



Australian Government

**Department of Infrastructure,
Transport, Regional Development,
Communications and the Arts**

Committee Secretary
Senate Standing Committee on Environment and Communications
Parliament House
PO Box 6100
Canberra ACT 2600

By email: ec.sen@aph.gov.au

16 January 2023

Re: Telecommunications Legislation Amendment (Information Disclosure, National Interest, and Other Measures) Bill 2022

Dear Committee Secretary

On 10 November 2022, the Telecommunications Legislation Amendment (Information Disclosure, National Interest and Other Measures) Bill 2022 (the Bill) was introduced into the House of Representatives.

The Bill amends the *Telecommunications Act 1997* (the Act) to address a range of matters associated with information disclosure and the national interest, including facilitating assistance provided by the telecommunications industry to law enforcement agencies and emergency service organisations.

Importantly, the Bill addresses a recommendation from the recent [Inquest into the disappearance of CD](#) for consideration of urgent reform to a provision of the Act to improve the ability of police to find missing people. The Bill also seeks to improve the functioning of the Act more generally, by clarifying existing provisions, improving their operation, and by introducing several new safeguards.

Following passage in the House of Representatives on 28 November 2022 and introduction into the Senate, the Bill has been referred to the Environment and Communications Legislation Committee for inquiry and report by 1 March 2023. Please find enclosed a submission to this Inquiry from the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), which has policy responsibility for the Act.

Thank you for considering the Department's submission. Your point of contact within the Department is Luke Slattery, Acting Assistant Secretary, Telecommunications Resilience Branch, [REDACTED] or [REDACTED]

Yours sincerely,

Lachlann Paterson, A/g Deputy Secretary
Communications and Media
Department of Infrastructure, Transport, Regional Development, Communications, and the Arts

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Introduction

1. The Department welcomes the opportunity to make a submission to assist the Committee's Inquiry of the Telecommunications Legislation Amendment (Information Disclosure, National Interest and Other Measures) Bill 2022 (the Bill).
2. The Bill seeks to address specific and identified barriers in the *Telecommunications Act 1997* (the Act) to help save lives in emergency contexts, improve the record-keeping of authorised information disclosures for transparency and oversight purposes, and to provide better protection for telecommunications organisations in the fulfilment of their national interest obligations during a declared national emergency.
3. The most important measure in the Bill improves the ability of police to find missing people. In the 2022 *Inquest into the Disappearance of CD*, it was found that a specific provision of the Act (section 287) should be amended to provide greater clarity in its application in order to help prevent such deaths in future.
4. Of interest to the Committee, in her Honour's 2022 findings, Magistrate Erin Kennedy states:

Legislative amendment is of course a matter solely within the province of Parliament. However, it is consistent with my death prevention role to highlight the urgent need for review given the current construction and operation of section 287 in the context of missing persons investigations, as was highlighted by this Inquest and that of the *Thomas Hunt* Inquest.
5. This Bill is deliberately limited in nature and scope. Almost all of the Bill's measures are of a minor nature, and were included because of the unanimous benefit identified by government agencies, regulatory bodies, or industry. The proposed amendments relate to existing provisions in the Act — either to reduce regulatory burden, to clarify industry obligations, or to remove obligations which are duplicative in nature.
6. Prior to introduction, the Office of Best Practice Regulation advised that a regulation impact statement was not required based on a preliminary assessment of the proposed Bill. Further, at the suggestion of the Information Law Unit at the Attorney-General's Department, a threshold Privacy Impact Assessment (PIA) was undertaken for relevant measures of the Bill, which helped determine that a PIA was not required.
7. The Department does not consider that the Bill reduces, in any way, a person's privacy and draws to the Committee's attention the Minister's responses to the Parliamentary Joint Committee on Human Rights and the Senate Scrutiny of Bills Committee, which set out detailed advice to help address such concerns. The Government will issue updates to the Bill's Explanatory Memorandum and statement of compatibility to provide further clarity on the operation of proposed measures, including the existence of safeguards.
8. In preparing the Bill, the Department consulted with several areas of the Attorney-General's Department, noting its policy responsibility on matters relating to law enforcement, information law, and human rights. Given the concerns which have been raised relevant to its functions, the Attorney-General's Department has advised that it will provide the Inquiry with a submission. The Department extends its thanks to the Office of the Communications Access Coordinator for facilitating this process on short notice.
9. Given the nature of the Bill, the Department would be pleased to engage further with the Committee and resolve potential concerns to help facilitate the Senate's consideration at the earliest opportunity.

