

DATA RETENTION INDUSTRY CONSULTATION MEETING**CANBERRA****Monday 30 November 2009****AGENDA****11.00 am – Meeting Open – *Catherine Smith***

- 1. Overview of developments – *Wendy Kelly***
- 2. AGD policy considerations**
- 3. Technical issues raised – *Lionel Markey***
- 4. Way forward – *Catherine Smith***

Meeting close 2.00 p.m.

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Australian Government
Attorney-General's Department

**Carrier-Carriage Service Provider Storage Model
Consultation Paper**

Version: 1.0

This paper does not represent the settled views of the Australian Government. The Government has made no decision with regard to any of the issues presented in this paper. The paper intends only to stimulate discussion on the issues set out in it. The results of these discussions will be used to inform government consideration of these matters.

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Background

What is telecommunications data?

Telecommunications data is information about the process of a communication, as distinct from its content. This includes information about the identity of the sending and receiving parties ('A and B parties'), when a communication started and stopped, and the type of communication (i.e. a phone call, a web-browser session, or a file transfer).

Access to telecommunications data for law enforcement purposes is regulated by Chapter 4 of the *Telecommunications (Interception and Access) Act 1979*, which permits agencies to authorise the disclosure of telecommunications data where it is reasonably necessary for the enforcement of the criminal law, a law imposing a pecuniary penalty, or the protection of the public revenue. Chapter 4 also contains separate provisions enabling access for national security purposes.

Telecommunications traffic data and related information is currently kept by carriers for billing and other business purposes and has proven to be an important tool for law enforcement and national security agencies, providing both intelligence and evidence for use when identifying and prosecuting offenders.

How important is telecommunications data?

The data provides agencies with a method of tracing all communications from end-to-end, and in retrospect. It can be used to reveal associations between members of criminal organisations, as well as provide expansive intelligence on the social networks of criminal and terrorist organisations.

This data is also extremely useful in relation to counter-terrorism, given the requirement for sophisticated planning in relation to terrorist activity. Data interrogation can reveal the daily habits of targets to enable targeted surveillance. Another benefit of telecommunications data is that it can be analysed after the fact to enable the development of detailed intelligence briefs.

The UK experience has also shown that the availability of this information can be of great benefit in providing exculpatory evidence, allowing police to rule out a person from an investigation, and to Coroners in determining the circumstances leading up to death.

In some situations, telecommunications data can be of equal or even greater benefit than the content of communications. Whereas people can communicate in different languages, or using code or other pre-approved systems which cannot be understood by agencies, traffic data is system-generated and cannot be altered by the communicator.

The existence of this information becomes even more vital as the use of new technologies, such as Voice over Internet Protocol (VoIP) and encryption, increases among agency targets. While these new technologies provide significant technical challenges to the interception regime, it is vital that even if agencies are unable to obtain the content of the communications, they are still able to determine how and with whom a person has been communicating.

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Why is a mandatory data retention scheme necessary?

With an evolutionary trend in the telecommunications industry towards Internet Protocol (IP) based services and volume based charging models, there is the likelihood that the traditional business reasons for creating or retaining this information may cease. This concern is not isolated to Australia; data retention is a significant topic internationally.

In response, agencies have proposed that new requirements be introduced to ensure that the telecommunications data currently retained continues to be available for law enforcement and national security purposes.

The European Union is currently implementing its data retention regulation directive, in response to the rapid adoption of new technologies. It is timely for Australia to also consider how the needs of agencies can be met without unduly impacting on the telecommunications industry.

What is a storage model & why is it important?

The storage model describes the method and architecture in which data is retained as part of a proposed *Carrier-Carriage Service Provider Data Retention Regime*.

It is noted a storage model covering how data is stored (and by virtue of this how it is accessed) is a secondary consideration to that of the actual retention of the data in the first instance. Whilst ensuring the actual retention of data occurs is the primary objective of the proposed regime it is also prudent to consider related items such as a storage model. In doing this Government strives to propose not only effective regulation but also the most efficient.

