

A2298802

9 January 2023

Chair
Environment and Communications Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: ec.sen@aph.gov.au

Dear Chair

**Inquiry into the Telecommunications Legislation Amendment
(Information Disclosure, National Interest and Other Measures) Bill 2022**

Thank you for the opportunity to provide comments on the Telecommunications Legislation Amendment (Information Disclosure, National Interest and Other Measures) Bill 2022 (the Bill). This letter represents my submission to the Committee's inquiry into this Bill.

The powers and functions of my Office are not directly impacted by the proposals in the Bill. However, I wish to draw the Committee's attention to one of the amendments on which I can provide further relevant background due to my responsibilities to oversee Commonwealth, state and territory law enforcement and integrity agencies' use of covert, intrusive and coercive powers under the *Telecommunications (Interception and Access) Act 1979* (TIA Act).

The Bill strengthens record-keeping and oversight of carriers and carriage service providers' provision of information to agencies pursuant to s 280 of the *Telecommunications Act 1997* (Telecommunications Act). Section 280 of the Telecommunications Act provides a framework for carriers and carriage service providers to lawfully disclose telecommunications information or documentation to Commonwealth, state and territory agencies under a warrant (para 280(1)(a)) or a disclosure "required or authorised by or under a law" (para 280(1)(b)). Section 280 allows information to be disclosed under a range of Commonwealth, state and territory laws.

Item 12 of Part 2 of the Bill amends ss 306(5) of the Telecommunications Act to require carriers and carriage service providers to record additional information when making disclosures to agencies under ss 280. In practice, this would require carriers and carriage service providers to record more information relating to the basis upon which a warrant or other law was used to seek the disclosure. It is my understanding that compliance with s 306(5) would remain subject to oversight by the Office of the Australian Information Commissioner (OAIC).¹ I welcome this amendment and agree with the statements in the Explanatory Memorandum that increasing record keeping requirements would support oversight of the warrants or authorisations being relied upon to utilise s 280.

However, the amendment would not address the current gap in oversight of *agencies'* use of s 280 combined with other laws *outside* the oversight jurisdiction of my Office. That is, where agencies

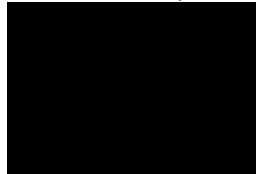
¹ OAIC jurisdiction to oversee the relevant provisions is provided by s 309 of the *Telecommunications Act 1997*.

seek disclosures from carriers and carriage service providers using a Commonwealth, state or territory law other than the TIA Act. Currently, there is no Commonwealth body responsible for comprehensive oversight of Commonwealth, state and territory agencies' use of s 280. This is a concern that has been previously discussed in both the Parliamentary Joint Committee on Intelligence and Security's *Review of the Mandatory Data Retention Regime*² and my predecessor's submission to that review. A copy that submission is enclosed for your reference.

There would be value in continuing to consider ways to resolve this oversight gap as part of broader government and Parliament scrutiny of s 280 of the Telecommunications Act. If a new or existing oversight body is given responsibility to oversee the Commonwealth, state or territory agencies' use of s 280, this would need to be supported with adequate resourcing.

I trust this will be of assistance.

Yours sincerely



Iain Anderson
Commonwealth Ombudsman

Encl. Submission by the Commonwealth Ombudsman for the Review of the Mandatory Data Retention Scheme

Influencing systemic improvement in public administration

² Parliamentary Joint Committee on Intelligence and Security, *Review of the Mandatory Data Retention Regime*, 2020, paragraph 3.25.