



THE LAW SOCIETY
OF NEW SOUTH WALES

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Dr James Popple
Chief Executive Officer
Law Council of Australia
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By email: shounok.chatterjee@lawcouncil.asn.au

Dear Dr Popple,

Senate Committee Inquiry into the Telecommunications Legislation Amendment (Information Disclosure, National Interest and Other Measures) Bill 2022

Thank you for the opportunity to contribute to the Law Council's submission in relation to the Senate Environment and Communications Legislation Committee's Inquiry into the Telecommunications Legislation Amendment (Information Disclosure, National Interest and Other Measures) Bill 2022 ("the Bill"). The Law Society's Privacy and Data Law Committee has contributed to this submission.

Part 1 – Information use and disclosure

Section 287 of the *Telecommunications Act 1997* ("the Act") currently provides an exception to the disclosure or use offences under Division 2, Part 13 of the Act if:

- the relevant information or document relates to the affairs or personal particulars (including any unlisted telephone number or any address) of another person (s 287(a)); and
- the disclosing party believes on reasonable grounds that the disclosure is reasonably necessary to prevent or lessen a serious and imminent threat to the life or health of a person (s 287(b)).

The proposed amendment in clause 7 of Part 1, Schedule 1 to the Bill effectively adds an additional requirement to section 287, that "it is unreasonable or impracticable to obtain the other person's consent to the disclosure or use", consistent with the Office of the Australian Information Commissioner's *Australian Privacy Principles Guidelines*.¹ The proposed amendment in clause 8 deletes the word "imminent" from section 287(b). Clause 9, which sets out proposed section 300, contains equivalent provisions relating to the secondary disclosure of information received under proposed section 287.

While we support in principle amending ss 287 and 300 by deleting the word "imminent" in accordance with the recommendations of the Australian Law Reform Commission,² we note there may be circumstances in which a person's health and safety are contingent upon

¹ Office of the Australian Information Commissioner, 'Chapter C: Permitted general situations' in *Australian Privacy Principles Guidelines* (22 July 2019).

² Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, Report No 108 (2008), 2433 (72-7).

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maintaining very strict personal privacy, including, for example, victims of family and domestic violence, or those in need of protection. In particularly sensitive cases, it is highly likely to be 'impracticable' to obtain the individual's consent, however, the risks associated with the disclosure of their personal information may need to be carefully balanced against other perceived threats to their life or health.

The privacy risk to individuals is, in our view, heightened by the lack of independent adjudication or oversight under proposed ss 287 and 300. As noted in the Explanatory Memorandum, it is intended that telecommunications providers will predominantly be reliant on representations made by law enforcement agencies or emergency services to determine the seriousness of a threat.

Accordingly, we suggest further clarification and guidance is required to assist regulated entities in assessing countervailing privacy concerns, particularly where disclosure of personal information may itself result in a health and safety risk. We also suggest consideration should be given to including an additional requirement to the effect that the disclosing party must first consider the wishes and circumstances of the person to whom the information relates before making a disclosure under ss 287 or 300. This may include, for example, whether the person has expressed a view about not being located in the event of disappearance, and whether the person may be the victim of family or domestic violence.

We also suggest consideration be given to amending the Bill to effectively require entities receiving information or documents under ss 287 and 300 to provide secure arrangements for the collection, handling and management of such data, particularly given its potentially sensitive nature.

Privacy and Data Impact Assessment

More broadly, the Law Society supports the need to implement a more extensive and sophisticated process of assessing the privacy and data security implications of proposed legislation, and calls on the Government to implement, as a matter of course, a formal Privacy and Data Impact Statement, in addition to the Statements on financial impacts and human rights that typically inform the Government's Explanatory Memoranda. In our view, the current practice of assessing privacy impacts through the narrow lens of human rights compatibility is insufficient to properly examine the wide ranging economic and social impacts of privacy and data security issues in the context of modern law reform.

We suggest that privacy and data impact assessments should be appropriately funded and resourced, and include robust review and regulatory oversight mechanisms, as well as opportunities to test and address potential privacy, data and security consequences of proposed legislation.

We hope this input is of assistance. Please contact Nathan Saad, Policy Lawyer, on (02) 9926 0174 or nathan.saad@lawsociety.com.au in the first instance if you have any queries.

Yours sincerely,



Cassandra Banks
President