



Australian Government
Attorney-General's Department

**Security and Critical
Infrastructure Division**

Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
Parliament House
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Dear Secretary

**Submission to the Senate Standing Committee on Legal and Constitutional Affairs inquiry
into the Telecommunications (Interception and Access) Amendment Bill 2007**

I am pleased to provide the Attorney-General's Department submission to the Committee's inquiry into the Telecommunications (Interception and Access) Amendment Bill 2007 (the Bill).

2. The Bill represents the second stage of the Government's legislative implementation of recommendations from the Report of the Review of the Regulation of Access to Communications under the *Telecommunications (Interception) Act 1979*, conducted by Mr A.S. (Tony) Blunn AO (the Blunn Report). Mr Blunn recommended specifically that:

- comprehensive and over-riding legislation dealing with access to telecommunications data for security and law enforcement purposes be established, and
- the basic elements of the *Telecommunications (Interception) Act 1979* (as it then was) relating to privacy and access to real time communications should be incorporated into and form the basis of any such legislation, which should also incorporate the relevant parts of the *Telecommunications Act 1997* (the Telecommunications Act).

3. The current Bill achieves these two key policy outcomes, by:

- transferring the national security and law enforcement-related provisions from the Telecommunications Act to the *Telecommunications (Interception and Access) Act 1979* (the Interception Act) to create overarching legislation in accordance with the recommendations in the Blunn Report, and
- refining the operation of the interception regime.

4. These changes will also strengthen the legislative regime by introducing a greater degree of consistency in the provisions governing agency access to telecommunications, and clarifying the

relationships between the categories of access: telecommunications interception, stored communications and telecommunications data.

5. **Schedule 1** to the Bill transfers the existing provisions from Parts 13, 14 and 15 of the Telecommunications Act dealing with lawful access to telecommunications data and co-operation with interception agencies. These provisions remain fundamentally unchanged with only minor changes required for technical drafting purposes. The key differences are:

- a) Access to telecommunications data (new Chapter 4 of the Interception Act)
 - i) *Prospective data*: The new legislation will make a distinction between access to historical telecommunications data (data that is already in existence at the time of the request) and prospective data (data that is collected as it is created and forwarded to the agency in near real time). Access to both historical and prospective telecommunications data are very important tools for national security and law enforcement agencies in investigating serious crime and terrorism offences. Given that access to prospective data has higher privacy implications, access will be limited to ASIO and criminal law-enforcement agencies.
 - ii) *Secondary disclosures*: The Bill allows secondary disclosure and use of the telecommunications data accessed under the Interception Act in certain circumstances. This will allow enforcement agencies to pass on information to ASIO where it is reasonably necessary for ASIO to carry out its functions, or to another enforcement agency where it is necessary for the enforcement of the criminal law, a law imposing a pecuniary penalty or the protection of the public revenue.
 - iii) *Procedural requirements relating to authorisations*: New record keeping requirements will be placed on enforcement agencies, which will be the basis of an annual report to the Attorney-General on the number of their requests for access to telecommunications data. This information will assist in monitoring the utility and maintaining the accountability of the authorisation regime. The Attorney-General must include this information in his Annual Report on the Interception Act, which must be tabled in Parliament.
- b) Cooperation with interception agencies (new Chapter 5 of the Interception Act)
 - i) *Change in the name of the Agency Co-ordinator to the Communications Access Co-ordinator*: The Bill changes the name of the Agency Co-ordinator to the Communications Access Co-ordinator (CAC), whose role is contained in the new Chapter 5. This change is to better reflect the evolving nature of the Agency Co-ordinator's statutory role, and is driven by the increasing number of agencies accessing telecommunications information under the proposed Act (due to the inclusion of the telecommunications data access regime) and the significant increase in the number of carriers and carriage service providers as a result of industry deregulation.

6. A number of additional amendments have been included in **Schedule 2** of the Bill to ensure the ongoing effective operation of the interception regime. This Bill will also amend the Interception Act to:

- a) Ensure that interception warrants are available in relation to the investigation of any offence relating to child pornography, regardless of the maximum terms of imprisonment that may be imposed by State and Territory criminal law.
- b) Partially implement Recommendation 24 of the Blunn Report in relation to the protection of data systems and the development or testing of new technologies by:
 - i. widening existing provisions that only apply to the AFP to allow a small number of specified agencies with highly secure networks to monitor all outbound and inbound communications for the purposes of enforcing professional standards and protecting their corporate network, and
 - ii. allowing security authorities to apply to the Attorney-General for permission to intercept communications for the purposes of developing or testing technologies or interception capabilities.
- c) Allow lawfully accessed information to be disclosed to a prescribed agency in connection with police disciplinary proceeding and for the purposes of proceedings in relation to the *Spam Act 2003*.
- d) Other minor technical amendments.

Yours sincerely

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