

The New South Wales Council for Civil Liberties (CCL) is committed to protecting and promoting civil liberties and human rights in Australia.

CCL is a non-government organisation in special consultative status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

CCL was established in 1963, and is one of Australia's leading human rights and civil liberties organisations. Our aim is to secure the equal rights of everyone in Australia and oppose any abuse or excessive use of power by the State against its people.

Submission to the Senate Legal and Constitutional Affairs Committee concerning the Telecommunications Interception and Intelligence Services Legislation Amendment Bill 2010

CCL thanks the Senate Committee for the opportunity to make a submission in relation to this bill. We have one concern. It is vitally important that the functions of the security and intelligence bodies are so far as possible kept distinct from those of the law enforcement agencies—that ASIO for instance is not inappropriately involved in police work; that it does not become Australia's secret police.

The Explanatory Memorandum notes that 'arrests and prosecutions will remain a matter for police and prosecutorial authorities'. But that is only part of the concern. There are restrictions properly placed upon the use of interception by law enforcement agencies. ASIO and the other intelligence and security bodies must not be used to circumvent the restrictions which properly apply to those agencies.

Moreover, unlike the law enforcement agencies, ASIO is shrouded in secrecy. When we have complaints against a member of a police force, we can know the names of those we complain against. We can know their records. Reports by ombudsmen or other supervisory bodies can be made public. These are very important safeguards. But no such publicity is available for the intelligence services.

During the Haneef affair ASIO demonstrated that its judgement was better than that of a section of the Federal Police. However the more distant record of ASIO is rather different (as the forthcoming documentary *I Spy* will remind us). It is part of its function to be suspicious of anything out of the ordinary, and it is not surprising that from time to time that affects the judgement of some of its members. Police however must work to different standards.

It is not clear to us that this part of Schedule 6 of the bill is necessary, in any case. The principal argument in the Explanatory Memorandum concerns efficiency and effectiveness. As usual, this phrase masks the preferring of one set of values over more important considerations. In view of the above, it is more important, and *therefore* more efficient



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and effective, for members of the law enforcement agencies to be given the necessary training to do their own interception.

The bill does include a number of safeguards to keep the functions of law enforcement interception agencies distinct from those of the security and intelligence bodies. However CCL is concerned that the more closely the bodies interact, the greater the risk that the distinction between their functions will become blurred, or that the safeguards will be circumvented.

If Schedule 6 is to remain part of the bill, we recommend that an additional safeguard be introduced. Each year, a report should be made to the Attorney General and the Parliament concerning the number of interceptions and accessions to stored communications in which ASIO (or ASIS, DSD or DIGO) have been asked to assist the law enforcement bodies, the agencies assisted, the crimes being investigated, the use of the information in evidence and the convictions which have resulted.

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