

**Senate Legal and Constitutional Affairs Committee's public hearing on 16 July 2007**

Michael Ryan's response to questions on notice to the -

**Inquiry into Telecommunications (Interception and Access)  
Amendment Bill 2007**

**CHAIR**—... I want to go to the Telstra submission where it talks about matters to be taken into account by the minister under section 189(4) and adds four dot points, with the second dot point specifically being:

- the effect of the determination on the ability of the telecommunications industry to introduce new and innovative products and services;

Senator Parry has touched on that. That is basically changing technology. And then the next dot point is:

- the effect of the determination on existing products and services in the market, including the costs to be incurred by carriers in ensuring that existing products and services in the market are compliant with the determination ...

*Q1. Is it right that you believe that the current section 189(4) is inadequate and needs to be broadened to take into account new technology and any costs to the industry?*

A1. We believe that the section should be broadened to require the Minister to take into account the effect of the determination on the ability for new and innovative products to be introduced into the Australian market, as well as on existing products and services in the market (which includes the costs implications of making existing products/services compliant with the subsequent determination).

*Q2. Do you want to expand on that and give us the reasons why?*

A2. In terms of new and innovative products and services, there may be various issues which make it extremely difficult or impossible to provide an interception capability. For instance, the Minister may issue a determination which requires industry to intercept a new or innovative product/service which may be hosted overseas where the overseas product vendor is unable to provide interception capability due to jurisdictional and/or technology constraints. In this scenario, it may result in the new and innovative product/service not being able to be made available in Australia.

In terms of existing products/services, the circumstances may arise where a determination issued under section 189 is applicable not only to the overseas hosted products but also (retrospectively) to products already in the local market. In order to make these existing products compliant with the subsequent determination, significant time, costs and resources may be required to provide that capability. This would impact both consumers as well as carriers. Changes to interception capability

requirements may turn what was initially a commercially viable (existing) product into an unviable one.

In some cases, the subsequent determination may not technically be compatible with the existing products in the market. In this scenario, if it is not cost effective or technically possible to implement subsequent interception capabilities on existing products in Australia, this may result in the product having to be withdrawn from the market.

The application of new determinations on existing products and services in the market will therefore create much uncertainty for the telecommunications industry and increased costs.