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A. Storage Models

This section of the document outlines possible storage models to be utilised as part of a *Carrier-Carriage Service Provider Data Retention Regime*.

1. Centralised

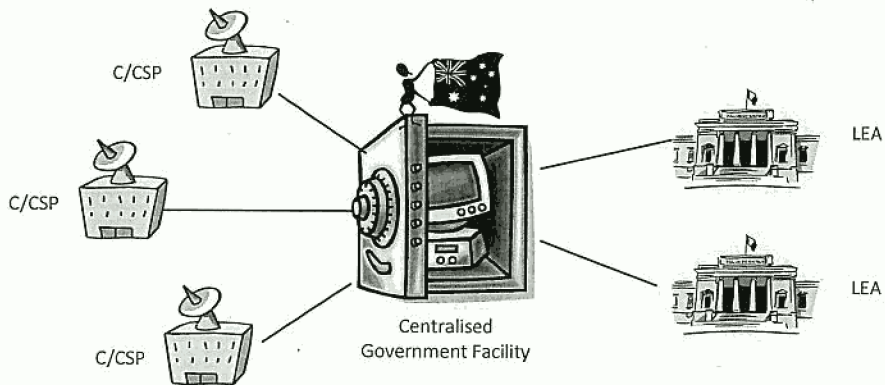
A centralised model is one in which a designated facility is used to store and retrieve retained data for a requesting agency. The carrier or carriage service provider has responsibility to transmit collected data to the centralised facility.

A centralised facility is considered to be of two distinct types, a Government facility and an outsourced facility.

1.1. Government Facility

The centralised government facility model involves the establishment, or use of a pre-existing government entity to store data from the C/CSP, mediate a common format and retrieve retained data transmitting this data to the LEA. Diagram 2 below represents this approach.

Diagram 2.



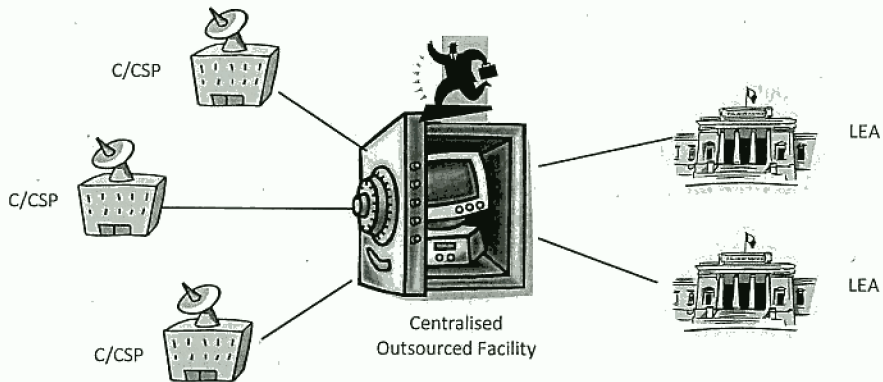
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1.2. Outsourced Facility

The centralised outsourced facility model involves the use of a pre-existing private entity to store data from the C/CSP, mediate a common format and retrieve retained data transmitting this data to the LEA. In this model the government would assume responsibility for managing outcomes provided by the private entity.

Diagram 3 below represents this approach.

Diagram 3.



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2. Decentralised

A decentralised model could involve C/CSPs either storing the data themselves or outsourcing this obligation. Individual C/CSPs may be responsible for extracting and storing data and passing it to agencies in accordance with a lawful request.

In certain respects a decentralised model reflects the status quo, except that carriers would be legally required to collect and store the requisite information in place of the current voluntary ad hoc arrangements based on an individual carriers' business operations.

Diagrams 4 and 5 below provide examples of possible structures for decentralised models. Diagram 4 represents a model in which the data is stored at the C/CSP end. Diagram 5 represents a model in which the data is stored at the LEA and all LEAs are interlinked and access each others' repositories.

Diagram 4.

