To the Department of Communications and the Arts and the Attorney-General's Department,

I write in response to your recent invitation for submissions to support a review into access to telecommunications data in civil proceedings.

In the consultation paper attached to this invitation, your departments posed three questions. I am best equipped to answer the third of these questions:

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.

It was originally stated that the intention of the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015* was to retain data which could be used in criminal cases. Attorney-General Brandis went to lengths to assure the public that data retained as a result of this amendment would be used only in the cases of extremely serious crime, such as "terrorism [or] international and transnational organised crime" [1]. The Australian public was sold this amendment as a mechanism which would assist our national security efforts in the most exceptional of cases.

Similarly, the inquiry undertaken by the Parliamentary Joint Committee on Intelligence and Security into the metadata retention scheme made its recommendations based on the assumption that "the proposed data retention regime is being established specifically for law enforcement and national security purposes and [...] as a general principle it would be inappropriate for the data retained under that regime to be drawn upon as a new source of evidence in civil disputes." [2]

To extend the use of data collected by telecommunications providers for the purposes of complying with this scheme to civil cases would dismiss the confidence placed in the government by the public and by its own parliamentary committee that the personal data collected under the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015* would be used only in situations on a scale similar to national security threats. It is not reasonable to conclude that civil matters such as divorce or copyright infringement are akin in gravity to terrorism.

Australia has no bill of rights which safeguards citizens' privacy, nor do Australians have any right to sue for breach of privacy. These protections are common in many other countries. Before seeking any expansion of powers to apply personal data collected about Australian citizens in legal proceedings, it is imperative that the Australian government creates a bill of rights which includes the right to privacy, and the right for citizens to seek redress when their privacy has been invaded. Enshrining this in Australian law will provide a uniform standard against which any further legislation in relation to information about Australians can be applied.

Additionally, until Australians have such protections in place, I would urge the government to consider repealing the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015*.

Thank you for the opportunity to contribute to this review.

Yours sincerely,

Lillian Ryan

[1] "Q&A, National Security: Finding A Balance" http://www.abc.net.au/tv/qanda/txt/s4096883.htm, aired ABC 3rd November, 2014, transcript accessed January 26th, 2017
[2] "Advisory report on the *Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014*", 6.115, http://www.aph.gov.au/~/media/02%20Parliamentary%20Business/24%20Committees/244%20Joint%20Committees/PJCIS/DataRetention2014/FinalReport_27February2015.pdf?la=en, accessed 26th January, 2017