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## Retaining Australians' Online Data – a Potential Breach of International Laws

In a [submission](#) to a Joint Parliamentary Committee on Intelligence and Security inquiring into proposed changes to national security and intelligence-gathering legislation, Australian Lawyers for Human Rights has expressed concerns about potential breaches of human rights and international law if national security laws are amended to allow for the storage of Australians' online data for a period of two years.

In any assessment of Australia's counter terrorism and national security laws, it is vital to achieve an effective balance between the government's responsibilities (including international obligations) to protect its citizens from terrorism, and its responsibilities and international obligations to preserve and promote its citizens' fundamental human rights. Expanded investigative powers that would require private enterprises to retain Australians' online data for a period of two years have the potential to upset that balance by substantially breaching the rights to privacy of the Australian public.

International law requires the Australian Government to ensure that Australians' private information and correspondence are not arbitrarily interfered with by governments or private enterprise. In brief, the data retention proposal is that the telecommunications "*industry assistance framework*" be "*modernised*" by amending the *Telecommunications (Interception and Access) Act 1979* to require "*tailored data retention periods for up to 2 years*". While insufficient detail is provided in the Committee's terms of reference to determine the precise interception and data retention regime contemplated, ALHR has submitted that any proposal requiring private enterprise to retain customers' private data for up to 2 years carries a significant potential for breach of privacy rights and risk of unauthorised disclosures of private information.

ALHR's concerns echo those of [United Nations' representatives who have previously expressed concerns](#) about governments increasing their powers to monitor internet users' activities without providing sufficient guarantees against abuse. Adding to ALHR's concerns, Australian privacy law does not require private enterprises to report unauthorised access to customers' private information. If any data retention scheme is proposed, mandatory disclosure laws for data breaches would more effectively and consistently implement the Australian Government's international obligations to protect human rights, including the right to privacy under Article 17 of the International Covenant on Civil and Political Rights

Statements made by former United Nations Secretary-General Kofi Annan in a [2005 address to the International Summit on Democracy, Terrorism and Security](#) highlight the importance of considering human rights when making laws for national security: "*...compromising human rights cannot serve the struggle against terrorism. On the contrary, it facilitates achievement of the terrorist's objective by ceding to him the moral high ground, and provoking tension, hatred and mistrust of government among precisely those parts of the population where he is more likely to find recruits.*"

**ALHR (Australian Lawyers for Human Rights)** is a network of Australian lawyers active in practising and promoting awareness of international human rights standards in Australia. ALHR has a national membership of over 2000 people, with active National, State and Territory committees.

*ALHR* has urged the Australian Government to consider its human rights obligation to protect the privacy of members of the Australian public who are not under investigation, before proposing any increase in government organisations' investigative powers, and before requiring private enterprise to store Australians' online data.

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