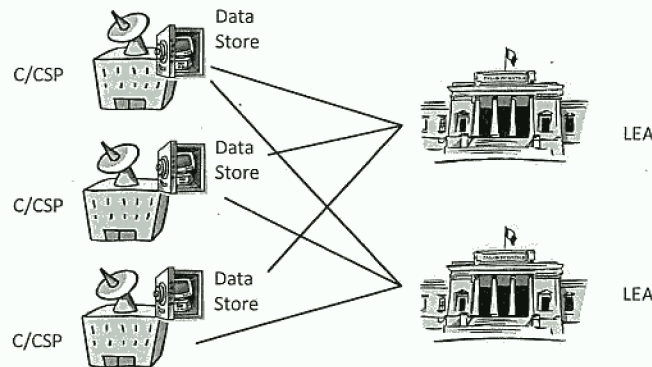
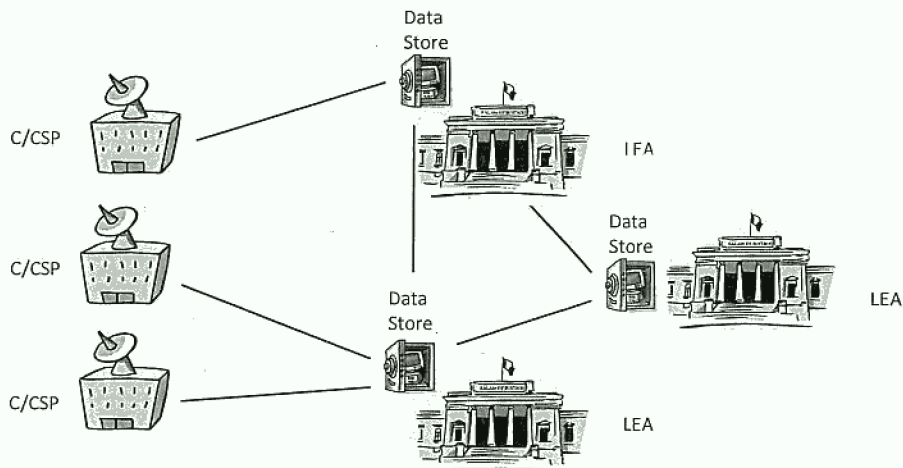


Diagram 5.



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B. Industry Feedback

The proposed storage models outlined in the previous sections of this document provides a basis for dialogue between Industry and Government on an ancillary element of a data retention regime, that is, the storage model used to store any data retained.

Government is keen to gain valuable feedback from Industry regarding how all elements of a proposed data retention regime may operate. In particular, the Government must consider possible impacts to Industry, resulting changes to individual business practice, consumer impacts and all costs involved.

To aid in this consideration, Industry members are requested to address the below questions when providing feedback.

1. What do you believe the most effective storage model for storing this data would look like?
2. Do you favor any of the previously described models? If not, additional suggestions are welcomed.

Feedback is to be lodged by the 30th September, 2009 to tlsb@ag.gov.au.

**Telecommunications Experts Group
01 September 2009**

SUMMARY OF DISCUSSION

Participants

Name	Organisation
S47F(1)	S47G(1)(a), S47G(1)(b)
Chris Cheah	ACMA
Stephanie Taylor	AFP
Geoff McDonald (Co-Chair) Catherine Smith Mike Rothery Lionel Markey (Secretariat)	AGD
S47F(1)	S47G(1)(a), S47G(1)(b)
Keith Besgrove (Co-Chair) David Jory Gail Robertson	DBCDE
S38(1)	
S47F(1)	S47G(1)(a), S47G(1)(b)

Action Points

1	Outside Scope	
2		S33(a)(iii)
3		
4	Outside Scope	

1. **Welcomes and Introductions**

2. **Minutes from the last meeting**

The minutes to the previous meeting were accepted.

