

1 August 2013

Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Committee Secretary

Inquiry into the Telecommunications Amendment (Get a Warrant) Bill 2013

The Rule of Law Institute of Australia (RoLIA) thanks the Committee for the opportunity to make a submission to this Inquiry.

RoLIA is an independent and not-for-profit body. It does not receive any government funding.

The objectives of the Institute include:

- Fostering the rule of law in Australia, including the freedom of expression and the freedom of the media
- Reducing the complexity, arbitrariness and uncertainty of Australian laws
- Promoting good governance in Australia by the rule of law
- Encouraging truth and transparency in Australian Federal and State governments, and government departments and agencies
- Reducing the complexity, arbitrariness and uncertainty of the administrative application of Australian laws.

The Institute makes the following submission on the Bill.

SUBMISSION

It is fundamental to the rule of law that the operations of the executive government are undertaken in a transparent way, subject to the law itself, and with the minimum intrusion on the fundamental rights of members of the community, including the right to privacy.

RoLIA is concerned about the increasing expansion of executive powers, including in the area of electronic interception and surveillance, which are not subject to procedural safeguards. This includes the use of such powers by public bodies, such as local councils, which were never established as law enforcement agencies.

RoLIA appreciates that the objective of the *Telecommunications Amendment (Get a Warrant) Bill 2013* is to regulate access to telecommunications data and agrees that further scrutiny of the use of authorisations, rather than warrants with the procedural safeguards they provide, to obtain access to metadata is necessary.

However, in RoLIA's view, a coordinated approach to the totality of issues raised by telecommunications interception and access is necessary, rather than piecemeal changes such as those contained in the Bill. In that respect, RoLIA welcomes the Report of the Inquiry into Potential Reforms of Australia's National Security Legislation by the Parliamentary joint Committee on Intelligence and Security tabled on 24 June 2013 with its emphasis on the need for appropriate safeguards for the privacy of individuals and the community to be put in place in the face of intrusive national security legislation, and the need for further information about the proposed legislative reforms to be provided by government, especially in relation to data retention.

RoLIA also notes that a coordinated approach to the provision of regulatory powers to government agencies was recommended by the Senate's Legal and Constitutional Affairs Legislation Committee in its report of the *Regulatory Powers (Standard Provisions) Bill 2012* dated 18 March 2013. The advantage of such an approach is that it more easily enables scrutiny of proposed coercive powers being given to government agencies and also reduces the volume of legislation which is a barrier to community understanding of the law.

If RoLIA can be of any further assistance please do not hesitate to contact me.

Yours faithfully

Kate Burns
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