

COMMONWEALTH DPP

Telecommunications (Interception) Amendment (Stored Communications) Bill 2004: Submission to the Senate Legal and Constitutional Committee

- **The DPP**

The Commonwealth DPP is the agency for prosecuting alleged offences against Commonwealth law and recovering the proceeds of crime.

The DPP is also responsible for providing advice to Commonwealth investigators on legal issues that arise in the course of a criminal investigation, including issues relating to search powers and the use of search warrants and telecommunications interception warrants.

The DPP also has an interest in ensuring that Commonwealth investigators have the powers they need to properly perform their function. The DPP can only prosecute and recover the proceeds of crime if the investigators have been able to conduct an investigation and present a brief of evidence to the DPP.

- **The proposed amendments**

The proposed amendments to the Telecommunications (Interception) Act 1979 will remove stored communications from the operation of the Act. It will no longer be an interception for the purpose of that Act for a person to monitor a communication at a point where it is stored, other than where the storage occurs on a transitory basis as an integral function of the technology used in its transmission.

The amendment will apply, for example, where an Email message has been downloaded by the intended recipient but not opened or when an Email message is held by an ISP before the intended recipient has downloaded it. It will also apply when a voice or text message is held on a message bank before being accessed by the intended recipient.

The proposed amendments will not remove protection from a stored communication. A law enforcement officer who wants to gain access to a stored communication will still need to hold an appropriate search warrant or other form of lawful authority.

The net effect of the proposed amendments will be that the Telecommunications (Interception) Act 1979 will apply where a communication is moving over the telecommunications system but the general law will apply if the communication comes to rest. At that stage the communication will be subject to the restrictions and protections that which apply to other forms of communication, including paper based communications.

- **The DPP view**

The DPP supports the proposed amendments on the basis that they will clarify what is presently an unclear area of the law and will rationalise the rules that apply to a criminal investigation.

The Telecommunications (Interception) Act was drafted before stored messages became a feature of the telecommunications system and there is nothing in the Act

which deals with them expressly. As a result, there is some uncertainty about how some of the provisions of the Act apply to stored communications.

It is undesirable that there be any uncertainty about the laws which apply in this area. The proposed amendments will clarify the legal position.

The proposed amendments will also rationalise the law.

As matters currently stand, there are a number of situations where an investigator may need to get both a telephone interception warrant and a search warrant to fully search the contents of a single computer. The proposed amendments will make that unnecessary.

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