Outline of the Bill

10. The Bill amends the Act to address a range of matters associated with information disclosure and the national interest, including facilitating assistance provided by the telecommunications industry to law enforcement agencies and emergency service organisations. It also amends record keeping requirements in the Act to better enable oversight of the types of information provided in a disclosure, as well as underlying laws or warrants which required or authorised a disclosure.
11. In addition, the Bill makes two technical amendments to the *Telstra Corporation and Other Legislation Amendment Act 2021* (the Amendment Act) to ensure that the obligations and measures in the Act will commence as originally intended.

Part 1: Amendments relating to information use and disclosure, and to national interest

Overview of Part 13 and Part 14 of the *Telecommunications Act 1997*

12. Under Part 13 of the Act, carriers, carriage service providers, number-database operators, emergency call persons, and their respective associates must protect the confidentiality of information that relate to:
 - the contents of communications carried by carriers or carriage service providers;
 - carriage services supplied by carriers and carriage service providers; and
 - the affairs or personal particulars of other persons.

Division 2, Part 13 prohibits the primary use and disclosure of such information, and contravention is an offence punishable on conviction by 2 years imprisonment. The prohibition extends to the content or substance of the communication, including content of voice calls, text messages, or voicemail, as well as any other information or document that relates to the communication, such as call logs. It also extends to any information that relates to a person's affairs or personal particulars, including numbers or addresses which are not publicly listed, or location information.

13. Given there are contexts which require a use or disclosure in the public interest such as for purposes related to emergency disclosures, Division 3, Part 13 sets out a number of exceptions to this general prohibition, where a primary use or disclosure of certain information is authorised in limited circumstances. Division 4 sets out that any secondary use or disclosure of information received under these exceptions must be for the authorised purpose, contravention of which is an offence punishable on conviction by 2 years imprisonment.
14. Part 14 of the Act establishes a framework which the telecommunications industry must adhere to as part of their obligations for national interest matters. Under section 313 of the Act, industry must provide help to the Commonwealth, States or Territories as it is reasonably necessary for a set of prescribed purposes, on a no profit, no loss basis. Carriers and carriage service providers are not liable for any action or proceeding in relation to an act done in good faith in accordance with these national interest obligations.

Proposed amendments to information use and disclosure, and national interest provisions

15. The proposed measures in this Part will:

- a. Authorise disclosure of unlisted number information contained in an integrated public number database (IPND) for purposes dealing with matters raised by a call to an emergency service number;
 - i. The IPND, which is currently managed by Telstra under clause 10 of its carrier licence conditions, contains a record of each telephone number issued by carriage service providers to their customers in Australia, including the customer's number, name, and residential address. Providers are required to supply Telstra with this information to populate the IPND.
 - ii. The IPND is used to assist for a range of critical purposes, such as delivering Emergency Alerts during and before disasters (e.g. bushfires and floods), and to provide information to the Triple Zero emergency call service to help locate callers in distress that cannot speak. The proposed amendment merely clarifies that the disclosure of unlisted numbers from the IPND Manager to the operator of an emergency service number is permitted for the purpose of routing calls and dispatching the requested emergency service (police, fire, or ambulance).
 - iii. As set out in paragraph 13 of Notes on Clauses in the Explanatory Memorandum for the Bill, the intention is to remove unnecessary complexity in the interpretation of the Act – however, the measure also introduces an additional safeguard that it must be unreasonable or impracticable to seek the consent of the person to whom the disclosure relates. Given only 5% of 72 million active phone numbers are listed, with mobile numbers unlisted by default, this amendment removes unnecessary ambiguity in the interpretation of the Act.
- b. Permit the use and disclosure of information to prevent serious threat to life or health of a person;
 - i. In her 2022 findings, Magistrate Erin Kennedy recommended urgent consideration of reform to section 287 of the Act, including removal of the 'imminent' qualifier in the provision, as well as lowering the threshold requirement of 'reasonable belief' to 'reasonable suspicion'.
 - ii. The Australian Law Reform Commission (ALRC) previously made a similar recommendation to the use and disclosure principles in the Privacy Act so that a disclosure exception applies if the threat is serious but not necessarily imminent, and extended the recommendation to section 287 of the Act in light of the public interest purposes for doing so.
 - iii. While amendments to the Privacy Act were introduced to address the recommendation, an amendment to the Act has not yet been introduced. The proposed section 287 amendment in the Bill removes the 'imminent' qualifier and introduces the requirement that it be 'unreasonable or impracticable to obtain the person's consent', which is similar to the safeguard introduced to address concerns with the ALRC recommendation at the time.
 - iv. This brings the section in line with the 'Permitted general situations' table at section 16A of the Privacy Act. As giving effect to Her Honour's second recommendation - changing the threshold from 'belief' to 'suspicion', would be lower than equivalent standards in the Privacy Act - the recommendation is not being taken forward at this time.
 - v. The Department notes the Attorney-General is currently reviewing the Privacy Act and will monitor any recommended changes to this threshold.

