

**1. In what circumstances do parties to civil proceedings currently request access to telecommunications data in the data set outlined in section 187AA of the TIA Act (refer to Attachment A)?**

I don't believe that this information is given out in civil proceedings besides matching ownership of a service to a particular user. For example in cases of online harassment or defamation. In these cases the date/time/destination/type are already known by the civil litigant. For example a post on facebook already gives the date/time of the post, destination is facebook, type is HTTP/S protocol and this is already known by the recipient of the defamation/harassment.

**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?**

A large impact, you would be opening the floodgates to American style litigation. Litigants would use this information for divorce proceedings/child custody litigation.

There's already lawsuits in the US suing people for sharing pornographic material (1). A quote from that article "They also know that individuals such as the Plaintiff in this matter are embarrassed to have their names associated with pornography, and therefore, are susceptible to being shaken down". I can foresee mass civil litigation along the lines of "pay up or we'll display your browsing history in open court and to your loved ones and colleagues".

Ordinary internet users expect privacy for their use of the internet. The enabling legislation for the retention of metadata was sold to the Australian parliament and public as being necessary for national security purposes. Opening this up for civil litigation should simply not be done.

**3. Are there particular kinds of civil proceedings or circumstances in which the prohibition in section 280(1B) of the Telecommunications Act 1997 should not apply?**

No! The risks far outweigh any rewards. If it's serious enough to warrant accessing this information then it should be a criminal matter.

From the discussion document "In making this recommendation, the Committee gave examples of 'family law proceedings involving violence or international child abduction cases' as potential classes of matters that could be excluded from the scope of the prohibition."

If a person is assaulting or harming their spouse or children this should have already crossed the barrier to criminal activity. If a person has abducted a child, even if lawful in another country, this should have broken a criminal law in Australia. In the case of criminal activities the police can already gain a warrant or use their proscribed powers under this legislation to obtain the required data.

I'd suggest rather than opening Pandora's box and enabling civil litigation to access this data, instead anything that that requires use of this data should instead be criminalized if it's not already.

References:

1. <http://arstechnica.com/tech-policy/2012/07/accused-of-downloading-porn-kentucky-woman-sues-the-pornographers/>