



**Australian
Communications
and Media Authority**

Red Building
Benjamin Offices
Chan Street
Belconnen ACT 2617

PO Box 78
Belconnen ACT 2616

T +61 2 6219 5555

acma.gov.au

Chair and Agency Head

Committee Secretariat
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

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

ACMA file reference: ACMA2022/699

Dear Secretariat

ACMA submission to the Inquiry into the Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022 (the Bill)

Thank you for the invitation to provide a submission to the Committee's Inquiry. Our submission pertains only to the proposed amendment to the *Australian Communications and Media Authority Act 2005* (see Item 1 of the Bill).

The Australian Communications and Media Authority (ACMA) is the independent statutory authority responsible for the regulation of broadcasting, radiocommunications, telecommunications and some online content in Australia.

Section 59D of the Australian Communications and Media Authority Act 2005 (the ACMA Act)

Under section 59D of the ACMA Act, "authorised disclosure information" may be disclosed to an authority specified under the provision if the Chair of the ACMA is satisfied that the information will enable or assist the relevant authority in the performance or exercise of any of its functions or powers. Authorised disclosure information is defined in the ACMA Act and includes information given to us in confidence or which we have obtained as the result of the exercise of our statutory powers.

Currently, section 59D allows the disclosure of this type of information to a range of named Commonwealth entities. It also permits disclosure to an authority of a State or Territory responsible for enforcing one or more of the laws of the State or Territory and to an authority of a foreign country responsible for regulating communications or media (see paragraphs 59D(1)(l) and (o)). Those State, Territory and foreign entities are described by reference to their function and so need not be specifically named.

As the list of named Commonwealth entities in section 59D is not an exhaustive list, the result is that the ACMA may have a more comprehensive capacity to share information with state and foreign regulators than it has to share the same information with its fellow Commonwealth regulators, law enforcement bodies or agencies.

Current impact

The ACMA receives, from time to time, information in the performance of its functions and the exercise of its powers that would also be relevant to the

responsibilities of other Commonwealth regulators, law enforcement bodies or entities. However, a number of these entities are not included in the current section 59D list.

The current status quo creates a significant risk that Commonwealth entities are duplicating their effort and places an increased regulatory burden on regulated entities. This arises where regulators may be investigating compliance with laws within their remit and seeking the same or similar information from an entity under statutory notice.

This can be overcome if a regulated entity provides consent to share the information (see section 59E of the ACMA Act). However, it may be undesirable in some circumstances to seek consent to share the information from a regulated entity, for example, when the purpose of sharing the information is to draw another agency's attention to the possibility a regulated entity has breached laws that it is responsible for enforcing. A regulated entity may also refuse consent if it considers it is not in its interest for different regulators to share such information.

The September 2022 Optus data breach is a recent example that exposes the current limits of section 59D, given both the ACMA's remit and that of the Office of the Australian Information Commissioner (OAIC) relate to data keeping, data retention and privacy obligations. However, the ACMA is not permitted to share authorised disclosure information it may obtain during its investigation with the OAIC, unless Optus consents to our doing so. As a result, we anticipate that there may be some duplication and inefficiency in how each entity can take forward their investigations.

In a similar vein, the ACMA works closely with AusTRAC and the Australian Criminal Intelligence Commission in the ACMA's scam prevention and interactive gambling work but is not permitted to share any authorised disclosure information with those agencies under section 59D. This has the potential to not only hamper our investigations but also potentially to hinder other law enforcement or regulatory activities being undertaken in the public interest.

Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022

The proposed change to section 59D of the ACMA Act in the Bill has the potential to significantly assist both the ACMA and other non-corporate Commonwealth entities responsible for enforcing or administering one or more Commonwealth laws to perform or exercise their functions or powers. As a result, we support the proposed amendment.

I hope this information is of assistance to your inquiry. The ACMA would be happy to provide additional information to the Committee as required.

Yours sincerely

Nerida O'Loughlin PSM

3 November 2022