- c. Confer civil immunities on telecommunications companies for the provision of reasonably necessary assistance to respond during emergencies if a national emergency declaration is in force.
- i. The amendment in the Bill is consistent with similar provisions in the Act which impose duties to assist to safeguard national security and protect public revenue, and corrects an error in the National Emergency Declaration (Consequential Amendments) Bill 2020.
 - ii. The *National Emergency Declaration (Consequential Amendments) Act 2020* inserted subsections 313(4A) and (4B) into the Act. These subsections introduce a duty on telecommunications providers to provide reasonably necessary assistance for preparing for, responding to, or recovering from an emergency if a national emergency declaration is made.
 - iii. Section 313(5) of the Act provides that a carrier or carriage service provider is not liable to an action or proceeding for damages if an act is done or omitted in good faith in performance of a duty imposed under subsections 313(1), (1A), (2), (2A), (3) or (4) of the Act. However, the immunity does not extend to performance of a duty imposed by subsections 313(4A) or (4B).
 - iv. The policy intention, as set out in the Explanatory Memorandum to the National Emergency Declaration (Consequential Amendments) Bill 2020, was that immunities would extend to the duties under subsections 313(4A) and (4B). Due to an error in drafting, the measures were not included in the Bill, and unfortunately section 313(5) was not amended at the time.

Part 2: Amendments relating to the record of disclosure requirements

16. The proposed measures in this Part will:

- a. Amend record-keeping arrangements in the Act to require more detailed records of disclosure;
 - i. This amendment was informed by a recommendation from the Office of the Australian Information Commissioner (OAIC), which noted that the lack of detailed information in the record of disclosure limits its oversight capability.
 - ii. Prior to the Bill's introduction, the OAIC was consulted on an exposure draft of the measures, and requested an additional amendment to include a description of the type of content disclosed. A revision to Clause 13 of the Bill was made to include a requirement to this effect.
 - iii. The measure introduces a requirement to keep a record of the type of information which was disclosed e.g. 'subscriber address'; 'billing information; 'call charge record from x date' - to assist in the OAIC's assessment of proportionality. It does not, however, require providers to record the actual information disclosed, or otherwise retain any personally identifiable information in the record of disclosure. Telecommunications providers subject to the *Privacy Act 1988* will continue to have obligations requiring that reasonable steps must be taken to protect personal information held under Australian Privacy Principle 11.
 - iv. Major telecommunications carriers (Telstra, Optus, TPG, NBN Co) and the Communications Alliance were consulted on the measure prior to its introduction, resulting in the delay of commencement to this provision. This delay was requested to enable carriers to make necessary systems changes to give effect to the requirement. If the Bill is passed by the Parliament and receives Royal Assent, the Department will also prepare guidance material to help ensure the record-keeping requirement is understood by industry.

Part 3: Other measures

17. Part 3 contains technical amendments to the *Telstra Corporation and Other Legislation Amendment Act 2021* (the Amending Act). These measures will:
- a. Clarify that obligations and measures relating to Telstra’s restructure have commenced as intended.
 - i. Telstra Corporation Limited had intended to apply for Scheme of Arrangement Orders under section 413 of *the Corporations Act 2001* to the Federal Court of Australia. The Order was a condition for commencement of various parts of the Amending Act.
 - ii. However, subsequent to the passage of the Amending Act, Telstra commenced proceedings in the Supreme Court of New South Wales, which could better accommodate listing dates. This amendment substitutes the Court’s title as appropriate in the commencement schedule.
 - b. Redefine the definition of a telecommunications transmission tower in the Amending Act so that it does not inadvertently apply to a too broad category of entity, such as fixed line carriers or broadcasters that own towers.

