

INDUSTRY CONSULTATION MEETING

S47G(1)(a)

Thursday 17th May 2012

AGENDA

Tea and coffee available from 9.30 a.m.

10.00 a.m. – Meeting Open

MATERIAL OUTSIDE SCOPE OF REQUEST

• **Data Retention** – *Lionel Markey*

MATERIAL OUTSIDE SCOPE OF REQUEST

Meeting Close 3.00 p.m.

RELEASED UNDER THE FOI ACT 1982 BY
THE ATTORNEY-GENERAL'S DEPARTMENT

FOI-1

Telecommunications (Interception and Access) Act 1979

Meeting of Industry Forum

Monday 27th February 2012

9:30am – 4:30pm (11am Morning Tea, 1:00pm Lunch)

Warrumbungle Room, Level 2, Robert Garran Offices (AGD) 3-5 National Circuit, Barton

Facilitator – Catherine Smith



Australian Government
Attorney-General's Department

National Security
Law and Policy Division

AGENDA

MATERIAL OUTSIDE SCOPE OF REQUEST

8. Data Retention (Lionel Markey)

Outside Scope

Outside Scope

Industry FORUM – 27 February 2012

S47F(1)

Attendees:

Wendy Kelly, Catherine Smith, Stuart Woodley, Lionel Markey, Simon Lee, Andrew Newman-Martin, Daniel Nolan.

AM Session: Piet Hooker, Jillian Cook, Parker Reeve.

PM Session: Glenn Nott, Stephanie Grant, Madeleine Manning.

Apologies: S47F(1)

MATERIAL OUTSIDE SCOPE OF REQUEST

~~IN-CONFIDENCE~~

OUTSIDE SCOPE

With respect to industry obligations – made a recommendation as to a data breach notification regime. When considering data retention note that the Departments thinking was at an early stage. The consultant’s preference was that requirements were to be set out in primary legislation rather than delegated legislation. Again, suggested independent approval to access the data which had been retained. The consultants considered the data storage methods, and possible function creep to find new use for the retained data.

Next Steps

Finalise the policy development; consultants will prepare the finalised PIA based on analysis of the exposure draft legislation. The preliminary report will be internal to government and not intended to be circulated more widely. Up to Government to decide whether the finalised report is made public. Expect that finalising the PIA may require stakeholder engagement and we will.

Questions

[redacted] – General work doing considering privacy breach notification, would these requirements be specific to Telco’s? MR Woodley indicated that this had not been fully considered, but there would be reluctance for duplication. [redacted] would not like for this process to result in additional data breach notifications for industry subject to the Privacy Act. Ms Kelly indicated that it was a recommendation specific to data retention but that it. [redacted] – Did they look at models for the data storage? Mr Woodley indicated that they looked at the models which we had previously discussed with you – IIS did not independently offer up additional models. [redacted] – commented that had they considered that industry would try to have less data. [redacted] – FOI has not traditionally applied to TI information – was there a suggested that FOI be expanded to include this? Mr Woodley indicated that this was not considered. [redacted] questioned whether there had been discussion of increased security audits? In 2003 they came and audited the processes and provided advice as to the processes. Mr Cheah – did they discuss the interrelationship between Industry Codes and Privacy apparatus more generally (there can be two agencies/regulators, ACMA and the Privacy Commissioner that are involved). Mr Woodley indicated that they acknowledged the patchwork nature of privacy.

All deletions in this paragraph are made pursuant to section 47F(1)

MATERIAL OUTSIDE SCOPE OF REQUEST

~~IN-CONFIDENCE~~

MATERIAL OUTSIDE SCOPE OF REQUEST

8. Data Retention

Lionel: Gave a discussion of issues that has arisen in regards to costs for the RIS – four major variables: level of industry compliance; the size of the data set; the storage model; and the retention period – as each variable varies, it has a knock-on effect on the other variables.

Lionel noted that compliance models have considered full industry compliance, or a tiered compliance regime, or a co-regulatory model developed by industry. In considering full industry compliance, we have however noted [REDACTED] S37(2)(b)

[REDACTED] We have also noted from the ABS statistics that there is 191 licensed carriers, but the number of ISPs have dropped sharply – originally thought of as about 700 providers a few years ago, but has recently been quoted as only 97 ISPs having more than 1000 customers. Only 10 of those providers have been rated as ‘very large’. This may arise due to the phenomenon of larger ISPs absorbing smaller ones in recent years. This in turn will affect the development of policy and consideration of regulatory impact.

S47F(1)

[REDACTED]: Considering what is a threshold for entry into the NBN – there may be a completely different set of circumstances as new players enter the industry, so current threshold requirements are likely to change. Lionel: we have noted this likelihood and will consider this further.

Lionel raised the issue of data set considerations and the issue of what information carriers will have in light of changes to document verification – credit card, driver’s licence, passport info etc. may not be held by carriers now, but rather sent to an external vetting agency with a true/false value token be returned and held instead. Network and port address translation information has also been an issue for consideration, especially by agencies.

S47F(1)

S45(1), S47G(1)(a), S47G(1)(b)

[REDACTED] [REDACTED] have built their systems based upon current industry standards of banking, and that requires them not to hold such credit card info. However, there is a receipt trail for LEAs to chase when needed, but no credit card number held. The TCP Code gives rules for customer identification requirements, and they think that it has to be disposed of as required under the Code. Departing from the norm will also change customer expectations in that regard.

S47F(1)

[REDACTED] Identity is a difficult field, but DVS helps with a trail appropriate for the particular device. Records for subscribers will nevertheless need to be retained – the issue is that with pre-paid, the

financial liability is out of the way immediately, whilst post-paid is an ongoing documented relationship.

S47F(1)

[redacted]: Is it whatever the carrier has in these fields that must be retained? Catherine advised that we anticipate so.

[redacted]

S37(2)(b), S47F(1)

Lionel noted the difficulty with costing internet-based traffic IP in relation to telephony: much reporting on telephony via annual reports and statistics, but IP reporting is generally based on download summaries and that there is less reporting. Attempting to provide a precise cost on DR relies upon a lot of assumptions.

S47F(1)

S47F(1) [redacted] asked what kind of back-up costs will be covered in the regime, e.g. expecting 2-3 copies of everything? Also, how often will the records be viewed? [redacted] also noted that costs would be dependent upon copying and transmission requirements and the failure rate of equipment.

Catherine noted that copying expectations & demands will not be that high. Lionel: all these issues add to the cost and have to be considered in setting DR system requirements.

[redacted]

S45(1), S47F(1), S47G(1)(a), S47G(1)(b)

[redacted]

S37(2)(b)

S47F(1) [redacted] considered that on the voice side, we anticipate that not much will be changed. Question is what would have to be changed on the data retention regime, hopefully not much.

[redacted]

S45(1), S47F(1), S47G(1)(a), S47G(1)(b)

~~IN CONFIDENCE~~

[Redacted]

S45(1), S47F(1), S47G(1)(a), S47G(1)(b)

~~IN CONFIDENCE~~

RELEASED UNDER THE FOIACT1982 BY
THE ATTORNEY-GENERAL'S DEPARTMENT