



Australian Government

Australian Law Reform Commission

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Inquiry into comprehensive review of the *Telecommunications (Interception and Access) Act 1979 (Cth)*

I refer to your invitation to provide a submission to the Legal and Constitutional Affairs References Committee on its review of the *Telecommunications (Interception and Access) Act 1979 (Cth)*.

As reflected by the terms of reference for the Senate Committee's inquiry, the ALRC examined aspects of the *Telecommunications (Interception and Access) Act* in its 2006–08 review of the *Privacy Act 1988 (Cth)*. This inquiry culminated in the report *For Your Information: Australian Privacy Law and Practice* (ALRC Report 108).

The Senate Committee's terms of reference highlight the ALRC's recommendation that the Australian Government initiate a review to consider whether the *Telecommunications Act 1997 (Cth)* and the *Telecommunications (Interception and Access) Act* 'continue to be effective in light of technological developments (including technological convergence), changes in the structure of communication industries and changing community perceptions and expectations about communication technologies' (Rec 71.2).

In addition, Chapter 73 of the ALRC's report made a number of recommendations relating to provisions of the *Telecommunications (Interception and Access) Act* concerning the use, disclosure and storage of personal information, which had privacy implications.

These recommendations, and the reasons for them, are set out fully in the ALRC's report. For example, the recommendations included the following:

Recommendation 73–1 Section 79 of the *Telecommunications (Interception and Access) Act 1979 (Cth)* should be amended to provide that the chief officer of an agency must cause a record, including any copy of a record, in the possession of an agency, made by means of an interception to be destroyed when it is no longer needed for a permitted purpose.

Recommendation 73–2 Section 79 of the *Telecommunications (Interception and Access) Act 1979 (Cth)* should be amended to require the destruction of non-material content intercepted under a B-Party warrant.

Recommendation 73–3 The *Telecommunications (Interception and Access) Act 1979 (Cth)* should be amended to provide that the Australian Security Intelligence Organisation and enforcement agencies must destroy in a timely manner irrelevant material containing accessed telecommunications data which is no longer needed for a permitted purpose.

Recommendation 73–4 Sections 151 and 163 of the *Telecommunications (Interception and Access) Act 1979 (Cth)* should be amended to provide for reporting requirements relating to the use of stored communication warrants that are equivalent to the interception warrant reporting requirements under Part 2–7 and s 102 of the Act.

Recommendation 73–5 The Australian Government Attorney-General's Department should develop and, where appropriate, publish guidance on the interception and access of

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information under the *Telecommunications (Interception and Access) Act 1979* (Cth), that addresses:

- (a) the definition of the term 'telecommunications data';
- (b) when voluntary disclosure of telecommunications data to the Australian Security Intelligence Organisation and other enforcement agencies is permitted; and
- (c) timeframes within which agencies should review holdings of information and destroy information.

Recommendation 73–6 The *Telecommunications (Interception and Access) Act 1979* (Cth) should be amended to provide expressly that where the Ombudsman has reason to believe that an officer of an agency is able to give information relevant to an inspection of the agency's records relating to access to a stored communication, the Ombudsman may:

- (a) require the officer to give the information to the Ombudsman and to attend a specified place in order to answer questions relevant to the inspection; and
- (b) where the Ombudsman does not know the officer's identity, require the chief officer, or a person nominated by the chief officer, to answer questions relevant to the inspection.

As you are aware, similar issues were examined more recently by the Parliamentary Joint Committee on Intelligence and Security, which made a range of recommendations concerning the *Telecommunications (Interception and Access) Act* in its March 2013 report *Inquiry into Potential Reforms of Australia's National Security Legislation*.

Among other things, the Joint Committee looked at means to strengthen the safeguards and privacy protections contained in the *Telecommunications (Interception and Access) Act*, including in relation to the legislation's privacy protection objective, mandatory record-keeping standards, and oversight arrangements by the Commonwealth and State Ombudsmen.

The role of the ALRC includes ensuring that the Government and members of Parliament are aware of recommendations made in recent ALRC reports. However, it does not have the capacity to track legal and policy developments relevant to all its past recommendations, and its ability to continue to advocate for implementation of particular recommendations is properly limited.

Nevertheless, the ALRC looks forward to its recommendations concerning reform of the *Telecommunications (Interception and Access) Act* being given due consideration by the Senate Committee and to the conclusions of the Committee's deliberations.

Yours sincerely,