

Sub No:
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ATTORNEY-GENERAL

Online Privacy Inquiry - Response Recommendation 9

Deadline: Required by 30 September 2011 to align with timeframe for whole of Government response to the Committee's Recommendations being coordinated by the Department of Prime Minister and Cabinet.

Key Issues: The Senate Standing Committee on Environment and Communications completed their inquiry into the adequacy of protections for the privacy of Australians online on 7 April 2011. The Committee made nine recommendations in total. Recommendation nine specifically relates to mandatory data retention. A response to Recommendation 9 is at **Attachment A**.

The Department of Prime Minister and Cabinet is coordinating the response to the report with additional input from the Department and the Department of Broadband, Communications and Digital Economy. Department of Prime Minister and Cabinet are expected to finalise the Government response early October 2011.

AGD Analysis: A mandatory data retention proposal regime continues to be of public interest. In response to a request under freedom of information the Department released documents relating to the development of a data retention proposal (including documents relating to the Inquiry) which were published by the Australian Newspaper in July 2011. The Committee's recommendations focused on further justifying why such a regime is necessary, quantifying costs and greater consultation. These recommendations are consistent with the Departments approach in further developing data retention proposal options as part of holistic reconsideration of the *Telecommunications (Interception and Access) Act 1979*.

Financial Implications: None.

Sensitivities and Communications Plan: No specific communications strategy is being developed in response to this Inquiry however the Department of Prime Minister and Cabinet is coordinating a communications strategy as part of the broader Government response on privacy issues generally.

Recommendation: I recommend that you:

- a) approve the proposed Government Response to Recommendation 9 of the Committee Report, and

Approved / Not Approved / Discuss

- b) sign the letter to the Minister for Privacy and Freedom of Information at **Attachment B**.

Signed / Not Signed

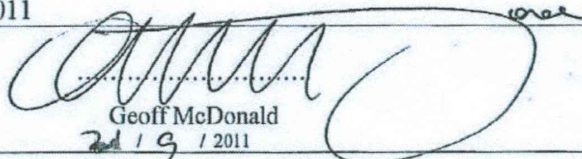
Catherine Smith
Assistant Secretary – Telecommunications and
Surveillance Law Branch

S47F(1)
21/9/2011

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Attorney-General

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Cleared by:


Geoff McDonald
21/9/2011

Action Officer: S47F(1), Date completed by AO 19/09./2011

Background

2. The Senate Environment and Communications References Committee tabled their report on "The adequacy of protections for the privacy of Australians online" on 7 April 2011. The Department of Prime Minister and Cabinet is coordinating the Government response to the Committee's report on behalf of the Minister of Privacy and Freedom of Information.

3. The Department appeared before the Committee and provided evidence about a possible data retention regime, part of this evidence was given in-camera. Recommendation nine of the Committee's report relates to data retention. Specifically, the Committee recommended that the Government must undertake an extensive analysis of the costs, benefits and risks of such a scheme, demonstrate the necessity of the data to law enforcement agencies to therefore justify the collection and retention of the data and the expense to Internet Service Providers, as well as assure the security of the information and consult with a range of stakeholders.

4. Consistent with previous public statements, the proposed response outlines the Government's commitment to an open, transparent and consultative approach. The concept of data retention is being progressed as part of holistic reconsideration of the *Telecommunications (Interception and Access) Act 1979* and it is intended that options for data retention regime will be put forward in the public discussion paper produced as part of the reform process.

Consultation

5. The Department of Prime Minister and Cabinet, Privacy and FOI Branch have been consulted in the development of this submission.

Sensitivities and Communication Plan

6. The concept of a data retention regime attracted significant media interest when it became publicly known in June 2010. There was some media coverage after the Senate Inquiry hearing and there have been a number of requests for release of documents under the *Freedom of Information Act 1982* since. The Department of Prime Minister and Cabinet have advised that they do not intend to engage in any media activity associated with the Government's response to the Committee's report. The Department of Prime Minister and Cabinet are developing a communications strategy as part of the broader work being undertaken with respect of privacy recommendations.



Australian Government
Attorney-General's Department

National Security
Law and Policy Division

10/27823-01

The Senate Environment and Communications References Committee conducted an inquiry into the adequacy of protection for the privacy of Australians online which was completed in April 2011. Recommendation 9 of the Committee's report:

The committee recommends that before pursuing any mandatory data retention proposal, the government must:

- *undertake an extensive analysis of the costs, benefits and risks of such a scheme;*
- *justify the collection and retention of personal data by demonstrating the necessity of that data to law enforcement activities;*
- *quantify and justify the expense to Internet Service Providers of data collection and storage by demonstrating the utility of the data retained to law enforcement;*
- *assure Australians that data retained under any such scheme will be subject to appropriate accountability and monitoring mechanisms, and will be stored securely; and*
- *consult with a range of stakeholders.*

Government Response

The Government agrees in principle with recommendation 9 of the Committee. The Government is committed to an open, transparent and consultative approach and acknowledges the public interest in these issues.

S47C(1)

Any proposal must strike the correct balance between community expectations regarding individual privacy, that unlawful behaviour is investigated and prosecuted, as well as the provision of competitive commercial telecommunications services.