

Introduction

The Bill and its referral

- 1.1 On 30 October 2014, the Minister for Communications, the Hon Malcolm Turnbull MP, introduced the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014 (the Bill) into the House of Representatives.
- 1.2 In his second reading speech, Minister Turnbull stated that the Bill is intended to ‘prevent the further degradation of the investigative capabilities of Australia's law enforcement and national security agencies’.¹
- 1.3 Minister Turnbull added that the Bill will ‘require companies providing telecommunications services in Australia, carriers and internet service providers to keep a limited, prescribed set of telecommunications data for two years’.²
- 1.4 Minister Turnbull also explained that:

This bill is critical to prevent the capabilities of Australia’s law enforcement and national security agencies being further degraded. It does not expand the range of telecommunications metadata which is currently being accessed by law enforcement

1 The Hon Malcom Turnbull MP, Minister for Communications, *House of Representatives Hansard*, 30 October 2014, p. 12560.

2 The Hon Malcom Turnbull MP, Minister for Communications, *House of Representatives Hansard*, 30 October 2014, p. 12562.

agencies. It simply ensures that metadata is retained for a period of two years.³

- 1.5 On 21 November 2014, the Attorney-General, Senator the Hon George Brandis, QC, wrote to the Committee to refer the provisions of the Bill for inquiry and to request it to report by 27 February 2015. He further requested that the Committee should, as far as possible, conduct its inquiry in public.
- 1.6 In the letter, the Attorney-General informed the Committee that the Bill follows the National Security Legislation Amendment Bill (No.1) 2014 and Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 as the Government's third tranche of legislation in response to the current national security threat.
- 1.7 The Attorney-General also provided the Committee with a draft data set outlining the specific types of telecommunications data that service providers would be required to retain. The Attorney-General indicated that it was his intention for the data set to be given effect by regulation at the time the Bill received Royal Assent. A copy of the draft data set is included at Appendix A to this report.

2012–13 Inquiry into potential reforms of Australia's national security legislation

- 1.8 The Committee previously examined a proposal for a mandatory data retention regime in the 43rd Parliament as part of its inquiry into potential reforms of Australia's national security legislation. The then Committee tabled its report before the Parliament on 24 June 2013.⁴ A copy of this report is available on the Committee's website at www.aph.gov.au/pjcis.
- 1.9 The 2013 report made several recommendations of relevance to the data retention regime, only some of which have been addressed in the current Bill. Many of the report's recommendations on other matters were addressed by the National Security Legislation Amendment Bill (No. 1) 2014, which the Committee reported on 17 September 2014. However, a number of recommendations in the 2013 report that are of relevance to the *Telecommunications (Interception and Access) Act 1979* (the TIA Act) are yet to be responded to by the Government.

3 The Hon Malcom Turnbull MP, Minister for Communications, *House of Representatives Hansard*, 30 October 2014, p. 12560.

4 Parliamentary Joint Committee on Intelligence and Security, *Report of the Inquiry into Potential Reforms of Australia's National Security Legislation*, Canberra, May 2013.

- 1.10 The Committee notes that the Senate Legal and Constitutional Affairs References Committee is currently undertaking a comprehensive inquiry examining revision of the TIA Act.
- 1.11 Without pre-empting the Senate Committee's conclusions, the Committee draws the Government's attention to the recommendations included in its 2013 report that have not yet been responded to (these recommendations are set out in Appendix B). The Committee recommends that the Government respond to those recommendations by 1 July 2015. The Committee notes that the Government response should not in any way delay debate of the Bill.

Recommendation 1

The Committee recommends that the Government provide a response to the outstanding recommendations from the Committee's 2013 *Report of the Inquiry into Potential Reforms of Australia's National Security Legislation* by 1 July 2015.

Inquiry objectives and scope

- 1.12 Through its current inquiry, the Committee carefully examined the overall appropriateness of the data retention regime proposed in the Bill and the draft data set. In doing so, the Committee weighed evidence provided by law enforcement and security agencies (both in public and private) that the continued availability of historical telecommunications data was critical for efforts to deal with the current national security environment and the ongoing threat posed by other serious criminal offences; against the financial implications and privacy and data security concerns associated with the proposal.
- 1.13 The Committee focused on ensuring the Bill incorporates adequate safeguards and accountability mechanisms for the proper application of the laws into the future.
- 1.14 At the time of the Bill's introduction into the Parliament, the formation of a joint government-industry Implementation Working Group (IWG) on data retention was announced. The IWG comprised senior representatives from both the telecommunications industry and Australian law enforcement and national security organisations. It was established to

discuss implementation, refinement of the draft data set and the cost of the scheme, in parallel with the Committee's inquiry.

