



14 March 2006

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Mr Jonathan Curtis
Committee Secretary
Senate Legal and Constitutional Committee
Room S1.61, Parliament House
Canberra ACT 2600
AUSTRALIA

and via email: legcon.sen@aph.gov.au



Dear Mr Curtis

Telecommunications (Interception) Amendment Bill 2004

The Law Society of South Australia received notice of the Inquiry being conducted by the Senate Legal and Constitutional Committee into the *Telecommunications (Interception) Amendment Bill 2004*. The very short timeframe given for consideration of this major piece of proposed legislation is of great concern and has not allowed proper consultation and consideration of it. Nevertheless, the Society feels compelled to provide at least a brief response.

This legislation allows the interception of private communications of any person who is known to be in 'communication' with a 'person of interest'. It is not predicated on the person whose communications are to be intercepted being suspected on reasonable grounds of involvement in some serious criminal conduct. It is not limited to the 'person of interest' being involved in 'terrorism' related conduct.

There are already significant powers for the agencies of the Commonwealth such as ASIO and other intelligence agencies to monitor communications of targeted individuals and groups. Those agencies also exchange information with intelligence agencies. Those powers are exercised in the interests of national security

The Telecommunications (Interception) Amendment Bill 2004 represents a serious infringement and erosion of the right to privacy. It creates a minefield or morass of bureaucratic infringements on freedom of speech.

The collection of information relating to otherwise 'innocent' individuals, their associations with third persons and content of their communications can be used without any means of monitoring or control. The collection, use and

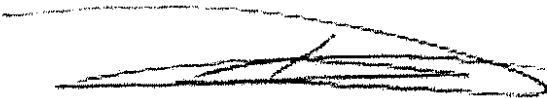
dissemination here and abroad about 'innocent' individuals puts such information completely outside the control of the Ombudsman who is given an unsatisfactory type of supervisory role under this Bill.

In *Levy v Victoria* (1997) 189 CLR 579 in an important passage, McHugh J said (at 622, footnotes omitted):

'It is not open to doubt that the Constitution protects the freedom of "the people of the Commonwealth" (the members of the Australian community) to communicate with each other concerning those political and government matters that are relevant to the system of representative and responsible government provided for by the Constitution. By a necessary implication drawn from ss 7, 24, 64 and supporting sections, the Constitution strikes down laws burdening freedom of communication on these matters. The implication is necessary because, without it, people of different backgrounds or with different perspectives or information could be legally prevented from exchanging views on matters relevant to choosing their representatives at federal elections and on matters relating to the performance of federal Ministers. Consequently, no Commonwealth or State law can validly impair the freedom of communication that the Constitution protects and, as the decision in Lange demonstrates, the common law cannot be at odds with the Constitution. The freedom protected by the Constitution is not, however, a freedom to communicate. It is a freedom from laws that effectively prevent the members of the Australian community from communicating with each other about political and government matters relevant to the system of representative and responsible government provided for by the Constitution. Unlike the Constitution of the United States, our Constitution does not create rights of communication. It gives immunity from the operation of laws that inhibit a right or privilege to communicate political and government matters.'

The Law Society of South Australia calls for debate in the Senate on this Bill to be postponed to allow time for full and informed public debate on this significant legislative measure. We seek to be involved in that debate by forwarding a detailed further submission in due course.

Yours sincerely



Deej Eszenyi (Ms)
PRESIDENT