MATERIAL OUTSIDE SCOPE OF REQUEST

MATERIAL OUTSIDE SCOPE OF REQUEST

4. Data Retention

M Smith gave an overview on data retention consultation paper, which includes proposals on the retention period, data sets and storage models. It was proposed that industry would respond back to AGD by 30 September 2009 with their views. Ms Smith stated that the data sets and retention periods were in line with International policies, legislation and standards, noting that the retention period for the EU were up to two years. **S47G(1)(a), S47G(1)(b)**

Initial consultation will occur with **S47G(1)(a), S47G(1)(b)** lawful interception working group as well as other industry bodies such as **S47G(1)(a), S47G(1)(b)**

S33(a)(iii)

MATERIAL OUTSIDE SCOPE OF REQUEST

Other work will include a regulatory impact statement and addressing issues of privacy.

It is also proposed that another meeting with industry would happen around mid October.

Mr McDonald advised that if industry didn't have time to perform a full response then they should work on responding on the key points.

[redacted] stated that the issues are very complex and there would be a number of questions arising out of the consultation paper.

Ms Smith advised that if there were 100 questions from industry arising from the consultation paper it would be beneficial for the development of data retention policy.

[redacted] also stated that she believes that a 2 year retention period is not necessary as most of the European countries are opting for a 1 year retention period.

Ms Smith advised that the proposed retention period was up to two years, in line with the EU Directive and there will be some data that will be retained for lesser periods.

[redacted] inquired about the cost and who will pay. Ms Smith advised that decisions on a cost model had not been decided as yet but there are considerations on whether it is in line with the current cost sharing arrangements for TI in the Act. Mr McDonald also advised that we are bound by the cost sharing principles for national security.

Mr Besgrove advised that it would be beneficial for the group to see how the EU states are implementing data retention and the timeframes for circuit switched and IP services.

[redacted]
S33(a)(iii)

Ms Smith advised that the EU Directive sets a minimum of 6 months for the retention of data.

[redacted] inquired on who will be authorised to have access to this retained data, stating that the EU Directive limits the access to retained data for serious crime offences.

Ms Smith advised agencies that currently have access to telecommunications data will have access to the same data under data retention regime.

Mr Cheah asked when AGD would be consulting the public on the policy. Mr McDonald advised that consultation would have to be finalised on a technical model and data sets before public consultation could commence with the public.

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DATA RETENTION INDUSTRY CONSULTATION MEETING

SYDNEY

Wednesday 26 August 2009

AGENDA

9.30 am – Meeting Open – *Catherine Smith*

S33(a)(i)

2. Presentation on the European Data Retention directive and associated ETSI technical standards – *Lionel Markey*
3. International perspective – what is occurring internationally – *Wendy Kelly*
4. Work done so far – Inter-agency Working Group – *Elizabeth Landford*
5. S33(a)(i), S38(1)
6. Storage models – *Catherine Smith*
7. Consultation strategy – *Wendy Kelly*

Meeting close 3.30 p.m.

**Telecommunications Expert's Group
16 June 2009**

SUMMARY OF DISCUSSION

Participants

Name	Organisation
S47F(1)	S47G(1)(a), S47G(1)(b)
Chris Cheah	ACMA
Neil Gaughan	AFP
Geoff McDonald (Co-Chair) Catherine Smith Mike Rothery Lionel Markey (Secretariat)	AGD
S47F(1)	S47G(1)(a), S47G(1)(b)
Keith Besgrove (Co-Chair) Sabeena Oberoi David Jory Dane Bohan	DBCDE
S38(1)	
S47F(1)	S47G(1)(a), S47G(1)(b)

Action Points

1	
2	
3	MATERIAL OUTSIDE SCOPE OF REQUEST
4	
5	
6	S33(a)(i)

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MATERIAL OUTSIDE SCOPE OF REQUEST

Ms Smith also provide an update on mandatory data retention sating that her branch had written to the Attorney-General and the Prime Minister seeking approval to consult with industry on the data sets and storage models.

Ms Smith also advised that she would like [redacted] to assist in the industry consultation process.

S47G(1)(a), S47G(1)(b)

On the matter of timeframe and introduction Ms Smith advised that at the present time there is no timeframe as consultation will take as long as is required.

S47F(1), S33(a)(i)

S33(a)(i)

- 7. It was agreed that the next Expert's Group meeting be held in another 3 months time rather than 6 months.**

Meeting closed