Background and context

The need for the Bill

18. On 29 April 2022, the NSW Department of Communities and Justice (NSW DCJ) – which assisted in the coronial *Inquest into the Disappearance of CD* (a pseudonym) – provided the Department with information about the need to consider reform to section 287 of the Act, given the operational difficulty the provision was creating in missing persons cases. The Department provided a response on 23 May 2022, indicating the matter would be given consideration.
19. Over the following months, the Department undertook consultation (which included meetings with law enforcement agencies, government bodies, and telecommunications industry representatives), and in collaboration with the Attorney-General’s Department, jointly developed guidance material to assist law enforcement and telecommunications providers in the interpretation of section 287 of the Act.
20. Although this material had some utility in providing a common understanding across jurisdictions on the circumstances necessary for the information disclosure exemption to apply, law enforcement agencies indicated this material alone was unlikely to resolve the issue in the absence of broader legislative reform.
21. On 13 October 2022, the Minister for Communications and the Department received correspondence sent on behalf of her Honour Magistrate Erin Kennedy. This included a copy of her Honour’s findings in the *Inquest into the Disappearance of CD*, a copy of findings from the *Inquest into the Death of Thomas Hunt*, and a recommendation to consider urgent reform of section 287 of the Act (available at [Appendix A](#)).
22. The Department also consulted with stakeholders and sought views on minor and technical amendments to improve the functioning of the Act, either by clarifying existing provisions, improving their operation, or by introducing several new safeguards through the Bill. A consultation timeline for the Bill, including a list of stakeholders who were consulted, is provided in the following sections of this Inquiry submission.

Stakeholder consultation

23. In addition to reliance on the evidence provided to the Department by the NSW DCJ, including the consultation undertaken by Magistrate Kennedy to form the recommendations in the publicly available findings, further consultation was undertaken to ensure the proposed amendments in the Bill reflected necessary and appropriate levels of safeguards, protections, and thresholds for disclosure.
24. In preparing the Bill, the Department consulted with:
- the Attorney General’s Department, including
 - Information Law Unit, and
 - the Office of the Communications Access Coordinator;
 - the Office of the Australian Information Commissioner;
 - the Department of the Prime Minister and Cabinet;
 - the Department of Home Affairs;
 - the Australian Communications and Media Authority;
 - the New South Wales Department of Communities and Justice, including
 - the Coroner’s Court of New South Wales;
 - Communications Alliance;
 - Telstra;
 - Optus;
 - Vocus
 - NBN Co
 - TPG-Telecom;
 - the Australian Federal Police, including
 - the National Missing Persons Coordination Centre; and
 - the Police Consultative Group on Missing Persons;
 - New South Wales Police Force, including
 - the NSW Missing Persons Registry;
 - Queensland Police Force;
 - Victoria Police Force;
 - Northern Territory Police Force;
 - South Australia Police Force;
 - Tasmania Police Force; and
 - Western Australia Police Force.
25. Following introduction of the Bill in the House of Representatives, on 1 December 2022, the Department met separately with Civil Liberties Australia (CLA) and the NSW Council for Civil Liberties (NSWCCL).
26. In response to recommendations made by the Parliamentary Joint Committee on Human Rights and the Senate Scrutiny of Bills Committee, the Department is consulting with the Attorney-General’s Department to ensure that the engagement of rights is appropriately reflected in the statement of compatibility and revised explanatory materials for the Bill.

