



Australian Government
Attorney-General's Department

Sub No.
File No: 08/1219

ATTORNEY-GENERAL

Industry Consultation on a Mandatory Data Retention Regime

Deadline: As soon as possible to allow public consultation on a mandatory data retention proposal

Key Issues: You previously agreed (submission 1112 of 2008 refers) to the Department developing a proposal for a mandatory data retention regime, including the establishment of an Interagency Working Group (IWG) to advance work on specific details of the proposal. S37(2)(b), S47C(1)

The Department has finalised a draft document outlining the type of telecommunications data which would be retained under the regime (the 'data set'), options for storing that data and the scope of the proposal. The Department proposes to now consult with industry on these proposals.

AGD Analysis: Data retention in other international jurisdictions has been used as an effective tool to combat serious and organised crime. Mandatory data retention has been highlighted in S47C(1) of interception legislation as a potential mechanism to combat serious and organised crime in a global telecommunications environment.

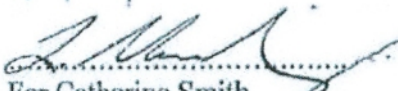
Consultation with industry is essential for further consideration of the two year model for data retention. Consultation will include consideration of the draft data set to be retained, possible storage models and the associated cost and scope of the proposal. Industry will have strong views on all of these issues.

Financial Implications: Consultation with industry will have no financial implications, though the data retention proposal has cost implications for industry.

Recommendation: I recommend that you:

- (i) Agree to consultation with industry groups on the proposed data retention regime, including the release of the consultation paper at **Attachment A** and sign the letter at **Attachment B** seeking the Prime Minister's approval for consultation, and at **Attachment C** informing the Minister for Communications of recent developments.

Signed / Not Signed / Discuss


 For Catherine Smith
 Assistant Secretary
 Telecommunications and Surveillance Law Branch
S47F(1)
 29/06/2009

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Attorney-General

/ / 2009

Cleared by:	 Geoff McDonald 29/06/2009	 Roger Wilkins AO / / 2009
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Action Officer: Lionel Markey (02) 6141 3017

Background

1. You previously agreed (Submission 1112 of 25 March 2008 refers, see **Attachment D**) to the Department developing a proposal for a mandatory data retention scheme, consultation with government agencies and the setting up of a Commonwealth Inter-Agency Working Group (IWG) for the detailed development of data sets to be retained, the retention period and storage models, comprising The Department of the Prime Minister and Cabinet (Privacy and FOI Policy Branch), The Australian Federal Police, The Department of Broadband, Communications and the Digital Economy, The Australian Competition and Consumer Commission, The Australian Crime Commission, The Australian Securities and Investment Commission, The Australian Security Intelligence Organisation, South Australian Police and The Australian Customs and Border Protection Service.

2. [REDACTED] S37(2)(b), S47C(1)
[REDACTED]
[REDACTED]
[REDACTED]

3. As part of the agreed consultation process to progress mandatory data retention policy development, I now seek your approval to consult with the telecommunications industry on the proposal, [REDACTED]

[REDACTED] S47C(1)
[REDACTED]

