

Subject: Submission to Legal and Constitutional Affairs Legislation Committee, Privacy Amendment (Re-identification Offence) Bill 2016 (Senate)

The purpose of this submission is to discourage the introduction of a Re-identification Offence into the *privacy act 1988*. It is our understanding that this amendment will prohibit conduct related to the re-identification of de-identified personal information published or released by Commonwealth entities. Our organisation believes that this legislation will do little to prevent or discourage privacy breaches and will increase the risk that such actions occur without the knowledge of relevant stakeholders.

Mercury Information Security Services regularly conducts activities that could be construed as re-identification. Information generated during the conduct of our services to commonwealth entities or other customers may require us to identify individuals that have been de-identified. This could be to provide breach notification data in support of defending against attacks, identification of a threat through de-identified personal information, or as apart of a penetration testing engagement that requires our assessment as to whether an adversary can in fact perform de-identification and to evaluate the consequence of this act. These activities are done with the utmost regard for the privacy and security of the information we access and with the intent of protecting the stakeholders associated with that information. Should this amendment take place or commensurate legislative changes occur, the ability of cybersecurity practices such as ours to secure customers would be considerably degraded.

In addition to being counterproductive towards our defensive activities, we evaluate that the legislation will have limited practical impact on individuals performing re-identification offences with malicious intent. Notwithstanding the technical requirements to demonstrate that such an activity has taken place for this amendment to be enforced, our organisation has identified that such acts already occur outside of Australia's jurisdiction and we assess that this legislation will do little to reduce or otherwise remove this threat.

We implore the legal and constitutional affairs legislation committee to evaluate the requirement of this amendment, and if indeed a need does exist that protections are put in place for researchers and security practitioners to ensure that our role in safeguarding information is not undermined.

Regards,

Edward Farrell
Director
Mercury Information Security Services