Consultation timeline

DATES	WHO WAS CONSULTED	DETAILS OF CONSULTATION
29 APRIL 2022	The NSW Department of Communities and Justice	The Department received correspondence from those assisting the Deputy State Coroner, which provided further context and information about the ongoing coronial inquest into the disappearance of CD as a further example of how section 287 was creating operational difficulty in missing persons cases.
26 JULY 2022	Interception Consultative Committee (ICC)	The Department consulted the ICC, a longstanding government consultative committee led by the Attorney-General's Department, including law enforcement agencies, industry representatives and oversight bodies. The prospect of future section 287 reform was discussed and supported.
29 AUGUST 2022	Telecommunications industry representatives	The Department met with the Communications Alliance, Telstra, TPG-Telecom and Optus on the Bill. In response to feedback by industry stakeholders, implementation of Schedule 2 of the Bill was postponed to six months following passage of the Bill, and the Explanatory Memorandum was updated. No further concerns were raised with the Bill.
10 OCTOBER 2022	Attorney-General's Department	Upon reviewing a draft of the Bill, the Information Law Unit of the Attorney-General's Department wrote to the Department to advise it had concluded there were no privacy risks associated with the information disclosure aspects of the Bill. Specifically: <ul style="list-style-type: none"> <li data-bbox="805 1435 1444 1749">• <i>It was not considered that the amendments to sections 287 and 300 raise privacy risks, noting the amendments would bring these provisions in line with the "Permitted general situations" table at section 16A of the Privacy Act, and introduce additional safeguards on information use and disclosure which are not currently present in the Act.</i> <li data-bbox="805 1794 1444 1944">• <i>It was also noted that the amendments implement recommendation 72-13 of For Your Information: Australian Privacy Law and Practice (ALRC Report 108).</i>

DATES	WHO WAS CONSULTED	DETAILS OF CONSULTATION
13 OCTOBER 2022	The NSW Deputy State Coroner's Office	<p>The Minister and the Department received correspondence sent on behalf of her Honour, NSW Deputy State Coroner Erin Kennedy.</p> <p>This correspondence enclosed a copy of her Honour's findings in the <i>Inquest into the Disappearance of CD</i>, a copy of findings from the <i>Inquest into the Death of Thomas Hunt</i> and a recommendation to consider urgent reform to section 287 of the Act.</p>
17 OCTOBER 2022	The Attorney-General	<p>The Attorney-General replied to a letter from the Minister for Communications, dated 5 September 2022, seeking input and any policy changes to the Bill. The Attorney-General affirmed support for the Bill's amendments and advised that the amendment to section 287 was of high importance.</p>
21 OCTOBER 2022	The Office of the Australian Information Commissioner (OAIC)	<p>After considering a draft of the Bill, the OAIC wrote to the Department in support of the policy intent behind the amendments to section 306(5A) of the Act to require service providers to keep detailed records relating to the kinds of information included in disclosures.</p> <p>The OAIC expressed concern that the amendment as originally drafted would not allow the OAIC to appropriately identify the information disclosed. As such, this provision of the Bill was further amended to require service providers to include a description of the specific information that has been disclosed. This change is intended to enable the OAIC to identify the information disclosed more clearly, enhancing its monitoring role and providing more transparency over the existing regime.</p>
3 NOVEMBER 2022	Telecommunications industry representatives	<p>A limited exposure of the Bill was issued to Telstra, TPG-Telecom, Optus, NBN Co and the Communications Alliance on 3 November 2022, with no significant concerns raised.</p>
14 NOVEMBER 2022	Interception Consultative Committee (ICC)	<p>At the 14 November 2022 ICC meeting, the Department went through the Bill in detail. The ICC was consulted about the interpretation of section 287 in the context of missing persons cases.</p> <p>No significant concerns were raised about the Bill.</p>

Response to scrutiny concerns in relation to the Bill

27. The Department does not consider that the Bill reduces the right of privacy, and in many areas, the Bill introduces new privacy safeguards into the Act. Furthermore, the Bill engages and enhances other rights, such as the right to life as specified in Article 6 of the International Covenant on Civil and Political Rights. Considering drafting improvements and the safeguards introduced, the Bill strikes an appropriate balance to enhance the right of privacy and assist emergency services in finding people and saving lives.
28. The Department notes that the Attorney-General's Department has policy responsibility for a number of matters raised during scrutiny of the Bill, including access to telecommunications information by law enforcement; family and domestic violence; information law; privacy; and human rights.
29. As the Attorney-General's Department is preparing a submission to the Inquiry to address these issues, this response is mostly limited to matters specific to the development of the Bill, in order to avoid duplication. However, the Department would welcome the opportunity to provide further information or clarity on the proposed measures, safeguards, or general operation of the Bill if it is of interest.

