



THE UNIVERSITY OF
NEW SOUTH WALES



FACULTY OF LAW

GILBERT + TOBIN CENTRE
OF PUBLIC LAW

25 August 2014

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT 2600

Dear Secretary,

Inquiry into National Security Legislation Amendment Bill (No 1) 2014

During our recent evidence to the Committee we were asked to provide further detail on how to limit the wording of the computer access warrant provisions in Part III, Division 2 of the the *Australian Security Intelligence Organisation Act 1979* (Cth) ('ASIO Act'). The relevant section of the evidence is at page 26:

Mr BYRNE: In relation to computers and access to third-party computers, do you think a way forward could be that there has to be an established link between any computer that could be linked to the target person or entity that might cause concern to the agencies? Is that a way forward? That would then start limiting the number of computers that could potentially be accessed in a network. I put that up as the way forward.

...

Prof. Williams: The only thing I would say is that we would be interested in seeing the specific wording that you might be interested in recommending. It is obviously a delicate and careful matter to get the wording right. I would say, in general terms, yes, this is the sort of thing that we would like to see. We do support the idea of computer networks broadly working their way into the legislation subject to these qualifying words. We would be happy to put something forward by way of supplementary submission if you wanted us to look specifically at any wording you might want to suggest.

Mr BYRNE: Could you do that, on the basis of the discussion. It is something I have just come up with. If we enshrined that in legislation, could you put wording forward that you would be comfortable with in your supplementary submission?

Prof. Williams: Yes. We would be happy to suggest something on that basis.

SYDNEY 2052 AUSTRALIA
Telephone: +61 (2) 9385 9654
Facsimile: +61 (2) 9385 1175
www.gtcentre.unsw.edu.au

After consideration, we would recommend that a new sub-section (2A) worded in the following way be inserted into section 25A of the ASIO Act:

Section 25A Computer Access Warrant

...

(2A) The warrant may only authorise access to those parts of the target computer that are reasonably necessary for the collection of intelligence in respect of the security matter.

We believe that this wording would allow sufficient scope for ASIO officers to collect intelligence held on computer networks, whilst also limiting the number of computers that could be accessed on a network to those reasonably necessary to collect that intelligence.

Yours sincerely,

Mr Keiran Hardy

Doctoral Candidate, Gilbert + Tobin Centre of Public Law, University of New South Wales

Dr Nicola McGarrity

Lecturer, Gilbert + Tobin Centre of Public Law, University of New South Wales

Professor George Williams AO

Anthony Mason Professor and Foundation Director, Gilbert + Tobin Centre of Public Law,
University of New South Wales