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Communications Security Branch
Attorney-General's Department

By email: CommunicationsSecurity@ag.gov.au

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To Whom It May Concern

Re: Consultation on Access to Retained Data in Civil Proceedings

The National Association of Community Legal Centres (NACLC) welcomes the opportunity to make a submission to Attorney-General Department's consultation on access to retained data in civil proceedings.

NACLC is the peak body for all community legal centres (CLCs) in Australia. CLCs are independent, non-profit, community-based organisations that provide free and accessible legal and related services to disadvantaged members of the community, and to people with special needs or who are for other reasons vulnerable and at risk.

Summary

The purpose of the consultation is to determine whether regulations should be made under s 280 of the *Telecommunications Act 1997* (Cth) to allow access to data retained solely for the purposes of the mandatory data retention scheme in civil proceedings.

NACLC is concerned about the short and limited nature of consultation in relation to what is a potentially significant reform. As a result, if the Department is minded to extend the Scheme, NACLC suggests further and more detailed consultation in relation to specific exceptions and proposed safeguards and oversight is appropriate prior to making a final decision.

Overall, NACLC is concerned about the potential expansion of the mandatory data retention scheme and at this time opposes access to data held by service providers solely for the purpose of complying with the mandatory data retention scheme for the purposes of civil litigation.

Mandatory Data Retention Scheme

Briefly, and as expressed in the past, NACLC has serious concerns about the existence and operation of the mandatory data retention scheme. In particular, NACLC considers that the current scheme infringes upon the right of people in Australia to privacy and freedom of expression and lacks sufficient safeguards.

Expansion to Civil Litigation

In addition to the broad concerns about the Scheme outlined above, NACLC is concerned about the potential expansion of the scheme to civil litigation.

The purposes of the mandatory data retention scheme were clear and specific, relating to national security and law enforcement. Expansion to civil litigation goes well beyond those purposes and as a result potentially creates a dangerous precedent involving discussion about access to such data in an increasing number of circumstances.

It also creates additional risks and unintended consequences including in relation to:

- privacy
- possible implications on litigation time, expense and efficiency, and
- data insecurity and unauthorised use or misuse of data.

Family violence

NACLC is particularly concerned about the potential extension of the scheme to civil litigation in matters and circumstances involving family violence.

As recognised in a number of submissions in relation to the original Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014, telecommunications data including the time, location and recipient of communications provides detailed information about the whereabouts of an individual and their life. In circumstances where a person is experiencing family violence, the disclosure of such data could pose a significant safety risk. There is also a risk that access to such data may be used by perpetrators of family violence as another means of perpetrating systems abuse on victims.

In our view the risks of this occurring outweigh any potential benefit to people experiencing family that the expansion may result in.

As a result and in light of NACLC's broad concerns about the existence and nature of the mandatory data retention scheme, its very specific and limited purpose, and the family-violence related issues outlined above, NACLC opposes access to retained data in civil proceedings.

Conclusion

A number of individual CLCs have and intend to make submissions to the consultation and NACLC draws the Department's attention to those submissions, including from the Human Rights Law Centre, Financial Rights Legal Centre and Consumer Action.

Please feel free to contact me to discuss this submission, or if we can provide any further information.

Yours sincerely

Amanda Alford
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National Association of Community Legal Centres