The Data Retention Proposal

The proposal's role in the Organised Crime Strategic Framework

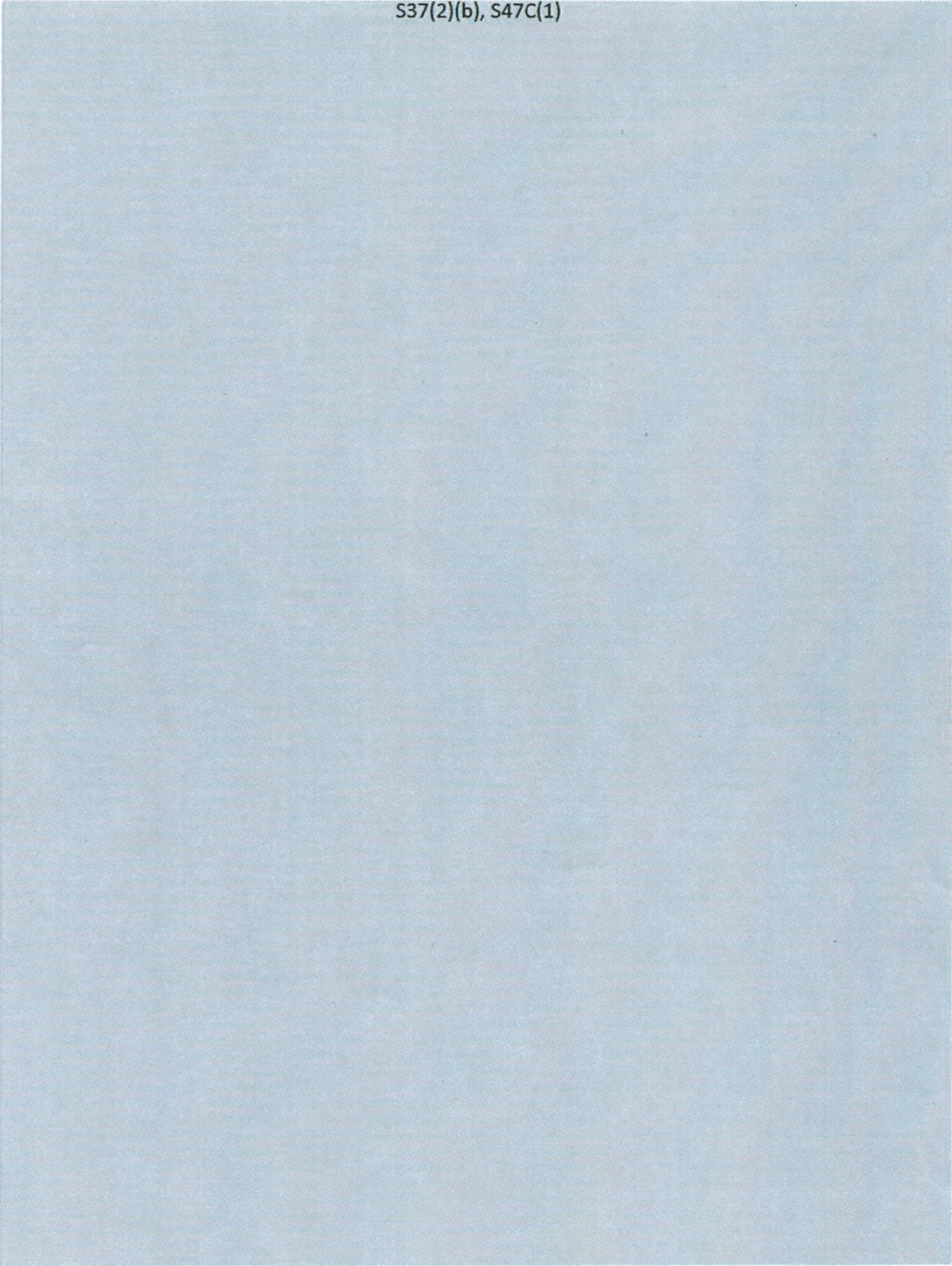
4. The Commonwealth has made an undertaking to ensure that the Commonwealth's legislative framework is responsive to the changes in the context of serious and organised crime. The *Organised Crime Strategic Framework* notes:

The Government continues to monitor the effectiveness of its legislative and operational response to organised crime to ensure it remains effective to respond to changes in society, technological advances and the criminal environment.

