



James Catchpole  
The Secretary  
Joint Select Committee on Cyber-Safety  
R1-109 Parliament House  
PO Box 6021  
Canberra ACT 2600

Dear Mr Catchpole

### **Inquiry into Cybercrime Legislation Amendment Bill 2011**

Thank you for your letter of 13 July 2011 inviting comments to the Joint Select Committee on Cyber-Safety inquiry into the Cybercrime Legislation Amendment Bill 2011 (the Bill) by 18 July 2011. I welcome the opportunity to provide the following comments.

Firstly, I would like to bring to the attention of your Committee that on 1 November 2010, the Office of the Privacy Commissioner was integrated into the Office of the Australian Information Commissioner (OAIC). The OAIC was established by the *Australian Information Commissioner Act 2010* (Cth) and is an independent statutory agency headed by the Australian Information Commissioner, Professor John McMillan. The Information Commissioner is supported by two other statutory officers: the Freedom of Information Commissioner, Dr James Popple, and myself as Privacy Commissioner.

The OAIC brings together the functions of information policy and independent oversight of privacy protection and freedom of information (FOI) in one agency, to advance the development of consistent workable information policy across all Australian government agencies.

The OAIC understands that this Bill is intended to facilitate Australia's accession to the Council of Europe's Convention on Cybercrime. Regulating online activities can be especially difficult because the ubiquitous nature of the internet increases the great ease with which information can flow between jurisdictions. The OAIC has consistently supported Australia's ongoing participation in international initiatives to better respond to issues of cybercrime and cyber safety.<sup>1</sup>

The right to privacy is not absolute and it is often necessary to balance this right with other important public interests, such as the public interest in maintaining the

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<sup>1</sup> See the former Office of the Privacy Commissioner's submission: *The adequacy of protections for the privacy of Australians online*; Senate Standing Committee on Environment, Communications and the Arts (August 2010) <http://www.privacy.gov.au/materials/types/submissions/view/7122>

safety and security of the Australian community and preventing criminal activity. There needs to be an appropriate balance between the public interest in law enforcement agencies sharing information to facilitate their legitimate activities and the public interest in protecting the personal information of individuals. As one means of bringing balance and perspective to the assessment of these priorities, the OAIC has developed and refined a tool called the '4A framework' (see **Attachment A**).

The 4A framework is intended to assist government agencies consider personal information handling issues when developing legislative measures specifically relating to new law enforcement or national security powers. It is underpinned by the recognition that measures that diminish privacy should only be undertaken where these measures are:

- necessary and proportional to address the immediate need, and
- subject to appropriate and ongoing accountability measures and reviews.

While the OAIC has not had the capacity to consider the Bill in detail, the OAIC refers the Committee to the 4A framework. The OAIC suggests that the issues identified in the 4A framework may assist the Committee in assessing whether the proposed amendments contained in the Bill only apply in circumstances where it is necessary and proportionate and that there are adequate privacy protections in place.

Yours sincerely

[Signed]

Timothy Pilgrim  
Australian Privacy Commissioner

15 July 2011





## 4A framework – A tool for assessing and implementing new law enforcement and national security powers

July 2011

The Office of the Australian Information Commissioner has developed a proposed framework for assessing and implementing new law enforcement and national security powers. The 4A framework sets out a lifecycle approach from development to implementation and review. The aim of the framework is to bring balance and perspective to the assessment of proposals for law enforcement or national security measures with significant effects on privacy.

### Analysis

Careful analysis is needed in the development phase to ensure that the proposed measure is necessary, effective, proportional, the least privacy invasive option and consistent with community expectations. This analysis should involve consideration of the size, scope and likely longevity of the problem, as well as the range of possible solutions, including less privacy invasive alternatives. The impact on privacy of the proposed solution should be analysed and critical consideration given to whether the measure is proportional to the risk.

### Authority

The authority by which the measure is implemented should be appropriate to its privacy implications. Where there is likely to be a significant impact on privacy, the power should be conferred expressly by statute subject to objective criteria. Generally, the authority to exercise intrusive powers should be dependent on special judicial authorisation. Intrusive activities should be authorised by an appropriately senior officer.

### Accountability

Implementation of the measure should be transparent and ensure accountability. Accountability processes should include independent complaint handling, monitoring, independent audit, and reporting and oversight powers commensurate with the intrusiveness of the measures.

### Appraisal

There should be periodic appraisal of the measure to assess costs and benefits. Measures that are no longer necessary should be removed and

unintended or undesirable consequences rectified. Mechanisms to ensure such periodic review should be built into the development of the measure. This could involve a sunset clause or parliamentary review after a fixed period.

### In summary:

**Analysis** – Is there a problem? Is the solution proportional to the problem? Is it the least privacy invasive solution to the problem? Is it in line with community expectations?

**Authority** – Under what circumstances will the organisation be able to exercise its powers and who will authorise their use?

**Accountability** – What are the safeguards? Who is auditing the system? How are complaints handled? Are the reporting mechanisms adequate? And how is the system working?

**Appraisal** – Are there built in review mechanisms? Has the measure delivered what it promised and at what cost and benefit?

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

### For further information

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