



**Submission by the
Financial Rights Legal Centre**

Communications Security Branch
Attorney-General's Department

Access to Telecommunications Data in Civil
Proceedings Review

January 2017

About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumer's understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. Financial Rights took over 25,000 calls for advice or assistance during the 2015/2016 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

For Financial Rights Legal Centre submissions and publications go to www.financialrights.org.au/submission/ or www.financialrights.org.au/publication/

Or sign up to our E-flyer at www.financialrights.org.au

National Debt Helpline 1800 007 007
Insurance Law Service 1300 663 464
Aboriginal Advice Service 1800 808 488

Monday – Friday 9.30am-4.30pm

Introduction

Thank you for the opportunity to comment on the Consultation Paper into Access to Retained Data in Civil Proceedings. Financial Rights strongly opposes any exceptions to the prohibition in section 280(1B) for civil proceedings.

The data retention regime was introduced for the purposes of national security and criminal law enforcement. The use of metadata for civil proceedings does not meet the original objective in any respect. There is no evidence that the current civil justice system needs access to this data.

Financial Rights is a community legal centre that specialises in credit, debt and insurance. Accordingly, this submission will focus on the potential detriment for consumers with credit, debt and insurance problems should access be granted to metadata in civil proceedings. We would also contend that there is no policy justification for enabling access in civil proceedings to metadata.

This submission raises two main concerns:

1. Insurance companies may demand access to metadata in insurance investigations; and
2. Debt collectors may seek access to metadata for debt collection purposes.

In both cases, we remain concerned that metadata (if access is granted) could be used to track, surveil, intimidate and harass consumers.

Metadata and the Privacy Act

APP 6.1 of the Privacy Principles requires that where information is collected for a particular purpose it should not (generally) be used for another purpose. In this case, the metadata was collected for the purpose of national security and law enforcement. If it was to be used for a secondary purpose (for civil cases) this would be inconsistent with the Privacy Act.

Financial Rights contends that the prohibition should be retained to ensure that the public retains confidence that the use of information is consistent with the Privacy laws in Australia.

We also refer to *Dallas Buyers Club v. iiNet*¹ demonstrated the careful consideration required to balance the privacy of telecommunications customers and the civil case being brought by a copyrights holder. Perram J expressed considerable concern about the potential harassment of telecommunications customers with claims for disproportionate damages (who had allegedly infringed copyright)².

Debt Collection

The issue of “speculative invoicing” was a central concern in the *Dallas Buyers Club v. iiNet* case. Financial Rights contends that the potential misuse of metadata for “speculative invoicing” or other debt collection practices is a serious concern for Australians. We contend that access to metadata for civil matters must be prohibited to ensure that this type of misuse is prevented. It is noted that this does not cause a disadvantage to civil litigants as metadata has not been available for discovery in the past.

Insurance Investigations

Financial Rights recently released a report on insurance investigations “*Guilty until proven Innocent: Insurance Investigations in Australia*”³. The report outlined serious concerns about the way insurance companies conduct insurance investigations. It made several recommendations

¹ Dallas Buyers Club LLC v. iiNet Limited [2015] FCA 317

² Dallas Buyers Club LLC v. iiNet Limited [2015] FCA 1437

³ Available at <http://financialrights.org.au/wp-content/uploads/2016/03/Guilty-until-proven-innocent.pdf>

for reform. It is also noted that there has been substantial media coverage outlining problems with insurance investigations.

We contend that access to metadata could be used to further harass consumers that are the subject of insurance investigations. This would cause further detriment to already stressed and upset consumers.

Responses to Consultation Questions

1. In what circumstances do parties to civil proceedings currently request access to telecommunications data?

Insurance companies routinely seek access to telecommunications data in insurance investigations.

2. What, if any, impact would there be on civil proceedings if parties were unable to access the telecommunications data set as outlined in section 187AA of the TIA Act?

In the context of insurance or debt-related litigation we do not believe there would be any adverse impact on litigants if parties were unable to access the telecommunications data set as outlined in section 187AA of the TIA Act as there are already sufficient mechanisms in place to access such data with consent from the consumer.

3. Are there particular kinds of civil proceedings in which the prohibition should not apply?

No, the Financial Rights Legal Centre does not support any exclusion to the prohibition in section 280 (1B).

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact the Financial Rights Legal Centre on (02) 9212 4216.

Kind Regards,



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