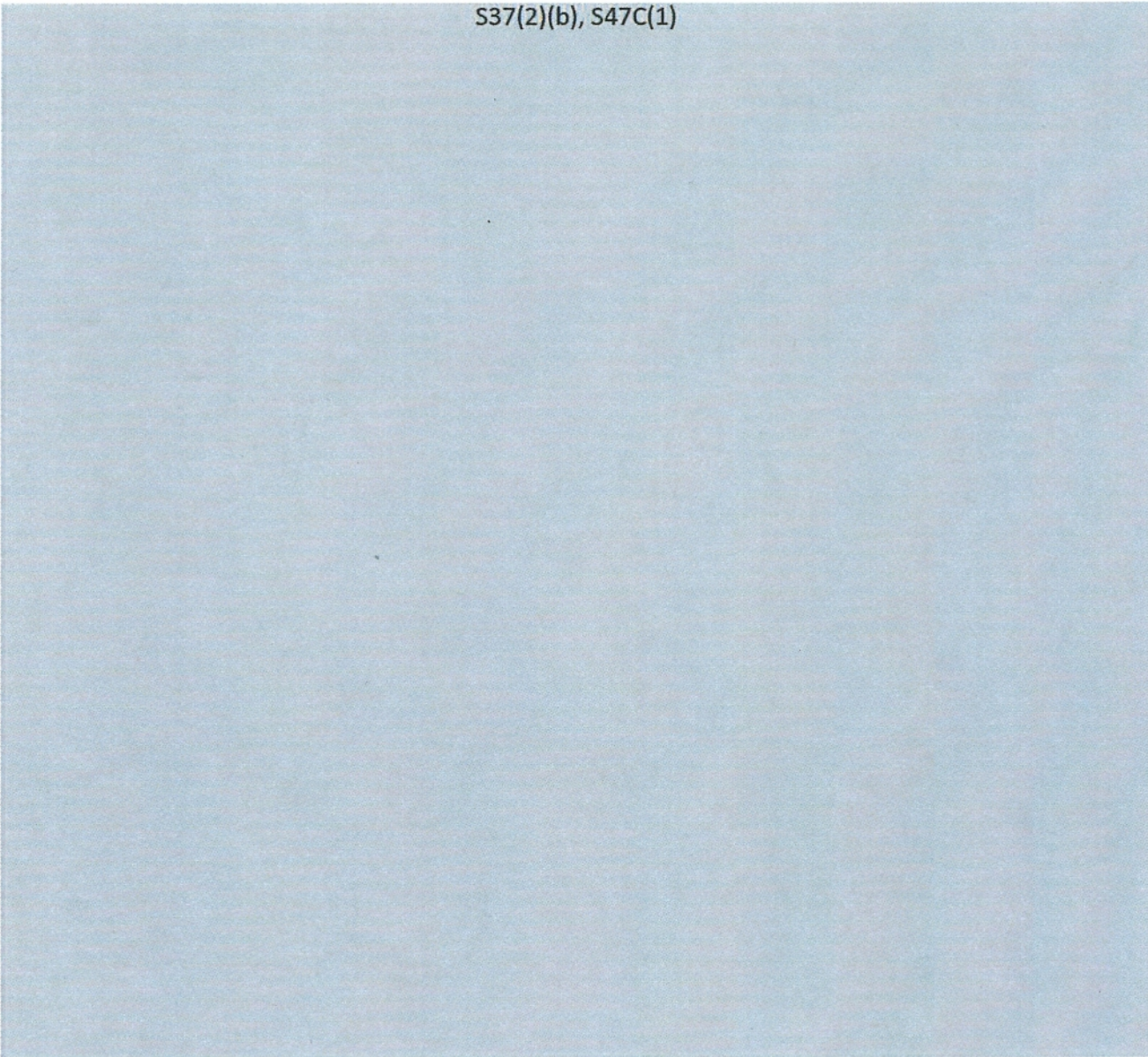
5. A mandatory data retention regime reflects the Commonwealth's commitment to respond to rapid technological and economic change in the telecommunications sector.

6. Telecommunications data has the potential to address the full spectrum of organised crime activities. When looking at classes of activity put forward in the framework, telecommunications data can be effective in the following ways:


S37(2)(b), S47C(1)



S37(2)(b), S47C(1)



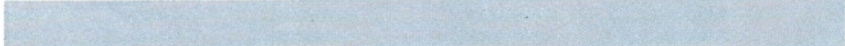
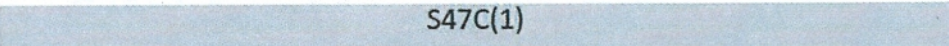

S47C(1)



