



Law  
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30 June, 2004

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Mr Phillip Bailey, Acting Secretary  
Legal and Constitutional Legislation Committee  
Australian Senate  
Parliament House  
CANBERRA ACT 2600

***By mail and by Email***

Dear Sir,

**Re: Inquiry into the Telecommunications (Interception) Amendment (Stored Communications) Bill 2004**

I refer to your letter dated 18 June 2004. The Law Institute of Victoria ("LIV") welcomes the opportunity to comment on the provisions of the *Telecommunications (Interception) Amendment (Stored Communications) Bill 2004* (Cth) which was referred to the Senate Legal and Constitutional Legislation Committee for inquiry and report by 22 July 2004.

The LIV, through its Criminal Law section has reviewed the provisions of the Bill. The fundamental question considered by the LIV is whether an ordinary search warrant ought to be regarded as sufficient for stored communications or whether all electronic communications whether stored or live should be the subject of telecommunications intercept warrants?

The proposed legislation raises issues concerning the civil liberty of persons who may be the potential subject of such warrants. The LIV submits that any telecommunications interception (whether live or stored) should be the subject of a specific telecommunications warrant. It follows that when the Australian Federal Police ("AFP") execute a search warrant on any premises in which a computer and telephone answering machine is found, they should be required to seek further warrants before accessing any voicemails or Internet transmissions which are stored on the seized equipment. The AFP should be required to obtain an additional telecommunications interception warrant in order to access the contents of answering

machines, seized mobile telephones and computers. Although this may be viewed as impractical given that the current practice has been for the AFP to access voicemails and emails from the computers and telephones of suspects during the execution of an ordinary search warrant, it is an important safeguard to intrusions on the privacy rights of individuals.

The LIV submits that whilst there are obvious differences, the division between the interception of live telephone communications and stored communications is at times an artificial distinction, particularly in the case of email where a chain of communication can exist within a single stored email. In these instances the consequences for the accused may be the same. The interception prohibition should apply in both cases.

In summary, the LIV cautions against any attempt to weaken the specific and strict requirements of the telecommunications interception legislation without thorough regard for the civil liberties of those suspected of committing offences who may fall within the ambit of the proposed legislation.

If you require further information please do not hesitate to contact myself or the Research Solicitor for the Criminal Law Section, Jayde Richmond on (03) 9607 9374.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Christopher Dale', written in dark ink.

**Christopher Dale**  
President  
Law Institute of Victoria