

SUBMISSION NO. 19

Submission to Joint Select Committee on Cyber-Safety on Cybercrime Legislation Amendment Bill 2011

I have two concerns about the Bill.

Firstly, the threshold for the disclosure of information or documents to overseas jurisdictions under the Bill is that the disclosure is:

- reasonably necessary for the investigation of an offence against a law of a foreign country that is punishable by imprisonment for 3 years or more, imprisonment for life or the death penalty; and
- appropriate in all the circumstances.

The first limb leaves the way open for a person's private information to be disclosed to police in a foreign jurisdiction because of something allegedly done by that person that would be lawful in Australia, and that the vast majority of Australians strongly believe should not constitute an offence.

Although the second limb provides some scope for an authorised officer to decline to disclose the information in these circumstances, it is too vague for a minimum safeguard.

I urge the Joint Select Committee on Cyber-Safety to consider recommending a further requirement – that there be an equivalent offence in at least one Australian jurisdiction punishable by imprisonment for three years or more.

Secondly, Australia should not provide information to a foreign country in relation to an offence for which the death penalty could be imposed. Public debate around the Australian Federal Police's cooperation with Indonesian authorities in relation to the "Bali 9" highlighted this issue. I urge the Committee to recommend excluding death penalty offences from the provisions.

If the Government persists with creating a power to share information in these circumstances, it should be considered so serious that it should only happen in exceptional circumstances, and should require the consent of the Attorney-General.

The Bill requires special circumstances and Attorney-General consent for prospective information (by reference to the *Mutual Assistance in Criminal Matters Act 1987*), but for other information the only relevant safeguard is that an authorised officer of the Australian Federal Police must consider the disclosure appropriate in the circumstances.

I appreciate that authorised officers will be very senior in rank, but I still urge the Committee – in the event that it is not minded to recommend excluding death penalty offences altogether – to recommend including the more rigorous safeguard in relation to death penalty offences for all information.

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