



The Telecommunications Legislation Amendment (Information Disclosure, National Interest and Other Measures) Bill 2022 (The Bill) – Fact sheet

Helping Police Find Missing Persons

January 2023

On 16 September 2022, NSW Deputy State Coroner, Magistrate Erin Kennedy, released her findings on the Inquest into the disappearance of CD:

“The need for potential amendment of s 287 [of the Telecommunications Act 1997] and the ‘serious and imminent’ threshold test requires urgent consideration.”¹

In response to the Deputy State Coroner’s recommendation to reform the Telecommunications Act 1997, the Government has introduced a Bill aimed at saving lives, into the Australian Parliament.

Telecommunications companies are prohibited from disclosing information about their customers. The penalty for disclosure is 2 years imprisonment.

There are some limited exceptions. One exception, known as section 287, is where sharing information about a customer is needed to prevent or lessen a serious and imminent threat to a person’s life or health.

This provision is used by police and emergency service organisations to get help from telecommunications companies to find missing people using **‘triangulation’**.

Triangulation allows telecommunications carriers to estimate the location of mobile phone based on the cell towers that the phone is connected to.

Triangulation is not perfect – it can only estimate where a phone is – but it is hard to overestimate how important it is in helping police to save lives.

In missing people cases, time is of the essence. Delays in getting triangulation data can cost lives. In two recent cases, NSW State coroners have highlighted how difficult it is for telecommunications companies and police to reach a conclusion that a threat to a missing person is **‘imminent’**.

¹ Inquest into the disappearance of CD, paragraph 197

In fact, NSW Deputy State Coroner, Magistrate Erin Kennedy in the inquiry of into the disappearance of CD has said that reform to section 287 is urgent.

The Government has introduced a new bill into the Parliament to solve this problem, to help police save lives.

The bill removes the requirement that telecommunications companies need to reach the conclusion that a threat is imminent. They still need to believe the threat is serious – as the Australian Law Reform Commission has noted, consideration of whether a threat is **‘serious’** will include consideration of its relative likelihood.

The Government believes that helping police save lives is of utmost importance, but also wants to improve privacy protections. That is why the bill includes new privacy protection safeguards.

For example, the bill introduces a requirement that it is **‘unreasonable’ or ‘impracticable’** to get the consent of the person involved.

The Act also includes strict **‘secondary disclosure’** prohibitions that have been strengthened in the bill – meaning that police are only allowed to use information from telecommunications companies for the purposes that it has been provided for.

Taken altogether, the bill strikes the right balance, will contribute to saving lives, and will help police to do their critical jobs in finding missing people.

“Legislative amendment is of course a matter solely within the province of Parliament. However, it is consistent with my death prevention role to highlight the urgent need for review given the current construction and operation of s 287 in the context of missing person investigations, as was highlighted by this Inquest and that of the Thomas Hunt Inquest.”²

The case of CD

On 17 June 2019, CD, a NSW man went missing. On 21 June 2019, a NSW Police Detective contacted the Duty Operations Inspector, requesting triangulation of CD’s phone. This request was declined on the basis there was no **‘serious or imminent threat to the life or health’** of CD within the meaning of the Act.³

The Chief Inspector who denied the triangulation has expressed his frustration in the position he was in, as he felt legally obliged to decline the triangulation in this case, and articulated the need for legislative change.⁴

The Detective Chief Inspector (DCI) managing the Missing Persons Registry at NSW Police reviewed the investigation into CD’s disappearance and formed the following opinion: **“... I also believe a triangulation should have been requested to discover the location of CD’s phone”**.

The DCI believes the triangulation tool should be used for all **‘high risk’** missing persons investigations.⁵

The case of Thomas Hunt

On 22 March 2017, Thomas Hunt went missing. As part of the effort to find Thomas, two NSW police officers raised the possibility of organising the triangulation of Thomas’ phone.⁶

NSW State Coroner, Magistrate Teresa O’Sullivan commented that **“it is therefore of some concern that the bar is set high for applications under s. 287 [the relevant provision of the Act] by the State Coordination Unit”**.⁷

“...the decision whether to triangulate can be a matter of life and death”.⁸

² Inquest into the disappearance of CD, paragraph 136

³ Inquest into the disappearance of CD, paragraph 48

⁴ Inquest into the disappearance of CD, paragraph 123

⁵ Inquest into the disappearance of CD, paragraph 95

⁶ Inquest into the disappearance of Thomas Hunt, paragraph 62

⁷ Inquest into the disappearance of Thomas Hunt, paragraph 67

⁸ Inquest into the disappearance of CD, paragraph 127

Why is it important to help police find missing people?

- In Australia a missing person is anyone who is reported missing to police, whose whereabouts are unknown, and where there are fears for their safety or welfare.
- Unfortunately, missing people in Australia is a serious problem.
- An estimated 38,000 people are reported missing to police each year; that is one person every 15 minutes.
- A long-term missing person is someone who has been missing for more than three months. There are over 2,500 people listed as a long-term missing person.
- The increased occurrence of natural disasters over the last few years during the summer period has the potential to heighten missing persons statistics.
- If you have concerns for someone's safety and welfare, and their whereabouts is unknown, you can file a missing person's report at your local police station.

Common questions/assumptions about the Bill

Q: Does the legislation make it easier for abusers to track down victims of domestic violence?

A: No. The changes will only allow for information to be disclosed by a telecommunications company (telco) where there is a serious threat to life or a person's health and where it is impracticable or unreasonable to obtain the consent of the person in question.

A telco would be relying on the advice of law enforcement and/or emergency services organisations, in accordance with existing practices.

A claim made by a member of the general public, without support or confirmation from law enforcement agencies, would not meet the threshold for disclosure.

Q: Does the legislation reduce privacy protections?

A: No. The changes improve privacy protections. Whilst the 'imminent' qualifier has been deeply problematic and may very well have contributed to loss of life, the changes to the legislation insert a requirement that disclosure from the telco can only occur where it is impracticable or unreasonable to obtain the consent of the person in question.

Q: Will police get access to my GPS data when they triangulate my phone data?

A: No. Triangulations by carriers do not use GPS technology. A triangulation uses one or more cell towers to provide an approximate area where the handset may be located. Triangulations assist in locating missing persons in about 20% of high-risk missing persons cases in NSW.

Q: Why does there need to be reasonable belief? Why can't it be reasonable suspicion?

A: The use of 'reasonable belief' is consistent with equivalent provisions set out in the Privacy Act.

The lower-threshold of 'reasonable suspicion' would create inconsistencies with the Privacy Act if it was applied to the Telecommunications Act.

The Government's approach is consistent with the **Australian Privacy Principle Guidelines**, where the 'reasonable suspicion' test is used for things like misconduct or unlawful activity, while the higher-threshold of 'reasonable belief' is to be used for locating a person reported missing.