

SUBMISSION NO. 3



21 March 2011

Mr James Catchpole
Committee Secretary
Joint Standing Committee on Treaties
PO Box 6201
Parliament House
Canberra ACT 2600

By email: jsct@aph.gov.au

Dear Mr Catchpole

AUSTRALIA'S ACCESSION TO THE CONVENTION ON CYBERCRIME

The Law Council of Australia wishes to provide the following comments regarding the Joint Standing Committee on Treaties' (the Committee's) invitation for public submissions on Australia's possible accession to the Council of Europe's Convention on Cybercrime (the Convention).

The Committee's inquiry overlaps with the public consultation being held by the Commonwealth Attorney-General's Department (AGD) on the same issue. Unfortunately the timeframes for both consultations are very short, and in the Law Council's view, insufficient. The simultaneous nature of the processes is particularly problematic, given that the results of the AGD consultation may not be known before the Committee's inquiry is finalised. The Law Council considers that the need for this urgency has not been made clear.

In addition, the supporting material released by the Government about the likely impact of accession to the Convention does not provide adequate information to allow for a considered assessment of whether accession is in Australia's best interests. While the material states that many of Australia's laws and arrangements already substantially comply with the Convention's obligations, it also indicates a number of areas in which further legislative and procedural changes may be needed. Unfortunately, only cursory information is provided about these potential changes, notwithstanding that this is the most critical issue for review and discussion.

For these reasons, the Law Council is unable to provide a submission on whether Australia should accede to the Convention.

The Council submits that further information is necessary to facilitate genuine public consultation, in particular, information which sets out:

- The precise changes to Commonwealth legislation which are required to achieve compliance with the Convention. For example, the supporting material briefly refers to possible amendments to the *Criminal Code Act 1995*, the *Mutual Assistance in Criminal Matters Act 1987*, the *Telecommunications (Interception and Access) Act 1979* and the *Copyright Act 1968* but provides little detail about what these amendments will entail. The risk is that post-accession, legislative amendments will be presented to parliament as a “fait accompli” because they are necessary to meet Australia’s obligations under the Convention.
- The precise changes to Commonwealth procedures which are required to achieve compliance with the Convention (in particular, with respect to the provision of agency-to-agency international law enforcement assistance). For example, the supporting material states that acceding to the Convention will “enhance the ability of Australian domestic law enforcement agencies to collect, share and receive information to assist in domestic and foreign investigations” but does not elaborate on the purported shortcomings of the current procedures, or on how these procedures will be altered or enhanced by accession to the Convention;
- Changes to State and Territory legislation which may also be required; and
- the extent to which the obligations and procedures prescribed by the Convention are consistent with Australia’s privacy regime, including any amendments to that regime which are currently under consideration.

The Law Council considers that the provision of such information will help to ensure that the process of considering Australia’s accession to the Convention is sufficiently open and transparent, before any binding action is taken.

Without this information, interested stakeholders are largely confined to offering broad statements which make the obvious points that tackling cybercrime is important; that laws and methods of law enforcement must keep abreast of technological changes; and that this should all be achieved within a framework which ensures appropriate respect for individual privacy and civil liberties.

It is how these sentiments translate into legislation and practice that is the real matter for discussion and reflection.

The Law Council hopes that the Committee will have the opportunity to undertake such a genuine process of review.

Yours sincerely



Bill Grant
Secretary-General