

Industry Implementation Issues

Introduction

9.1 The Committee invited comment from the communications industry on the Cybercrime Legislation Amendment Bill 2011 (the Bill) and its potential impact on their operations once enacted. Telstra responded with a submission and gave evidence at the Committee's public hearing on 1 August 2011.

Implementation Issues

Transitional period

9.2 Generally, Telstra supported the Bill and stated that the amendments will:

- assist in streamlining procedures between carriers and carriage service providers and law enforcement agencies in the preservation of stored communications; and
- enable carriers and carriage service providers to more readily recover costs incurred when responding to requests from law enforcement agencies.¹

¹ Telstra Corporation Limited, *Submission 14*, p. 1.

9.3 Telstra was concerned, however, that the Bill does not allow a transition period to allow carriers and carriage service providers to put in place processes and systems to allow full compliance with the legislation. Telstra feared that the lack of a transition period means that carriers and carriage service providers will be unable to:

- undertake detailed feasibility studies into the additional obligations for carriers and carriage service providers of the Bill;
- engage vendors to modify and/or provide additional equipment and determine the technical cost impacts;
- investigate any new security and privacy risks;
- allow the lead government agency, in consultation with industry, to develop and publish delivery and formatting protocols for the handover of data;
- develop the most appropriate cost recovery model with the Attorney-General's Department; and
- allocate additional funding in the carriers and carriage service providers budget cycle.²

European standards

9.1 During the Committee's public hearing, Mr Peter Anthony Froelich, Telstra's Domain Expert explained the importance of clarity and consistency in interface methods to ensure the security of data and ability to respond quickly to requests:

It would be beneficial to have some reference to international agreed mechanisms for interface, and standardisation bodies such as the European Telecommunications Standards Institute publish these types of interfaces already and they are, in fact, in use in European marketplaces. Access to those international standards would reduce bespoke development in Australia, which is something that we definitely want to avoid. We do not want to develop Australian-centric solutions to these sorts of issues.³

9.1 In further correspondence, Telstra advised that the following European standards are relevant:

² Telstra, *Submission 14*, pp. 1-2.

³ Mr Peter Anthony Froelich, Principal Domain Expert, Telstra, *Committee Hansard*, Canberra, 1 August, 2011, p. 20.

- ETSI DTR 103 690 V0.3.0 (2011-06) Lawful Interception (LI); eWarrant Interface (describes and electronic interface for workflow management between law enforcement and carriers or internet service providers (ISP's));
 - ETSI TS 102 656 V1.1.2 (2007-12) Lawful Interception (LI); Retained Data; Requirements of Law Enforcement Agencies for handling Retained Data; and
 - ETSI TS 102 657 V1.3.1 (2009-09) Lawful Interception (LI); Retained data handling; Handover interface for the request and delivery of retained data.⁴
- 9.2 These standards describe pragmatic agreed ways to interface between Agencies and Carriers/ISP's attempting to describe real world expectations for managing disclosures and coordinating information flow. Telstra expects that these standards would form part of the framework to deliver speedier responses, more resilient functions and greater cost effectiveness for both government and industry.

Cost recovery

- 9.3 Telstra also raised the issue of cost recovery:

Telstra also believe that the additional obligations to preserve data are beyond Telstra's business needs and should be subject to further discussions with the government, as the proposed amendments, we believe, will place a significant resource burden on carriers and carriage service providers in the form of cost and manpower.⁵

- 9.4 Telstra representatives acknowledged that they did not necessarily envisage an increase in the number of requests they would receive, but sought acknowledgement that they will have to change their systems and incur costs to comply with the legislation.⁶ It is likely that the largest number of preservation notices will be issued to companies that have the largest market share. Telstra, for example, accounts for 43% of the mobile market, 73% of fixed lines, and 45% of fixed retail broadband.⁷

4 Correspondence, 9 August 2011.

5 Mr James Shaw, Director Government Relations, Telstra, *Committee Hansard*, Canberra, 1 August 2011, p. 17.

6 Mr James Shaw, Telstra, *Committee Hansard*, Canberra, 1 August 2011, p. 18.

7 Telstra, *Supplementary Submission 14.1*. p.1.

Telstra recommendations

9.5 Telstra recommended:

- carriers and carriage service providers be allowed to complete a compliance feasibility study prior to Royal Assent;
- having an exemption process for carriers and carriage service providers unable to comply with the short time frame;
- the exemption to include an implementation plan; and
- that implementation occur a suitable length of time (not more than 18 months) after technical requirements have been published by the Attorney-General's Department.⁸

Attorney-General's Department response

9.6 The Attorney-General's Department was surprised by Telstra's position on the required timeframe for implementation as it felt that service providers were already providing the required responses and that no new infrastructure should be required as there was no specified way that providers had to store the required communications. The Attorney-General's Department stated:

We have been working for some time with the main players, as I said earlier, who actually provide mobile services like text messages of where the high risk is of losing that evidence or intelligence where it is needed...

Certainly we are willing to talk to industry now and are talking to industry about their obligations on a daily basis as to how they can do this to best have it up and running.

... I did not understand from my discussions that there would be any need to build delivery standards or have any specifications or anything like that... There are already delivery systems in place for the delivery of this kind of information – the stored communications regime.⁹

⁸ Telstra, *Submission 14*, pp. 2-3.

⁹ Ms Catherine Smith, Assistant Secretary, Telecommunications Surveillance Law Branch, Attorney-General's Department, *Committee Hansard*, Canberra, 1 August 2011, p. 31.

Committee View

- 9.7 The Committee is conscious of the practical impact the introduction of the Bill will have on carriers and carriage service providers. The largest demand is likely to fall to those companies with the largest share of the market, especially in mobile services, who will in turn bear the largest overall cost.
- 9.8 The Committee is also conscious that introduction of the legislation may have impose a disproportionate cost on smaller carriers and carriage service providers.
- 9.9 There appears to be a need for greater consultation between the government and industry on the implementation of the Bill. Accordingly, the Committee agrees with the Attorney-General's Department that 'it is important that [the Department] start talking to industry very quickly on how this will be done'.¹⁰

Recommendation 13

That the Attorney-General's Department consult widely with carriers and carriage service providers to ensure that the Cybercrime Legislation Amendment Bill 2011, when enacted, can be implemented in a timely and efficient manner.

Senator Catryna Bilyk

Chair

¹⁰ Ms Catherine Smith, Attorney-General's Department, *Committee Hansard*, Canberra, 1 August 2011, p. 31.

