

Proposed mandatory data retention scheme requires further consideration

In its [submission](#) to the Parliamentary Joint Committee on Intelligence and Security (PJCIS), the Law Council of Australia has recommended the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014 (the Bill) be withdrawn, amended and released as exposure draft legislation for public consultation.

Law Council of Australia President, Mr Duncan McConnel, said the Law Council supports efforts to modernise Australia's telecommunications interception and access legislation to protect the community from serious crime and threats to national security but that the response must be necessary and proportionate.

"The Law Council acknowledges that the Bill seeks to pursue the legitimate objective of addressing and preventing serious crime and terrorism.

"However, there are some problems with the proposed mandatory telecommunications data scheme, which require further consideration.

"The scheme is not sufficiently defined to allow people to know the extent of interference with their privacy and for service providers to know their legal obligations.

"The Law Council also has concerns about the proportionality of the data retention regime, security of the retained data and the impact on privacy and confidential communications," Mr McConnel said.

The Law Council's submission contained a series of alternative recommendations to address four key issues if the Bill is to proceed: accessibility and legislative precision; proportionality; security of retained telecommunications data; and privileged and confidential communications.

"The data set and agencies which can access telecommunications data should be clearly defined, and that definition should be contained in the legislation, not regulation.

"Access to telecommunications data should be limited to agencies required to investigate serious indictable offences or specific threats to national security.

"A warrant obtained from an independent tribunal should also be required to access personal information to ensure it is only accessed where it is really necessary for the purpose of preventing or detecting serious crime or threats to national security.

"Emergencies, involving immediate risk to public health and safety, could be dealt with through a non-delegable Ministerial warrant as now occurs in other security-related legislation.

"There must also be specific protections for privileged and confidential information," Mr McConnel said.

"Client legal privilege and other forms of privilege have long been recognised as critical to the proper administration of justice and need to be adequately protected.

"The Law Council is of the view that data should only be required to be retained for the minimum time likely to meaningfully assist the investigation of significant criminal activity.

"Most jurisdictions around the world do not require data to be retained for as long as 2 years.

"The Law Council looks forward to assisting the PJCIS with its inquiry and will appear before the Committee on Friday 30, January 2015," Mr McConnel concluded.

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