

## MEDIA RELEASE

Canberra, 5<sup>th</sup> August 2014

### No justification for society-wide mandatory data retention scheme

**EFA is alarmed by media reports today that suggest that Cabinet's National Security Committee has signed off on the fast-track implementation of a mandatory data retention scheme, apparently citing the 'rising threat of home grown terrorism'.**

The Daily Telegraph reports that the government is believed to be seeking "an interim data retention measure...to be introduced as early as September to meet what spy agencies claim is an immediate need in the face of heightened fears of potential terrorist attacks on Australian soil".<sup>1</sup>

EFA accepts that there are genuine potential threats to Australian security from the potential actions of individuals involved in the current conflicts in the Middle East.

There is however absolutely no basis whatsoever on which these potential threats can be used to justify a mandatory, society-wide data retention scheme.

ASIO and the Federal Police already possess broad powers to issue data preservation notices to ensure that communications data (metadata) relating to persons of interest is retained. It is likely that such notices have already been issued in relation to those persons of interest that are of such current concern to the government.

EFA Treasurer Daemon Singer today said, "Rushing through new surveillance powers in the context of an apparently imminent threat is the exact opposite of how public policy-making should be conducted. There have been dozens of extensions to surveillance powers since 2001 and, if today's media reports are correct, it appears that the government is seeking now to use the cover of concerns about returning jihadists to again significantly expand surveillance powers that will adversely affect the privacy and presumption of innocence of all Australians."

EFA is strongly opposed to the introduction of any mandatory, society-wide data retention scheme. A data retention scheme would involve the forced retention, by Telecommunications and Internet Service Providers, of records of communications, potentially involving both telephone-based and internet-based (eg email, Voice-over-IP and social media) communications.

Such a scheme would amount to a massive invasion of the privacy of all Australians, as well as undermining the presumption of innocence, treating everyone as potential suspects, rather than citizens. As Bernard Keane points out in Crikey today, such a scheme also carries with it very serious threats to media freedom and to the ability of whistleblowers to highlight areas of government overreach.<sup>2</sup>

A mandatory, society-wide data retention scheme would involve very significant technical challenges and security risks as well as substantial costs that will inevitably be passed on to consumers through higher internet access charges. The burden of implementing such a scheme would also result in diminished competition within the telecommunications sector as smaller providers will be less able to cope with the demands of complying with such a scheme.

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<sup>1</sup> <http://www.dailytelegraph.com.au/news/nsw/terror-byte-your-data-kept-for-two-years-in-war-on-homegrown-extremists/story-fni0cx12-1227013435230>

<sup>2</sup> <http://www.crikey.com.au/2014/08/05/data-retention-is-an-intolerable-threat-to-democracy/>

Attorney-General Senator George Brandis has recently been quoted as saying that mandatory data retention is “very much the way in which western nations are going”.

The reality however, is quite the opposite.

The EU data retention regime was recently ruled as unconstitutional by the European Court of Justice (ECJ). The United States’ congress is also currently considering legislation (the USA Freedom Act) that would impose significant restrictions on the collection and retention of metadata US agencies. While it is true that the United Kingdom government is seeking to rush through data retention legislation, this is only happening because their current regime has been ruled illegal by the aforementioned ECJ decision.

EFA therefore welcomes the comments this morning from Communications Minister, Malcolm Turnbull, who is reported to have said, “We are a Liberal government, we believe in small government. We are absolutely committed to individual liberty and privacy and we believe that the incursion of government into our lives, into our affairs, should be absolutely limited to no more than is necessary.”<sup>3</sup>

EFA is a signatory to the International Principles on the Application of Human Rights to Communications Surveillance, and believes these principles should be adhered to in relation to all mass surveillance activities. These principles are available at: <https://en.necessaryandproportionate.org/text>

EFA therefore calls on the government to resist the urge to act reflexively and with undue haste to implement any mandatory, untargeted data retention scheme, and to allow serious, unhurried, objective consideration of a properly detailed proposal.

As the Parliamentary Joint Standing Committee on Intelligence and Security (PJCS) stated in its report tabled in June 2013,

“If the Government is persuaded that a mandatory data retention regime should proceed, the Committee recommends that the Government publish an exposure draft of any legislation and refer it to the Parliamentary Joint Committee on Intelligence and Security for examination.”<sup>4</sup>

It should be noted that Senator Brandis was a member of the Committee at the time this report was published.

EFA also calls on the opposition and other parties to strongly resist any moves by the government to subvert proper parliamentary process and oversight in relation to any mandatory data retention or other mass surveillance scheme.

## About EFA

Celebrating its 20th Anniversary in 2014, Electronic Frontiers Australia Inc. (EFA) is a non-profit national organisation that has been promoting digital freedom, access and privacy in Australia since 1994. EFA’s major objectives are to protect and promote the civil liberties of users and operators of computer based communications systems such as the Internet, to advocate the amendment of laws and regulations in Australia and elsewhere (both current and proposed) which restrict free speech and to educate the community at large about the social, political, and civil liberties issues involved in the use of computer based communications systems. EFA website: [www.efa.org.au](http://www.efa.org.au).

## Media Contact

Jon Lawrence, Executive Officer  
[media@efa.org.au](mailto:media@efa.org.au)  
0414 669 787

<sup>3</sup> <http://www.zdnet.com/data-retention-plans-leaked-before-cabinet-briefed-7000032321/>

<sup>4</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=pjcs/nsf2012/report.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=pjcs/nsf2012/report.htm)