



Australian Government

Australian Law Reform Commission

Professor Rosalind Croucher
President

28 October 2010

Mr Hamish Hansford
Committee Secretary
Standing Committee on Legal and Constitutional Affairs
PO Box 6100
CANBERRA ACT 2600

Dear Mr Hansford,

The Australian Law Reform Commission (ALRC) welcomes the opportunity to contribute to the Standing Committee on Legal and Constitutional Affairs' inquiry into the Telecommunications Interception and Intelligence Services Legislation Amendment Bill 2010 (the Bill).

As was the case in relation to the Committee's inquiry into the Telecommunications (Interception and Access) Amendment Bill 2009, the ALRC does not intend to provide detailed comments on the issues raised by the Bill. However, the ALRC would again like to highlight the recommendations of its major inquiry into the *Privacy Act 1988* (Cth), which culminated in the final report *For Your Information: Australian Privacy Law and Practice* (ALRC Report 108) (*For Your Information*).

Part J of *For Your Information* deals with telecommunications privacy issues, including the interaction between the *Privacy Act* and the *Telecommunications (Interception and Access) Act 1979* (Cth) (TIA Act). In particular, Chapter 73 of the report made a number of recommendations that should be considered by the Committee in the context of provisions of the Bill that broaden access to telecommunications data and stored communications. For example, the Bill would, among other things:

- enable telecommunications data, such as call records, to be obtained and used by police forces to assist in finding missing persons (Schedule 3); and
- enable enforcement agencies access to the stored communications of victims of crime in circumstances where victims are unable to be notified (Schedule 4).

In *For Your Information*, the ALRC recommended that the TIA Act be amended to provide:

- that the Australian Security Intelligence Organisation (ASIO) and enforcement agencies must destroy, in a timely manner, irrelevant material containing accessed telecommunications data that is no longer needed for a permitted purpose (Recommendation 73–3); and
- for reporting requirements relating to the use of stored communication warrants that are equivalent to the interception warrant reporting requirements (Recommendation 73–4).

Telecommunications data includes information about when, how and with whom individuals communicate and, in the case of mobile phones, location information. In relation to the former recommendation, the ALRC observed that the disclosure of this information by employees of telecommunications service providers to ASIO and law enforcement agencies is a significant invasion of an individual's privacy. While the retention of this information by law enforcement agencies may be regulated by the *Privacy Act*, in the interest of clarity and certainty, the ALRC considered that the TIA Act should be amended to provide that irrelevant material containing accessed telecommunications data is destroyed when no longer needed for a permitted purpose—such as finding missing persons, if the Bill is enacted.

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In relation to the latter recommendation, the ALRC noted that the record-keeping and reporting requirements under the TIA Act relating to access to stored communications are significantly less onerous than the requirements that apply to the interception of communications.¹ For example, agencies are not required to provide as much information on the use and effectiveness of stored communication warrants as they are for interception warrants.

The ALRC noted that reporting obligations are vital to providing adequate transparency and accountability of the interception and access regime set out under the TIA Act and could see no reason why stored communications warrants should be subject to less onerous reporting requirements than interception warrants, particularly given that more agencies can make applications for stored communications warrants than interception warrants.

The Government has yet to respond to the ALRC's recommendations concerning the interaction between the *Privacy Act* and the TIA.

I trust that this material is of assistance in the review. The *For Your Information* report is available on the ALRC's website at www.alrc.gov.au, if further background information on the relevant recommendations would be of interest to the Committee.

Yours sincerely,

Professor Rosalind Croucher

¹ Compare *TIA Act* ss 151 and 163 (stored communications) to Part 2–7 and s 102 (intercepted telecommunications).