



## Submission No 206

### **Inquiry into potential reforms of National Security Legislation**

**Name:** Mr David Epstein  
Vice President, Corporate & Regulatory Affairs

**Organisation:** Optus

# **Optus' Opening Statement to the Parliamentary Joint Committee on Intelligence and Security on its Inquiry into Potential Reforms of National Security Legislation**

by

David Epstein, Vice President, Corporate & Regulatory Affairs

September 2012

Optus welcomes the opportunity to appear before the Committee to present its views and discuss the critical issues raised by the terms of reference of the Inquiry into Potential Reforms of National Security Legislation.

Optus has provided a detailed and confidential written submission. I will briefly outline Optus' credentials and interest.

## **Optus background**

Optus serves over 10 million customers per day with a broad range of telecommunications services, including mobile, national, local and international telephony, voice over IP, fixed and mobile broadband, internet and subscription television (including IPTV).

To deliver these services, Optus owns and operates fixed, mobile and long haul transmission networks and the largest domestic fleet of satellites. These provide a set of advanced technology platforms for the delivery of services. Optus has invested over \$1 billion in each of the last seven years to improve and upgrade its networks and services.

In short, Optus is a provider of critical national infrastructure and takes this responsibility seriously.

Optus has invested in required interception capability on its platforms and services and operates a specialist team, its Law Enforcement Liaison Unit, which responds to warrants for lawful interception, call related data and other requests for assistance from law enforcement and national security agencies. The costs of this team and the infrastructure and capability to support it are in the order of many millions of dollars per annum.

Optus' experience as a 'carrier practitioner' which provides assistance to law enforcement and national security agencies under the various legislative provisions informs our comments on the various terms of reference, and my comments today will start with interception-related matters and then focus on the proposed telecommunications sector security reform.

**Telecommunications (Interception and Access) Act** - Optus agrees that it is an appropriate time to fundamentally review the *Telecommunications (Interception and Access) Act 1979* (the TIA Act).

One of the most significant changes is the increasing global supply of telecommunications services. Suppliers located outside of Australia may not be subject to nationally-based obligations to assist Australian law enforcement and national security agencies. This challenge underlies many of the problems being faced by agencies. It is important that any proposals for new legislative provisions be tested for their effectiveness in a global supply environment.

Optus agrees that opportunities to improve the efficiency and effectiveness of the interception regime and associated assistance provisions are apparent and should be progressed. For example, end-to-end processes between agencies and carriers for dealing with warrants could be streamlined.

The proposal for a tiered industry model for interception obligations, based on the size of the carriage service provider, is not a direction that Optus supports. Optus suggests that the model should be risk based, with key higher risk services subject to consistent obligations across all suppliers (e.g. fixed and mobile voice, fixed and mobile broadband).

Optus does not support mandated response times for warrants, unless it is calibrated as a backstop for extremely poor responsiveness. If the objective is to achieve an overall improvement in timeliness, then the focus should be on end-to-end process opportunities, taking into account both the agency activities and the carrier activities. The adoption of more effective and complete B2B electronic transaction processes for warrants by both agencies and carriers could drive substantial improvements in timeliness.

Optus supports further consideration of methods to remove high volume mass audience entertainment traffic from the interception process, for example IPTV.

**Data retention** - The discussion paper mentions a data retention proposal at a conceptual level, and does not provide significant detail. Subsequently, I pass on observations based on Optus' detailed analysis and understanding of an earlier data retention proposal from the Attorney General's Department.

- i. The cost to Optus or any major carrier of an EU based regime would be significant (depending on which data set is selected for retention).
- ii. A nationally based data retention regime does not resolve the gaps arising from increased globalization. For example, it may not assist with identifying malicious senders of messages using common "over the top" internet platforms based offshore.
- iii. It is not clear that any regime will be fully immune to currently available bypass techniques
- iv. Any regime must also consider the sheer volume of data generated and the practicality of searching records and the security of storage
- v. Design of any regime should be tiered based on service type (to focus on services of interest and reduce overall costs, e.g. no point retaining data about IP television).

Optus recognises the privacy principle that carriers should only collect and retain customer data that is necessary for business purposes and notes that any data retention proposal that seeks to go further than this risks altering the current relationship and understanding between carriers and their customers.

Should the Committee support further policy development, the design of a regime and associated cost/benefit justification should be developed in consultation with industry.

**Encryption** - Optus' view is that any new legislation should be focussed on obligations on individuals in relation to stored data or end-to-end encryption of communications.

**Cost sharing** - Current cost sharing arrangements have a practical balance which sees carriers and carriage service providers make substantial contributions to the interception and assistance regime. Reasonable policy justification and positive cost-benefit analysis should underpin any changes.

The Discussion Paper has suggested a 'modernisation' of cost sharing arrangements without providing detail of what this may entail. Optus is concerned that it does not understand what is proposed and therefore cannot contribute detailed comment, except to say it is wary of carriers being asked to bear a greater proportion of the costs of any reforms.

### **Telecommunications Security Sector Reform**

For a number of years Optus has engaged informally with national security agencies on matters relating to the security and resilience of its networks and business operations, including offshore operations. Having regard to the positive aspects of this experience, Optus has formed the view that it is desirable to move to a more structured scheme, to ensure that the benefits and responsibilities are proportionately shared across the industry (for competitive and equity reasons).

Optus provides "cautious support" for the implementation of a scheme. I want to emphasise that our caution arises more from the challenge of correctly calibrating the practical design of such a scheme (and the down-side risks of incorrectly calibrated arrangements), than fundamental concern about the principle.

A successful arrangement would require an open and transparent exchange of information between agencies and carriers in very sensitive areas, both to national security and carrier's business and network operations and investments.

We support the idea that a scheme should be targeted to achieve and verify outcomes, rather than be prescriptive about particular business practices, network designs or purchasing decisions. This aligns with the proposed approach of a scheme requiring carriers to demonstrate:

1. Competent supervision; and
2. Effective control

One of the key outcomes Optus seeks from any scheme would be a high level of certainty and investment confidence. That is, a scheme should allow carriers to demonstrate their credentials and get a reasonable level of surety about the acceptance by Government of their processes and procedures, providing the confidence to undertake substantial investment decisions without fear of later revision.

Optus would welcome the opportunity to work more closely on the design of a scheme if the Committee is minded to recommend that such a reform proceeds.

I am happy to take any questions.