Information use and disclosure, and privacy

30. In its *Scrutiny Digest 8 of 2022*, the Senate Scrutiny of Bills Committee considered further information was required in order to assess the potential of the Bill to trespass on an individual's right to privacy. The Scrutiny of Bills Committee requested detailed advice from the Minister for Communications regarding the safeguards which protect information that may be used or otherwise disclosed under proposed subsection 285(1B) of the Bill and proposed sections 287 and 300 of the Bill, including:
 - (a) to whom information may be disclosed;
 - (b) what kinds of information may be disclosed;
 - (c) the process by which information may be requested and disclosed; and
 - (d) what safeguards would operate in respect of information disclosed under these provisions and why the minister considers that these safeguards are sufficient.
31. The Minister provided a detailed response to the Scrutiny of Bills Committee (dated 16 December 2022) which will be made public by the Senate Scrutiny of Bills Committee once formally received.

Sharing of information in the case of a serious threat to a person's life or health

32. It is important to note that the amendments to the exception in sections 287 and 300:
 - do not compel the disclosure of information — even in cases where a request from police clearly satisfies the threshold for the exception to apply, disclosure remains at the discretion of the carrier;
 - do not provide access to the contents or substance of a communication, GPS information or any other information which would ordinarily require a warrant; and
 - do not allow for information received through the exception to be used for another purpose — amendments to section 300 of the Act require that any secondary disclosure or use of information by police or emergency service organisations must relate back to the purpose of the original request. Failure to do so is an offence punishable on conviction by 2 years imprisonment.

33. For the proposed exception in section 287 of the Act to apply, the carrier or carriage service provider must believe on reasonable grounds that the disclosure is reasonably necessary to prevent a serious threat to the life or health of a person. The Bill also introduces a safeguard that the carrier or carriage service provider must be satisfied that it would be unreasonable or impracticable to obtain the consent of the person to which the information disclosed relates.
34. As clarified by Section 275A of the Act, the 'affairs or personal particulars of a person' includes location information. Carriers can use triangulation to provide an approximate area of where a handset might be located, based on the location of one or more nearby cell towers. As carriers do not typically have access to GPS information, this triangulation would not involve GPS data.
35. The OAIC's Australian Privacy Principle Guidelines (C.5 to C.13) on [the equivalent use/disclosure principle](#) in the *Privacy Act 1988* provides helpful interpretative guidance about the scope and appropriate meaning of these terms above in relation to the circumstances where a use or disclosure is likely to be permitted.
36. The Department notes that despite the removal of the 'imminent' qualifier in the proposed amendment to section 287 of the Act, any analysis of 'seriousness' still requires consideration of the gravity of the potential outcome as well as the relative likelihood of occurrence for the exemption to apply.
37. As set out in the Explanatory Memorandum to the Bill, it is intended that telecommunications companies would be largely reliant on representations made by law enforcement or emergency service organisations to determine whether a threat was 'serious'. This approach is consistent with the existing operational process of law enforcement agencies, and recognises that police or emergency service organisations have access to information, systems and resources that telecommunications companies do not.
38. Secondary disclosures will also be limited through the proposed amendment as section 300 of the Act will now similarly require that it is unreasonable or impracticable to obtain the person's consent before the secondary disclosure exception can apply. This ensures that any further disclosure of information always requires consideration of whether a person's consent was able to be sought at that specific point in time.

Domestic and family violence

39. The Department recognises particular sensitivities that may attach to personal information of individuals who have been reported missing. Such individuals may have exercised their free choice to disassociate themselves from friends and family for legitimate reasons, including removing themselves from harmful environments.
40. Accordingly, a claim made by a member of the general public, without support or confirmation from emergency service organisations or law enforcement agencies, would not meet the threshold for the exception to apply and would therefore be an offence punishable on conviction by 2 years imprisonment. This is made plain in the Explanatory Memorandum to the Bill. However, the Government will clarify the process through which requests under the section 287 exception are invoked through amendments to the Bill's explanatory materials.

Immunity from civil liability

41. In *Scrutiny Digest 8 of 2022*, the Scrutiny of Bills Committee drew its concerns to the attention of Senators on ‘*the appropriateness of providing civil immunities to telecommunications companies*’ in relation to the proposed amendment to section 313(5) of the Act.
42. Similarly, in its *Report 6 of 2022*, the Parliamentary Joint Committee on Human Rights noted that the Bill’s statement of compatibility did not identify the engagement of the right to an effective remedy, requesting advice on whether the proposed amendment was consistent with the right to an effective remedy.

