



**Australian  
Privacy  
Foundation**

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<http://www.privacy.org.au/About/Contacts.html>

1 March 2015

Mr Simon Corbell MLA  
ACT Attorney-General

Dear Mr Corbell

**Re: Privacy Cause of Action; and Data Retention**

The Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation. A brief backgrounder is attached.

We refer to the article in The Canberra Times on Sunday 1 March 2015, and the earlier article that it refers to, from 8 October 2012.

The APF submitted strongly in support of a suitably designed privacy right of action. The APF urges your Government to again show a lead to the rest of the country in the human rights arena, by bringing forward a Draft Bill for consultation. Links to the APF's submissions on the matter are below our signatures.

In relation to data retention proposal, the APF has provided the relevant Parliamentary Committees with a sheaf of evidence. It shows that the proposal is incapable of achieving its claimed purpose or purposes, it would be highly costly, it would create a mass surveillance scheme the like of which has never previously existed in Australia, and access to the data would be largely uncontrolled. The proposal should not be passed into law, either in its present form or in the marginally amended form recommended by the PJCIS this week. I attach the short version of the APF's findings on data retention, which contains pointers to the detailed evidence.

We would be pleased to provide further assistance on these matters.

Yours sincerely

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APF Documents re the Privacy Right of Action:

- A Privacy Right of Action, Policy Statement (21 Jul 2011)  
<https://www.privacy.org.au/Papers/PRoA.html>
- A Statutory Cause of Action, Submission to PM&C / AGD (4 Nov 2011)  
<https://www.privacy.org.au/Papers/PMC-SCofAction-111104.pdf>

## Australian Privacy Foundation

### Background Information

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance.

When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.

The APF is open to membership by individuals and organisations who support the APF's Objects. Funding that is provided by members and donors is used to run the Foundation and to support its activities including research, campaigns and awards events.

The APF does not claim any right to formally represent the public as a whole, nor to formally represent any particular population segment, and it accordingly makes no public declarations about its membership-base. The APF's contributions to policy are based on the expertise of the members of its Board, SubCommittees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

The APF's Board, Committees and Reference Groups comprise professionals who bring to their work deep experience in privacy, information technology and the law.

The Board is supported by Patrons The Hon Michael Kirby and Elizabeth Evatt, and an Advisory Panel of eminent citizens, including former judges, former Ministers of the Crown, and a former Prime Minister.

The following pages provide access to information about the APF:

- Policies <http://www.privacy.org.au/Papers/>
- Resources <http://www.privacy.org.au/Resources/>
- Media <http://www.privacy.org.au/Media/>
- Current Board Members <http://www.privacy.org.au/About/Contacts.html>
- Patron and Advisory Panel <http://www.privacy.org.au/About/AdvisoryPanel.html>

The following pages provide outlines of several campaigns the APF has conducted:

- The Australia Card (1985-87) <http://www.privacy.org.au/About/Formation.html>
- Credit Reporting (1988-90) <http://www.privacy.org.au/Campaigns/CreditRpting/>
- The Access Card (2006-07) [http://www.privacy.org.au/Campaigns/ID\\_cards/HSAC.html](http://www.privacy.org.au/Campaigns/ID_cards/HSAC.html)
- The Media (2007-) <http://www.privacy.org.au/Campaigns/Media/>



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## **MEDIA RELEASE**

**5 February 2015**

### **Data Retention Bill Fails Every Test**

The APF has appeared before two Parliamentary Committees, and presented evidence that:

- The proposal is much, much more than its proponents are pretending
- The proposal is not for targeted personal surveillance, but for mass surveillance
- The justification that has been offered is not evidence, just anecdotes
- The counter-evidence from multiple countries shows that data retention does not help with counter-terrorism or with other forms of serious crime
- Anyone with technical understanding can circumvent the law and avoid being tracked
- The proponents are ignoring the counter-evidence, and hoping people won't notice
- An effective weapon already exists, in the form of preservation orders
- The proposals would have serious negative impacts on normal people, and business
- The proposals do not include anything resembling proper safeguards
- The limited safeguards that the proposal contains are not subject to effective controls
- In other countries, such proposals are struck down by the highest-level courts, but that can't happen in Australia because we lack human rights protections
- The Parliament must apply as much care to the evidence before it as the High Court would if it had the opportunity to do so

### **The Parliament must reject this proposal for mass electronic surveillance**

Summaries:

<https://www.privacy.org.au/Papers/SLCA-TIAA-Notes-150202.pdf>

<https://www.privacy.org.au/Papers/PJCIS-DataRet-Supp-150131.pdf>

Detailed Submission:

<https://www.privacy.org.au/Papers/PJCIS-DataRetention-150119.pdf>

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