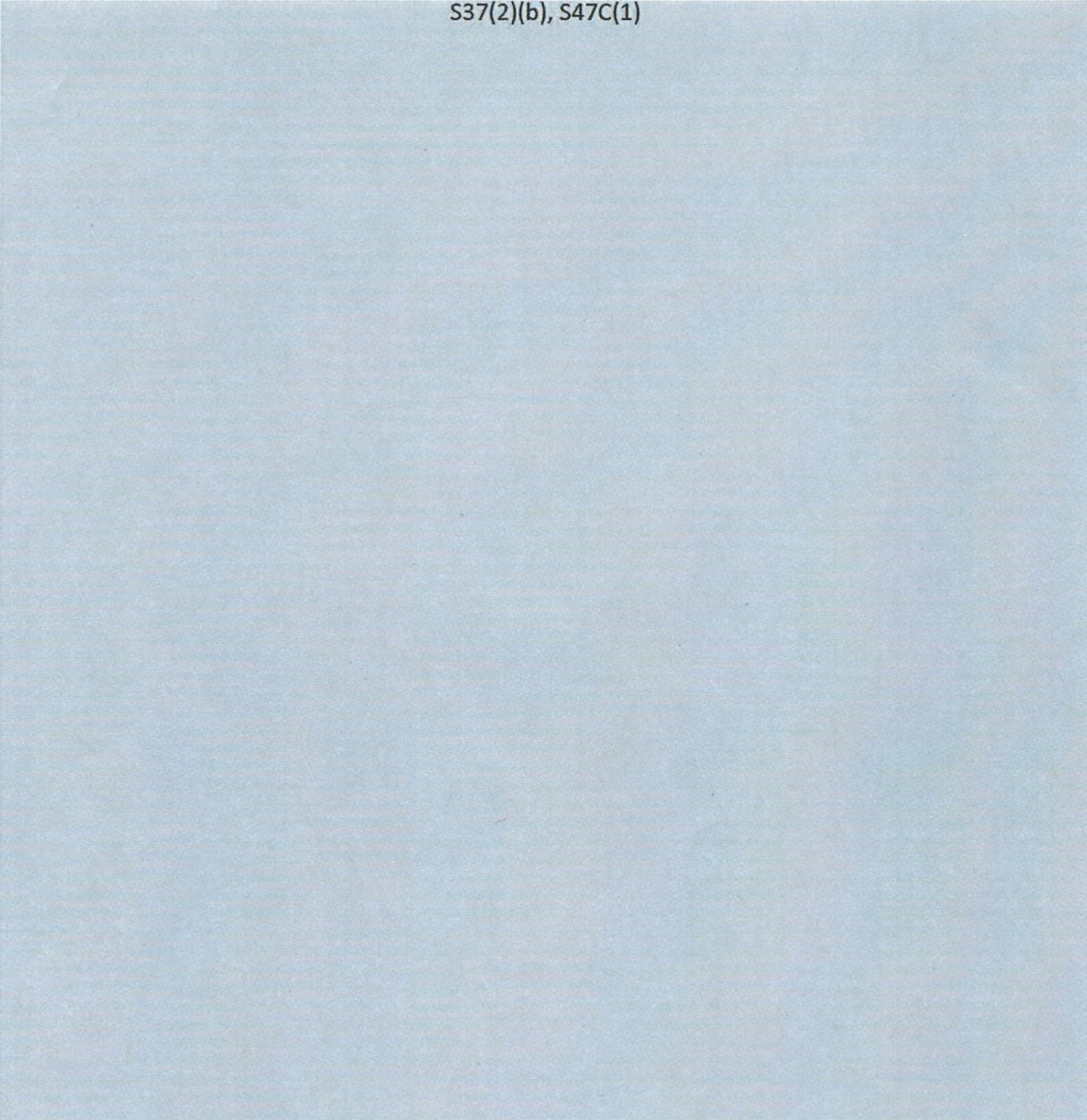
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S47C(1)



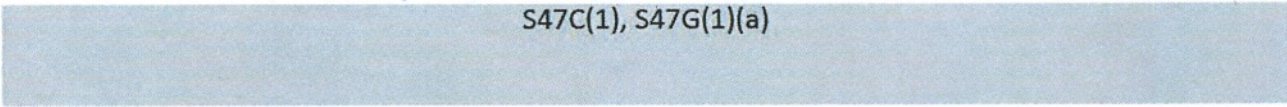
S37(2)(b), S47C(1)



Industry Consultation

20. The main telecommunications providers and industry bodies that the Department will consult with on the mandatory data retention proposal will be (but not limited to) mobile and fixed line carriers including

S47C(1), S47G(1)(a)



Consultation

Internal

S47C(1)

External

22. As outlined, work on this proposal has been aided by an Interagency Working Group.
23. Commonwealth enforcement agencies, such as ASIO, AFP, Customs, ACCC and ASIC are strongly supportive of a mandatory data retention regime. State and territory agencies are equally supportive of the proposal.
24. PM&C Border Security and Law Enforcement Branch have been consulted S47C(1)
- S47C(1)

Sensitivities and Media Implications

25. Once public comment is made on a proposal for a mandatory data retention regime it is likely to attract considerable interest from the media and from privacy advocates. The Department will prepare relevant Question Time Briefs (QTB) and Minister's Office Briefs (MOB) prior to industry consultation.