

Access to telecommunications data in civil proceedings submission

In noting that there is a wish from the Attorney-General's department to amend the *Telecommunications Act 1997* to enable civil proceedings, I wish to submit that amendments of Section 280 should not occur. Before I give my reasoning in accordance to the below questions, I will give full detail of my unfortunate experiences as a domestic violence survivor.

For five years – from 6 December 1997 to 19 December 2002 – I was in a relationship with a man that did not end well. Initially, he was very focused upon me. At the time, I had very low self-esteem. He destroyed it even further. I was called many names, and blamed for every single thing that went wrong in his life. The situation culminated in the early hours of 16 December 2002 at around 12:30am, when after I told him I wished to leave him he then put a quilt over my face and his arm across my nose. His intent was to murder me. As he was trying to grow marijuana at the time, he told me that he would implicate me in his illegalities.

At the time, I had believed him. I was suspicious of the police, as the police had never actually helped me with anything. I was also not as afraid of dying as others have been at hearing my story. However, I have been traumatised severely by the impact of the fact that someone else wanted to steal my soul.

I was finally able to leave him on 19 December 2002, with the tiniest window of opportunity. That did not stop him from stalking me afterwards. At one stage, I moved around. I had asked my Internet Service Provider for a silent number. I had assumed that they had complied with my request, due to the stalking that had occurred. They hadn't. He had found me, and drove by the place where I lived with the express intent on scaring me. I then moved interstate.

I found later on that I was not believed. He had made himself out to be such an outstanding member of the community that people had believed him over me.

Five years later, another man decided that he had to have me. He literally spent months in 'courting' me. After all internal barricades had broken down within me, I finally complied. He took everything I had – all with the express intention on keeping me with him. When I was able to finally leave him (after finally realising that he did not have cancer like he had said for literally months on end) he stalked me.

With both men, they used telecommunication devices to stalk me, as well as their physical selves. For me, there was nowhere to run, as they both made it their obligation to 'have' me no matter what.

At no stage could I go to the police. I simply was not believed. What they both did inside the house were so melodramatic, their actions simply did not mesh with their public personas.

For a victim of domestic violence, we need to obtain every single piece of information for evidence. The perpetrator's word is usually enough to placate most within this society. This is one of the most unjust aspects of our society today. This is also what leads to the numerous murders of women victimised by domestic violence.

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**)?

At this point in time, from my understanding there already are subpoenas available to both parties in order for evidence to be considered. Giving carte blanche notification will not benefit either party to the extent that they are already being benefited by civil proceedings as they are at present.

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?

Why on earth do you really want to go there? The impact is as positive as it gets for victims of domestic violence, if the perpetrator is refused access to telecommunications data.

Please imagine what it would be like if you are a victim of domestic violence, and your perpetrator was able to manipulate the civil court system to locate your exact whereabouts using your telecommunications data. Imagine the fear that you would have in having to move yet again, to no avail. Imagine what it is like to know there is nowhere to run, and it's only a matter of time before you are murdered, and all because the perpetrator was able to access the telecommunications data.

At this present moment, our court system has domestic violence so totally wrong. Perpetrators see the court system as a game to be overcome. They play magistrates and judges for fools. The biggest issue is that the perpetrator wins. The victim already has many problems. This would be another incredibly major problem. The biggest losers are the court systems that fail to protect the victim, as they give access to the perpetrator.

What I am saying is that the perpetrator will be able to gain access to all details pertaining to the victim, leaving the victim unprotected. While many can assume that the victim would possibly have similar access, this is not what happens in reality. The victim tries to get away from the perpetrator, not know every single detail of the perpetrator that there is. The victim is running away from the situation the perpetrator wants to maintain. Finding details is not what the victim wants to know. They have been traumatised more than enough without having to also detail with the next manipulated move by the perpetrator.

The victim only wants to know about survival. The perpetrator is the one that wants to know all details. The amendments to section 280 would give the perpetrator everything, and the victim nothing – not even their life.

There is no need to change any aspect in relation to this part of the legislation.

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?

All kinds of civil proceedings should not apply in this context. You don't know how the perpetrator of domestic violence manipulates the system. There are as many civil ways as there are sand on all the beaches in Australia. While one could say that there should be exemptions in relation to 'family violence' or 'children being molested', stating that 'domestic violence' should be exempted cannot solve the many issues that come from this.

A victim could use equity, property law, domestic violence orders, contract law, tort law with negligence claims or any other area of law in order to protect themselves against domestic violence. Trying to make a blanket conclusion over something so utterly complex will have you wondering what else could go wrong.

Before you think about trying to amend section 280, it is highly advisable that you speak to several domestic violence survivors, to see how they were able to leave, and instruments they were able to use in order to leave, how they found a way not to go back, how they were able to stop being stalked and what methods of recovery they used after the events.

This submission is to put a stop to amendments of section 280. Otherwise, there **will** be even more domestic violence murders that could have been stopped simply by not amending section 280.