Jonathan Curtis
Committee Secretary
Senate Legal and Constitutional Legislation Committee
Department of the Senate
Parliament House
CANBERRA ACT 2600

Enquiries: Alex Barski
Tel: (02) 9228 8581
Our ref: A06/0083
Your ref:

Dear Mr Curtis

Inquiry into the provisions of the Telecommunications (Interception) Amendment Bill 2005

We are writing with respect to your invitation received at this Office on 3 March 2006 to provide comments in relation to the Telecommunications (Interception) Amendment Bill 2005.

We appreciate strict timeframes the Committee has to follow in conducting the inquiry and have endeavoured to comply with tight deadline for making submissions as nominated by the Committee. Brevity of our contribution is largely due to the time factor necessary to be followed.

We understand and accept that there is a pressing need to revise the *Telecommunications (Interception) Act* 1979 so that law enforcement authorities have the capacity to fight crime in the era of new technological advances. We note some of the changes were proposed before with a varied level of success and refer you to our views on the subject expressed previously to this Committee by letter dated 5 April 2002. While some arguments raised in our previous submission might not be directly relevant to the current inquiry, the submission nevertheless provides an excellent discussion on the balance of individual privacy rights and the need to fight crime, using methods that are inherently privacy intrusive.

In relation to the amendments currently proposed we would like to raise the following concerns:

1. The new regime confirms the distinction, made originally by the *Telecommunications (Interception) Amendment (Stored Communications and Other Measured) Act* 2005 (which is due to cease operation on 14 June 2006), between two sets of communications: real-time communications (e.g. telephone conversations) and stored communications (e.g. emails, SMS messages, etc). The warrant regime for access to stored communication is more relaxed compare to that required for intercepting real-time communications: there is a wider range of authorities who can issue warrants,

the threshold to be met to obtain warrants is lower and more law enforcement agencies can obtain access to the information. This appears to be unwarranted. It is argued that under the old regime an even lesser threshold had to be satisfied, as all it needed to access stored communication was an ordinary search warrant. While it might be true, it does not negate the fact that text and email messages are no less private than telephone conversations and therefore should enjoy equal level of protection.

2. We are concerned with what appears to be an expansion of interception powers in relation to so-called B-parties. The proposed amendment clearly authorises, however high the threshold of such authorisation is intended to be, an interception of the telecommunication service of third parties who are known to communicate with persons of interest. In practical terms it would mean that communications of innocent people not only with persons of interest, but with other innocent third parties not suspected of committing any crime, will be intercepted without their knowledge. This constitutes a significant invasion of privacy and we are not at all convinced that such invasion is justified. We do not think that the need for this amendment has been sufficiently demonstrated nor, we understand, in the Report of the Review of the Regulation of Access to Communications by Mr Anthony S. Blunn AO ('the Blunn Report'), neither by the lawmakers themselves. We are of the opinion that the invasion of privacy of innocent citizens allowed by this amendment has not been sufficiently and convincingly explained by policy considerations. We would suggest carefully considering privacy implications of the proposed amendment to see if there are better ways to balance civil liberties with extensive powers given to law enforcement agencies in their fight with crime. Perhaps a 3 to 5 year sunset clause on the Schedule 2 of the proposed Bill would be a sensible proposition to ensure the legislation does not operate for any longer that it is absolutely necessary.

If you have any queries, please contact Alex Barski at Privacy NSW on (02) 9228 8581. Please quote the reference number at the top of this letter.

Yours sincerely

John Dickie
Acting Privacy Commissioner