The right to an effective remedy

43. Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR) protects the right to an effective remedy for any violation of rights or freedoms recognised by the ICCPR. The right to an effective remedy applies notwithstanding that a violation is committed by a person acting in an official capacity.
44. By providing civil immunities to a carrier, carriage service provider, or intermediary that is fulfilling a duty under subsections 313(4A) or (4B) to give such help as is reasonably necessary in disaster and emergency circumstances, including national emergencies, the Bill engages the right to an effective remedy for any unlawful or arbitrary violation to the rights of individuals infringed in the process of providing that help.
45. The proposed measure serves the legitimate objective of ensuring that a carrier, provider, or intermediary (or an agent acting on their behalf) is able to provide reasonably necessary assistance during a disaster or national emergency, in order to fulfil their statutory duties in good faith and in the national interest. The immunities are rationally connected to that objective by managing the risk that carriers, providers, or intermediaries would limit their conduct and in turn, the level of assistance provided to a requesting government body in order to minimise any real or perceived risk of incurring personal civil liability.
46. The immunity is proportionate to achieving this objective; is not arbitrary, unfair or based on irrational considerations; and is limited to circumstances where a telecommunications company is assisting in good faith in specified situations (as noted above). Furthermore, the immunity only extends to actions or other proceedings for damages (for example, a cause of action in tort or negligence).

Alternative remedies which are available to persons where performance of a duty under subsections 313(4A) and/or (4B) results in a violation of their human rights

47. While the Department does consider that the proposed measure engages the right to an effective remedy under Article 2(3) of the ICCPR, to the extent that it does limit that right, the limitation is reasonable, necessary and proportionate to the objective. Alternative remedies are available to persons where performance of the duty under subsections 313(4A) and (4B) results in a violation of their human rights.
48. In cases where the performance of a duty was done in good faith, an affected person could still seek an effective remedy for loss or damage suffered in the purported exercise of the assistance against the relevant Commonwealth, State, or Territory body or government official initiating the assistance request.
49. Further information on the compatibility of the measure with the right to an effective remedy was provided to the Parliamentary Joint Committee on Human Rights, and the Government will update the explanatory materials to the Bill to comprehensively outline the engagement of the right accordingly.

Records relating to authorised disclosures of information or documents

50. The Department does not consider that any aspect of the proposed amendment to section 306 of the Act will limit the right to privacy.
51. This measure introduces a requirement to keep a record of the type of information which was disclosed by reference to the table in subsection 187AA(1) of the *Telecommunications (Interception and Access) Act 1979* - e.g. 'subscriber address'; 'billing information'; 'call charge record from x date' - to assist in the OAIC's assessment of proportionality.
52. It does not, however, require providers to record the actual information disclosed, or otherwise retain any personally identifiable information in the record of disclosure. This issue was specifically addressed in consultation with major carriers and the Communications Alliance, and a revision to the explanatory materials of the Bill will be taken forward to clarify the intended operation of the measure and that the disclosure record should not contain personally identifiable information.
53. Telecommunication providers subject to the *Privacy Act 1988* continue to have obligations that require reasonable steps be taken to protect personal information held under Australian Privacy Principle 11.

Conclusion

54. The Bill seeks to address specific and identified barriers in the Act to help save lives in emergency contexts. By further enhancing record-keeping requirements, the Bill contributes to greater transparency and oversight of authorised information disclosures.
55. Targeted consultation was undertaken with relevant agencies to ensure that amendments are reasonable, necessary and proportionate to strike an appropriate balance between protecting the privacy of personal communication and the prevention of threats to a person's safety and wellbeing. Moreover, the Department is consulting with the Attorney-General's Department to ensure that the engagement of rights is appropriately reflected in the statement of compatibility and explanatory materials for the Bill.
56. The Department believes that this Bill strikes an appropriate balance between privacy protections and the safety and wellbeing of the public while improving safeguards. Ultimately, the Department views this Bill as one that can save lives by addressing coronial findings.
57. To resolve any concerns or questions, the Department would be pleased to engage further with the Committee at the earliest opportunity.

Appendices

Appendix A – Letter to Hon Michelle Rowland MP with CD Findings

Appendix B – Further information on the operation of the Bill