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Data retention legislation needs more work

The release of the Parliamentary Joint Committee on Intelligence and Security's review of the mandatory data retention regime clears the way for the immediate implementation of the 22 recommendations contained in the report, says the Law Council of Australia.

Law Council President, Pauline Wright, said the bipartisan report, tabled in Federal Parliament yesterday, is evidence the Committee shares the Law Council's view that improvement is required to ensure the scheme's proportionality.

"The Report specifically recommends that the Law Council should be consulted in (a) the development of national guidelines on the operation of the scheme; and (b) defining the term 'content or substance of a communication', and we are ready and willing to assist in that regard," Ms Wright said.

"Notably, it is clear that the mandatory data retention scheme as currently contained in Part 5-1A of the *Telecommunications (Interception and Access) Act 1979* (Cth), has the potential to intrude on the privacy of all Australians, not just suspected criminals or people of national security interest.

The Law Council maintains that access to telecommunications data must only be permitted when the public interest in detecting serious criminal activity or threats to national security outweigh intrusion into the private lives of Australians by the State.

"The Committee's 22 recommendations that address deficiencies in the current framework, should be implemented as soon as possible," Ms Wright said.

"This includes repealing s 280(1)(b) of the *Telecommunications Act 1997* (Cth) which creates a 'backdoor' for a wide variety of public and private bodies to access telecommunications data, where they would otherwise be excluded by the framework under the *Telecommunications (Interception and Access) Act 1979* (Cth).

"Steps must be taken to ensure that the current lack of proportionality is addressed. The Law Council also supports the Committee's recommendations to increase the threshold for accessing existing information or documents by law enforcement agencies, and to make ASIO's authority to disclose telecommunications data consistent with the threshold enabling ASIO to intercept telecommunications or access stored communications under a telecommunications service warrant," Ms Wright said.

"The Law Council also fully endorses the Committee's recommendation that the Department of Home Affairs prepare national guidelines on the operation of the mandatory data retention scheme by enforcement agencies and define the term 'content or substance of a communication'.

"It is pleasing to see that the Committee has expressly recommended the Law Council be consulted, and we look forward to engaging with stakeholders in this process," Ms Wright said.

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