

Telecommunications (Interception) Amendment Bill 1995

Dissenting Report

Senator Sid Spindler
(Australian Democrats, Vic.)

The evidence before the Committee indicated a high level of concern about the monitoring and recording of phone conversations without customer consent. On the other hand, random and brief monitoring is regarded as essential for the operation and maintenance of telephone systems, and a requirement to obtain consent in such cases would appear to impose an unreasonable burden on carriers.

The evidence indicates that the non-random covert monitoring of customers' phone services has happened in some cases in sensitive circumstances. It also shows such interception can traumatise the target customer.

In particular, the provisions of the Bill attracted the following criticisms:

- Telecom, Optus and the CEPU voiced concerns that carriers and their employees would be exposed to unreasonable legal risk. Telecom claimed that acts done in good faith for maintenance or operational purposes, in accordance with guidelines referred to in the regulations, could nevertheless be found by a court not to be reasonably necessary.

The uncertainties created by the legislation were made worse by the fact that the regulations have not been made public, making it difficult to assess the impact of the legislation.

- The Casualties of Telecom called for the involvement of AUSTEL in giving approval for voice monitoring and recording, to bring independent expertise to bear in deciding whether such monitoring and recording was necessary.
- The Privacy Commissioner called for examination of a requirement of customer consent for all voice recording.

The inability of the Director of Public Prosecutions to take action under the *Crimes Act* in relation to the apparently unwarranted disclosure by a Telecom employee of a customer's private information, due to amendments of the *Crimes Act* passed in 1991, was the subject of related evidence.


Recommendations

- The Bill should not be proceeded with until the proposed regulations are available.
- The Bill should be amended to:

- » require written customer consent to the recording or protracted voice monitoring of conversations on that customer's telephone service. This should not include random and brief interceptions as described in the Telecom submission. Failure to obtain written consent should be made an offence.
 - » provide carrier employees with a defence of good faith.
- Sanctions, similar to those previously available under the *Crimes Act*, should be available to deal with the unwarranted and unauthorised release of private information held by a carrier.

Comment

Given the strong opposition of most witnesses to the provisions dealing with interception by a carrier for operational or maintenance purposes, it seems extraordinary that the majority report presses for the passage of the Bill as drafted.


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