



THE LAW SOCIETY
OF NEW SOUTH WALES

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25 October 2024

Dr James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
Braddon ACT 2612

By email: shounok.chatterjee@lawcouncil.au

Dear Dr Popple,

Cyber Security Legislative Package

Thank you for the opportunity to contribute to the Law Council's submission to the inquiry of the Parliamentary Joint Committee on Intelligence and Security into the Cyber Security Legislative Package. The Law Society's Privacy and Data Law Committee contributed to this submission.

From the perspective of harmonisation, we note that certain types of entities in New South Wales appear to be out of the scope of the Bills. This includes companies limited by guarantee. In our view, this limits the scope for a coordinated approach to regulation.

We consider that harmonisation between Australia's privacy, data, and cyber security regimes is vital. We emphasise the need to mitigate the regulatory burden on affected entities caused by diffuse and inconsistent state and federal laws and regulations.

In the time available, we focus our comments in this context on the effect of the provisions of the Cyber Security Bill 2024. We query how the powers of the proposed Cyber Incident Review Board (**the Board**) under Part 5 Division 1 of the Bill are intended to interact with the powers of existing regulators. We suggest consideration be given to how the functions of the Board will operate alongside, for example:

- the Privacy Commissioner's power to initiate investigations under section 40(2) of the *Privacy Act 1988* (Cth), in respect of a breach of APP 1 (open and transparent management of personal information);
- the powers of the Australian Communications and Media Authority (**ACMA**) to conduct investigations under the *Telecommunications Act 1997* (Cth), which ACMA exercised in relation to the Optus data breach;¹

¹ Australian Communications and Media Authority, Investigation Report (2023), online https://www.acma.gov.au/sites/default/files/2024-03/Optus%20Mobile%20Pty%20Ltd_FINAL%20investigation%20report_21%20November%202023_Redacted.pdf.

- the Australian Federal Police, and its Cyber Command, to investigate cybercrime under criminal laws; and
- the powers of the Australian Securities and Investments Commission (**ASIC**) to investigate Australian financial services licence conditions, which include cyber security, as was the case in *ASIC v RI Advice Group Pty Ltd* [2022] FCA 496.

If you have any questions in relation to this submission, please contact Mimi Lee, Policy Lawyer, by phone (02) 9926 0174 or by email to mimi.lee@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Brett McGrath', with a long horizontal stroke extending to the right.

Brett McGrath
President