligations. The Committee also recommended that, when designing funding arrangements, the Government ensure that an appropriate balance is achieved that accounts

for significant variations between the services, business models, size and financial positions of differing companies (Recommendation 16).

The Committee recommended maintaining the proposed two-year retention period specified in the Bill (Recommendation 9).

The Chair of the Committee, Mr Dan Tehan MP, said “I am extremely pleased to present this bipartisan report. The Committee has carefully considered the evidence presented on the necessity and proportionality of the proposed mandatory data retention regime, and concluded that it is necessary to support our national security and law enforcement capabilities.”

“At the same time, the Committee considers that appropriate limits, safeguards and oversight mechanisms must be in place”, Mr Tehan said.

In a recommendation with particular significance to Parliamentary oversight of the data retention regime, the Committee has recommended that it be enabled to look at operational matters in the limited area of authorisation of access to telecommunications data relating to ASIO and the AFP, consistent with the Committee’s remit. Mr Tehan commented that “This recommendation represents a significant step in the evolution of this Committee”.

The Committee received more than 200 written submissions from a broad range of sources and heard from 30 organisations over three days of public hearings, in addition to private evidence.

The Chair of the Committee Mr Dan Tehan MP wished to thank the Deputy

Chair, Mr Anthony Byrne MP, and all other Committee members for the true spirit of bipartisanship they showed in conducting this inquiry.

A full copy of the report is available on the Committee's website at:<http://www.aph.gov.au/pjcis>.

For media comment, please contact the Office of the Chair, Dan Tehan MP, on 6277 4393 (Parliament House) or 03 5572 1100 (Electorate).

For inquiry information, please contact the Committee Secretariat on 02 6277 2360 or email dataretention@aph.gov.au.

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