



Ms Sophie Dunstone
Committee Secretary
Legal and Constitutional Affairs References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: legcon.sen@aph.gov.au

10 MAR 2014

Dear Ms Dunstone,

**Re: Inquiry into comprehensive revision of the Commonwealth
*Telecommunications (Interception and Access) Act 1979***

Thank you for your invitation seeking comment addressing the terms of reference regarding the Commonwealth Legal and Constitutional Affairs References Committee's inquiry and report on a comprehensive revision of the *Telecommunications (Interception and Access) Act 1979 (Cth)* (TIA Act).

Telecommunications interception is receiving the attention of the community in New South Wales, across Australia and internationally. This is in large due to media coverage on the News of the World phone tapping activities in the United Kingdom. The community has justifiable concerns about the intrusion into the privacy of ordinary citizens that such activities represent, particularly as mobile phones and internet services form an important part of daily life.

The community is also conscious of the benefits of this technology for law enforcement agencies to carry out their enforcement functions. These enforcement functions have a clear benefit to the community. The TIA Act is an example of where the balance between privacy interests and law enforcement must be carefully considered.

As NSW Privacy Commissioner, it is my role to champion the privacy rights of the people of NSW with respect to their personal and health information. My comments reflect the concerns and issues the community has expressed regarding the collection, use, access and storage of personal and health information produced by interception activities. My comments therefore relate to these concerns and the best practice actions that can be put in place to address them.

The comments that I wish to make are:

- I support the protection of the privacy of communications as an object of the TIA Act. Where privacy interests of individuals and law enforcement activities meet, the interception and access to communications to investigate serious crime and threats to national security should not be seen as inconsistent with one another. The lawful interception and access to communications can be managed appropriately in the context of the right to privacy. The review of the TIA Act should ensure that the privacy of individuals affected by the lawful interception, access and storage of their communications is considered as

part of the process in obtaining the authority to intercept, access and store communications.

- The power to collect information, much of which will be personal information, must be limited to the specific purpose for which the authority to collect the information was given. Information collected from intercepting communications should only be available for use for specified purposes and not for other purposes.
- Access to an individual's communications should only be provided to agencies that have a clear requirement to access communications information. The community expects that the law provides privacy safeguards by ensuring that agencies that cannot demonstrate a proper justification for communications which can be accessed, should not gain access.

I note that Recommendation 5 in the Parliamentary Joint Committee on Intelligence and Security's "*Report of the Inquiry into Potential Reforms of Australia's National Security Legislation*" (May 2013) recommends "the review for the threshold for access to telecommunications data...focusing on the number of agencies able to access telecommunications data by using gravity of conduct which may be investigated utilising telecommunications data as the threshold on which access is allowed".

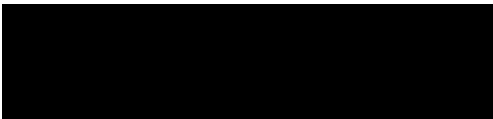
- It is good practice to ensure that only communications data that relates to the purpose for which it was collected is retained and used. Other information that does not relate to that purpose should be identified and disposed of as early as possible in a safe and secure manner. This will ensure that the privacy of individuals is not breached unnecessarily. I am aware that dealing with information obtained from interception may depend on other obligations enforcement agencies have, such as discovery for defendants, should criminal proceedings be commenced. This comment is directed toward information collected from interception that do not relate to the individual(s) subject to communications interception, or the matter for which the individual's communications is being monitored.

The general intent to strengthen the safeguards and privacy protections in the TIA Act is supported. Any review of the TIA Act and any exposure draft to be released for consultation should enhance existing privacy protections for the personal and health information and accord, at a minimum, with existing privacy principles and community expectations of privacy.

I consent to this submission being published on your website or any website. Please ensure that prior to any publication of this submission that my signature is redacted.

Please do not hesitate to contact Sean McLaughlan, Manager Performance Reporting and Projects, on (02) 8071 7030, or by email at sean.mclaughlan@ipc.nsw.gov.au if you have any questions.

Yours sincerely



Dr Elizabeth Coombs
NSW Privacy Commissioner

10/3/14