

Agreement between the Government of Australia and the Government of the United States of America on Access to Electronic Data for the Purpose of Countering Serious Crime

Public hearing: Thursday, 13 October 2022

Response to questions on notice

NSW Council for Civil Liberties

Questions:

CHAIR: Yes. On page 7 you talk about ‘the right for an individual to know of the existence of an order relating to them’. The suggestion there is that the moment that an order would be transmitted through the designated authority to provider in the United States that the individual subject to the order would be notified. That goes to the point I made earlier about the extent to which that compromises a law enforcement investigation or, indeed, an investigation by security agencies. I think that’s an issue.

Mr Blanks: Can I take that on notice, and we’ll provide a further submission on that. Obviously, there are other agreements of this kind internationally being entered into, and one of the things I’d like to do is have a look at how they handle that issue.

Answer: Individuals in Australia should be provided similar rights to individuals in the EU under the GDPR. The overriding premise is that an individual has a right to be informed when data about them is disclosed to a third party, with limited exceptions. See generally <https://gdpr-info.eu/issues/right-to-be-informed/>. The operation of the exceptions should be regularly reviewed by the PIM or other relevant oversight authority.

Senator O’Neill: One of the issues that’s embedded in here is the concern about dispute resolution within the agreement. Do you have a view about what an appropriate dispute resolution mechanism might look like?

Answer: The dispute resolution mechanism should be accessible at low cost to individuals. The PIM, or other oversight authority, should have appropriate powers to investigate complaints and disputes lodged by individuals, and to make appropriate determinations as to outcomes, including the award of compensation in appropriate cases

Senator O’Neill: With regard to civil penalties being imposed on the US for a company that is not complying with an order, is the process about what would happen clear in this document?

Mr Pallas: On the basis of the information that I’ve read, I can’t answer that question off the top of my head. Again, we could take it on notice and get back to you.

Answer: In our view, this question may be better directed to the secretariat, as members of the Committee indicated.