

Introduction

- 1.1 On 22 June 2011, the House of Representative's Selection Committee referred the Cybercrime Legislation Amendment Bill 2011 (the Bill) to the Joint Select Committee on Cyber-Safety (the Committee) for consideration.¹ Under House of Representatives Standing Order 222, the Selection Committee may refer to the relevant standing or joint committee any bill regarded as 'controversial or requiring further consultation or debate'.
- 1.2 The main purpose of the Bill is to facilitate Australia's accession to the Council of Europe Convention on Cybercrime (the European Convention). The provisions of the Bill and the European Convention are outlined in Chapter 2 and dealt with in greater detail in the following chapters. It is sufficient to note at this point, that the Bill expands the powers of enforcement agencies and the Australian Security Intelligence Organisation (ASIO), to obtain communications for investigative and security purposes. The Bill will also increase the ability of the Australian Federal Police (AFP) to share data with foreign counterparts.

Conduct of the inquiry

- 1.3 The Committee agreed to a request by the Attorney-General, the Hon Robert McClelland MP, to table its report in the Parliament by 5 August 2011. By mutual agreement, the reporting date was subsequently extended to 18 August 2011 to allow more time for public submissions.
- 1.4 The inquiry was advertised electronically and in the national press. Invitations to lodge submissions were sent to all State Premiers and Chief Ministers and to those organisations and individuals likely to have an

1 House of Representatives Selection Committee, *Report No. 26: Consideration of bills*, 22 June 2011.

interest in the inquiry. Submissions are listed at Appendix A and are available on the Committee's website at:

http://www.aph.gov.au/house/committee/jscc/cybercrime_bill/index.htm

- 1.5 The Committee received twenty-three submissions and held a public hearing in Canberra on 1 August 2011 followed by an inspection of the AFP High Tech Crime Operations facilities in Barton, Canberra. A list of witnesses who gave evidence at the hearing is at Appendix B.

Previous parliamentary consideration

- 1.6 In early July 2011, the Senate Standing Committee for the Scrutiny of Bills reviewed the Bill and alerted the Senate to the question of 'whether the bill strikes an appropriate balance of the right to privacy and the policy objectives associated with the implementation of the Convention'.² The comments of the Scrutiny of Bills Committee were taken into account during consideration of the Bill.
- 1.7 Previously, the Parliament has considered both the phenomena of cybercrime and the European Convention in two separate committee proceedings. In June 2010, the House of Representatives Standing Committee on Communications tabled a report of its inquiry into cybercrime.³ Among other things, the Committee recommended that the Attorney-General, in consultation with state and territory counterparts, move expeditiously to accede to the Convention on Cybercrime.⁴ The Committee also said any changes to Australian legislation should also be consistent with its obligations under the International Covenant on Civil and Political Rights.⁵
- 1.8 In April 2011, the Joint Standing Committee on Treaties considered Australia's proposed accession to the European Convention and also made relevant comments on issues that now arise under the Bill.⁶ While the Treaties Committee supported binding treaty action; it also took note of the importance of their being adequate safeguards to protect privacy and civil liberties.⁷

2 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No.7 of 2011*, 6 July 2011, p. 4.

3 House of Representatives Standing Committee on Communications, *Hackers, Fraudsters and Botnets: Tackling the Problem of Cyber Crime*, June 2010, Canberra.

4 Standing Committee on Communications, *Hackers, Fraudsters and Botnets*, p. 122.

5 Standing Committee on Communications, *Hackers, Fraudsters and Botnets*, p. 121.

6 Joint Standing Committee on Treaties, *Report 116*, April 2011, Canberra; Chapter 11, pp. 79-91.

7 Joint Standing Committee on Treaties, *Report 116*, pp. 86-92.

- 1.9 Finally, it should be noted that this Bill has been introduced into Parliament at a time of debate about a proposed data retention scheme for electronic communications that was the subject of an Inquiry by the Senate Environment and Communications References Committee into the adequacy of privacy protections for Australian citizens online.⁸ Neither the European Convention nor the Bill seeks to implement a communications retention scheme.

8 Senate Environment and Communications References Committee, *The adequacy of protections for the privacy of Australians online*, April 2011, Canberra.

