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Inquiry Secretary
Parliamentary Joint Committee on Intelligence and Security
Department of the House of Representatives
PO Box 6021 Parliament House Canberra ACT 2600
Via email to: pjcis@aph.gov.au

25 March 2020

Comments on the Committee's inquiry to review the mandatory data retention regime

Thank you for the Committee's approach to local government as part of its inquiry into the mandatory data retention regime prescribed by Part 5-1A of the *Telecommunications (Interception and Access) Act 1979* (TIA Act).

The Australian Local Government Association (ALGA) is the national voice of local government in Australia, representing 537 councils across the country. ALGA is a federation of State and Territory Local Government Associations.

Following the Committee's approach to ALGA regarding this inquiry, ALGA approached its Local Government Association of Queensland and Local Government New South Wales, to obtain feedback from those councils which have been listed by the Communications Alliance Ltd as entities which were accessing metadata under Section 280 of the *Telecommunications Act 1997*.

Three councils in NSW and one council in Queensland were listed in the Alliance's submission as accessing metadata "simply relying on powers in their own statutes to request data." Councils, the RSPCA, the Environmental Protection Authority and state coroners were named by the Alliance as "other examples of entities that have managed to subvert the intended scope of the legislation."

Evidence provided to the Committee from the Department of Home Affairs took the opposite view, contending that S280 allows exemption to the prohibition of disclosure of the data "if the disclosure is required or authorised under law".

According to the Department, "Requests under section 280(1)(b) are facilitated by industry obligations under section 313(3) of the Telco Act, which requires carriers and carriage service providers to give authorities "such help as is reasonably necessary". This is a licencing condition for all carriers."

"Many Commonwealth, state and territory organisations have their own 'notice to produce' powers, set out in their own enabling statute. As a result, these bodies can lawfully access telecommunications data under section 280, provided the request falls within their legislated powers", the Department said.

ALGA's view is that if metadata is required by council to pursue a breach of the law, council should be able to access the data to pursue criminal activities such as illegal dumping, removal of trees, traffic offences etc., if it is lawfully within their legislated powers.

A balance has to be struck between lawfully pursuing criminal activity using this data and the contention by the Communications Alliance that this is at “significant financial cost to industry”. As Canterbury-Bankstown Council states in its email below: “Whilst Council accepts that there may be some cost associated with Telcos responding to notices issued by Council, it is considered that such a cost would be minimal in the scheme of the Telecommunications industry given that metadata has to be retained in any event.”

“As good corporate citizens, Council submits that Telcos should not be averse to assisting in achieving those goals”.

In answer to the Committee’s specific questions in relation to frequency of data requests by councils, no data was accessed by either council during the 2018-19 financial year, nor the 2109-20 financial year.

In conclusion, ALGA supports the view of the Department of Home Affairs that an exemption to the prohibition of disclosure of the data is provided under S280 of the *Telecommunications Act 1997* “if the disclosure is required or authorised under law”. Councils should be able to pursue breaches of the law using those statutory powers.

Note 1: The Canterbury-Bankstown response (below) was written in collaboration with Fairfield Council, which holds the same views.

Note 2: Brisbane City Council has been contacted in relation to this issue, and has advised that it is not intending to make a formal response.

Note 3: The original email from Canterbury-Bankstown has been changed slightly to remove council names.

Yours sincerely,

Adrian Beresford-Wylie
Chief Executive

From: Canterbury-Bankstown City Council
Subject: RE: Access to Telecommunications Data by Councils

Canterbury-Bankstown Council administers numerous pieces of legislation that relate to the amenity of its local government area. Of particular note are the Environmental Planning and Assessment Act 1979 which relates to the regulation of building and development activities and the Protection of the Environment Operations Act 1997 which relates to the regulation of environmental pollution, including waste. Both Acts create criminal offences that carry substantial penalties, particularly where environmental damage ensues. Under section 9.22 of the EPA Act and section 192 of the POEO Act, Council has the power, in support of its investigative and enforcement

functions, to require from any entity the production of records. Metadata is a record for the purpose of those Acts.

Since its creation on 12 May 2016 (by amalgamation), Canterbury-Bankstown Council has not sought the production of metadata by any telecommunications carriers under the aforementioned compulsive powers although the former Bankstown Council may have had recourse to such powers. Having said that, Council is of the view that the ability to access metadata may, in certain cases, be of assistance in investigating and prosecuting offences, particularly where the offences relate to acts that have a significant impact on the environment. Metadata can be particularly helpful where there may be difficulty in connecting a suspect to a crime scene. This is none the more evident than when the illegal dumping of chemicals or waste (particularly the dumping of asbestos) occurs under the cover of darkness.

Whilst Council accepts that there may be some cost associated with Telcos responding to notices issued by Council, it is considered that such a cost would be minimal in the scheme of the Telecommunications industry given that metadata has to be retained in any event. Furthermore, it is a cost that assists in the achievement of deterring environmental offences that can have significant impacts on the environment and the amenity of the community. As good corporate citizens, Council submits that Telcos should not be averse to assisting in achieving those goals.

In specific answer to the questions asked:

- Under what state or territory law (such as a notice to produce law) is the data being accessed? Where data is to be accessed, it would be via compulsive powers in state environmental laws (such as s. 9.22 of the Environmental Planning and Assessment Act 1979 or section 192 of the Protection of the Environment Operations Act 1997)
- Why is the data being accessed? None has been accessed at the moment but in all likelihood it would be to assist in connecting a suspect to the scene of an offence.
- How often has the data been accessed during the 2018-19 financial year - Nil; and.
- Any data on data accessed during the current 2019-20 financial year. – Nil.

General
Manager

