

RULE OF LAW

INSTITUTE OF AUSTRALIA

29 September 2010

Committee Secretary
Senate Standing Committee on Environment, Communications and the Arts
PO Box 6100
Parliament House
Canberra ACT 2600

By email to: eca.sen@aph.gov.au

Dear Committee Secretary

The adequacy of protections for the privacy of Australians online

The Rule of Law Institute of Australia (RoLIA) has become concerned by reports in the media that the Government plans to introduce law forcing Internet Service Providers (ISP's) to retain records of Australians' web use for the access of law enforcement agencies, known as the 'Mandatory Data Retention Proposal'. Although the proposed internet filter issue has dominated the media, this significantly detrimental data retention proposal must be examined in detail by the Senate Standing Committee.

Upholding the rule of law in Australia requires transparency in lawmaking as well as clear protections for privacy of citizens.

RoLIA has had the benefit of reading the Law Institute of Victoria's submission to this inquiry which we support in full, especially the following arguments:

1. That there may be a potential conflict with the National Privacy Principles;
2. That data collection in this way is not necessary and will result in an unworkable overload of data along with data security lapses; and
3. That the discussions should be held in public with community participation.

RoLIA

RoLIA is an independent non-profit association formed to uphold the rule of law in Australia. RoLIA was established in September 2009 and does not receive any government funding. Our objectives are as follows:

- To foster the rule of law in Australia.
- To promote good governance in Australia by the rule of law.

- To encourage truth and transparency in Australian Federal and State governments, and government departments and agencies.
- To reduce the complexity, arbitrariness and uncertainty of Australian laws.
- To reduce the complexity, arbitrariness and uncertainty of the administrative application of Australian laws.

RoLIA is additionally concerned that the proposed scheme will be incompatible with Article 12 of the Universal Declaration on Human Rights, which mandates that:

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

The process to arrive at law reform in respect of internet privacy needs to be handled with due care and openness. It is important to expose the state of play on policy development for such a sensitive issue. This is a critical area of law which should be accessible to all Australians and it should not be the case that important information is only obtainable by freedom of information processes.

With so little information on the subject available in the public domain, a balanced and comprehensive assessment of the proposed changes is impossible. RoLIA is most concerned about the method in which federal law enforcement agencies will have access to the data. The enormous volumes of data that appears proposed be stored by ISP's for a rumoured two years would be subject to data security concerns as well as an apparent lack of oversight by anyone as to what data federal agencies might access. Oversight by the courts of such significant information should not be removed. Such a removal of power would be tantamount to allowing government agencies to visit mail exchanges and post offices so as to open mail without any court authorisation. Any such removal of court approval to access data would be detrimental to the rule of law in Australia.

Accordingly, RoLIA calls on the Senate Standing Committee on Environment, Communications and the Arts to take an active interest in the developments of the Mandatory Data Retention Proposal by ascertaining how advanced the plans are to implement the proposal, as well as ensure that at a minimum the Privacy Commissioner be involved in any discussions. Six-monthly reports to Parliament on the use of any powers must also be a requirement.

Yours sincerely

Richard Gilbert
Chief Executive Officer