



BSA | THE SOFTWARE ALLIANCE
PARLIAMENTARY JOINT COMMITTEE ON INTELLIGENCE AND SECURITY
(PJCIS)

CYBER SECURITY LEGISLATIVE PACKAGE 2024

31 OCTOBER 2024

[Tham Shen Hong, Senior Manager for Policy (APAC), on behalf of BSA | The Software Alliance]

Response to Question Taken on Notice

Question from Deputy Chair on the limited use obligation: “Are there any circumstances that you are concerned about where information provided under the limited use obligation could be used in legal proceedings?”

BSA’s position is that there are sufficient safeguards in the *Cyber Security Bill 2024 (Bill)* to ensure that information provided to the National Cyber Security Coordinator (**Coordinator**) are used in a restricted fashion. Consequently, we do not expect this information to be admissible in most legal proceedings.

The Bill states that:

- The information disclosed by an impacted entity in relation to a cyber security incident under subsection 35(2) may only be used or disclosed for the purposes of one or more of the following: (a) assisting the impacted entity, and other entities acting on behalf of the impacted entity, to respond to, mitigate, or resolve the cyber security incident; (b) a permitted cyber security purpose for a cyber security incident;¹
- The information cannot be used or disclosed for civil or regulatory action;²
- The information must be voluntarily provided by the impacted entity;³
- The information is not admissible in evidence against the impacted entity in: (a) criminal proceedings for an offence against a Commonwealth, State or Territory law; (b) civil proceedings for a contravention of a civil penalty provision of a Commonwealth, State, or Territory Law; (c) proceedings for a breach of any Commonwealth, State, or Territory law; and (d) proceedings before a tribunal of the Commonwealth, a State, or a territory.⁴

The Explanatory Memorandum to the Bill (**Explanatory Memo**) also states: “[i]nformation voluntarily provided under permitted cyber security purposes cannot be used by regulators for civil compliance action against the reporting entity” [emphasis added].⁵ This further clarifies how the relevant provisions governing the limited use obligation are to apply.

¹ Section 38(1) of the Bill.

² Section 38(2) of the Bill.

³ Sections 33-37 of the Bill.

⁴ Section 42 of the Bill.

⁵ Explanatory Memo to the Bill, p. 67.

For completeness, the Explanatory Memo states that “[t]he limited use obligation is not intended to be a ‘safe harbour’ to shield a reporting business entity from legal liability” and is also “not intended to restrict law enforcement or regulators from gathering this information through other passage using their own existing powers and using it for regulatory or law enforcement purposes against the entity.”⁶ As such, BSA understands that there will be circumstances where the relevant authorities have gathered the same information through other means, which would allow such information to be admitted as evidence in legal proceedings. Further, there are also specific exceptions set out in section 42(3) of the Bill which allow for the information provided under the limited use obligation to be admitted.

The Deputy Chair also asked if section 42 of the Bill could be interpreted to mean that the information provided to the Coordinator by the impacted entity could be used in civil proceedings where there is no civil penalty. Our view is that this is unlikely. As highlighted above, the Explanatory Memo evinced a clear intention for such information to be inadmissible in civil compliance actions against the impacted entity.⁷ The Bill also states that the information cannot be admitted as evidence in “proceedings for a breach of any other Commonwealth, State or Territory Law”.⁸

In totality, we are satisfied that the language in the Bill, as interpreted by the Explanatory Memo, will ensure that information provided to the Coordinator is used in a restricted manner. Consequently, we do not expect the information to be admissible in most legal proceedings.

⁶ Explanatory Memo to the Bill, p. 7.

⁷ Explanatory Memo to the Bill, p. 67.

⁸ Section 42(2)(c) of the Bill.