

**Parliamentary Joint Committee on the
Australian Crime Commission**

Inquiry Into Cybercrime

Submission No:28

Received 11 July 2003

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SUBMISSION OF THE VICTORIAN BAR

1. Thank you for providing to the Victorian Bar a copy of the Australian Crime Commission's Submission to the Parliamentary Joint Committee. That submission has provided a very useful context and focus for the Victorian Bar in assessing whether and to what extent we can usefully contribute to the deliberations of your Committee.
2. After consideration of the ACC's submission there is only one issue that the Victorian Bar wishes to raise and that relates to the issue of Law Reform and especially "Cyber Search Warrants".
3. At page 5 of the ACC's submission the Executive Summary states:

"This submission proposes a number of practical steps which are intended to enhance law enforcement capacities. The ACC's Cybercrime focus will include:

Law reform, including making the case for law enforcement agencies to conduct lawful interception of criminals' data via 'electronic search warrants'."

4. "Legal and Policy Issues" are addressed at pages 53 to 57 of the ACC's submission and the Victorian Bar has no comment to make in relation to the matters addressed under the first three headings in that section of the submission although the Committee will recall the concerns and in principle objections articulated by the Victorian Bar when the terms of the then Australian Crime

Commission Bill were being considered by the Committee. It is obviously not appropriate to further canvass those matters at this stage.

5. Nevertheless the Victorian Bar is concerned about the matters canvassed under the heading “*Cyber Search Warrants*” at pages 55 and 56 of the ACC’s submission and in particular would submit to the Committee that nothing in those pages could properly be said to satisfactorily articulate a case in favour of law enforcement agencies (whether generally or specifically in the case of the ACC) having access to Cyber Search Warrants of the character and duration discussed under that heading.
6. So far as the Victorian Bar is aware the only circumstance in which a Cyber Search Warrant of the type discussed is potentially available in Australia is in the context of an investigation by the Australian Security Intelligence Organisation concerning access to data held in a particular computer that will “...*substantially assist the collection of intelligence... in respect of a matter... that is important in relation to security.*” See Section 25A Australian Security Intelligence Organisation 1979.
7. The Victorian Bar notes that the issue of the “*Computer access warrant*” as contemplated by S. 25A is not in any sense driven by law enforcement issues as those matters are normally comprehended but rather are quite extraordinary measures considered by Parliament to be appropriate in the context of conducting an investigation in relation to “*security*” as that word is defined in Section 4 of the Australian Security Intelligence Organisation Act 1979. Further the issue of such a warrant is authorised by the Attorney General personally after being satisfied as to the matters contained in Section 25A(2).
8. In the view of the Victorian Bar the provisions of S25A of the Australian Security Intelligence Organisation Act 1979 are extraordinary in character and should be seen as appropriately confined to protection against threats to national security rather than being regarded as a desirable blueprint of general application in the wider law enforcement community.

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