- 1.15 On 16 December 2014, the Attorney-General provided the Committee with a copy of the IWG's first report.⁵ The report made 16 recommendations, including four suggesting changes to the draft data set, 11 suggesting additions to the supporting explanatory material, and one recommending changes to the procedure for any future amendments to the data set. The report also included an amended version of the draft data set reflecting the IWG's recommendations. In its submission to the Committee, the Attorney-General's Department explained that the IWG report was intended to assist the Committee's consideration of the proposed data set rather than provide a replacement. A copy of the IWG report's recommendations is included at Appendix C to this report.

Conduct of the inquiry

- 1.16 The Chair of the Committee, Mr Dan Tehan MP, announced the inquiry by media release on 27 November 2014 and invited submissions from interested members of the public. Written questions were also sent to selected law enforcement agencies and industry organisations. Submissions were requested by 19 January 2015.
- 1.17 The Committee received 204 submissions, 31 supplementary submissions and two exhibits from sources including individuals, government agencies, statutory authorities, telecommunications companies and industry, legal, community and civil liberties groups. A list of submissions and exhibits received by the Committee is at Appendix D.
- 1.18 The Committee held three public hearings on 17 December 2014, 29 January 2015 and 30 January 2015. The Committee also held one private hearing and received three private briefings from relevant agencies in Canberra, and visited the Australian Federal Police headquarters for further operational briefings. A list of hearings and the witnesses who appeared before the Committee is included at Appendix E.
- 1.19 Copies of submissions received and transcripts of public hearings can be accessed on the Committee's website at www.aph.gov.au/pjcis. Links to the Bill and the Explanatory Memorandum are also available on the Committee's website.

5 Data Retention Implementation Working Group (IWG), *Report 1 of the Data Retention Implementation Working Group*, December 2014.

- 1.20 This report, while making a number of recommendations to amend the Bill, is designed to inform the next stage of debate which will take place in the Senate and House of Representatives. In some instances the Committee has recommended amendments to the Bill. In other instances the Committee has determined that measures in the Bill require more detailed explanation and has requested that the Attorney-General provide additional information to assist debate of the Bill.
- 1.21 The provisions of the Bill were intensely debated and there were a variety of views expressed within the Committee. The Committee expects the Bill will be subject to continuing debate in the Parliament and the community.

Report structure

- 1.22 This report consists of seven chapters:
- This chapter sets out the context, scope and conduct of the inquiry,
 - Chapter 2 provides an overview of the Committee's consideration of the case for data retention. The chapter considers whether mandatory data retention can, in principle, be justified as a vital tool for national security and law enforcement investigations, and whether appropriate safeguards and oversight can be put in place. The chapter discusses the adequacy of the current regime, privacy and civil liberties concerns, and the security of the retained data.
 - Chapters 3 to 5 discuss the main issues raised in evidence to the inquiry in relation to Schedule 1 to the Bill, and the Committee's comments and recommendations in regard to those issues. These issues were:
 - ⇒ Chapter 3 - Whether the Government's proposed data set should be contained in primary legislation, as opposed to being made in regulations; and the scope of the Government's proposed data set.
 - ⇒ Chapter 4 - The proposed two-year retention period; and whether service providers should be required to destroy telecommunications data retained in accordance with proposed new Division 1 of Part 5-1A at the end of the retention-period.
 - ⇒ Chapter 5 - The range of service providers and services to which data retention obligations are proposed to apply; the implementation arrangements for the proposed data retention regime; and the cost of the proposed data retention scheme.

- Chapter 6 discusses the main issues raised in evidence to the inquiry in relation to Schedule 2 to the Bill, and the Committee's comments and recommendations in regard to those issues. Schedule 2 contains amendments in respect of restrictions on access to stored communications and telecommunications data.
- Chapter 7 examines specific safeguards and oversight mechanisms set out in the Bill. This includes consideration of the expanded role for the Commonwealth Ombudsman set out in Schedule 3 to the Bill, review mechanisms and reporting requirements. The chapter also examines matters raised in evidence that are outside the scope of the Bill, but which were addressed by the Committee in its 2012-13 inquiry, including a mandatory data breach notification scheme.