



Australian Government
Australian Communications Authority

Ref: ACA 2004/715

Mr Phillip Bailey
Acting Secretary
Senate Legal &
Constitutional Legislation Committee
Parliament House
Canberra ACT 2600

By facsimile: (02) 6277 5794

Dear Mr Bailey

***Telecommunications (Interception) Amendment (Stored Communications) Bill
2004***

As I understand it, this proposed bill was introduced into Parliament in May 2004 but was passed to a Senate Committee to report back by 22 July 2004.

I am advised that the amendment to the *Telecommunications (Interception) Act 1979* ('the Interception Act') is designed to remove 'stored communications' (defined broadly to include electronic messages located on a computer, internet service or other equipment, and whether read or unread) from the prohibition on intercepting communications in the Interception Act.

From the ACA's very preliminary consideration of this matter, the impacts of this amendment on the *Telecommunications Act 1997* ('the Act'), which the Australian Communications Authority (ACA) administers, may be important. Part 13 of the Act covers the disclosure of information held by carriers, carriage service providers, number database operators, emergency call persons and their respective associates. The disclosure or use of protected information is authorised in limited circumstances (for example, disclosure or use for purposes relating to the enforcement of a criminal law). Any person who receives such a disclosure can only further disclose or use the information for an authorised purpose.

The ACA is concerned about the impact on carriers, carriage service providers, number database operators and emergency call persons, if as a result of the Bill, they are asked to disclose information on stored communications without a warrant. These organisations will still be required to comply with Part 13, and not disclose the information unless a particular exemption applies. The organisations will also have to record all such disclosures. The number of disclosures of all types reported in the ACA's 2002/03 annual report on carrier telecommunications performance was approximately 670,000 in total.

The ACA is also aware of the Act's current balance between privacy and confidentiality aspects of public number customer data, and sufficient access for law enforcement, national security and emergency services activities. It appears that the current Part 13 exemptions in the Act, by themselves, may not provide an adequate protection for the privacy and confidentiality of stored communications.

I understand that the Senate Committee is due to report back to the Senate by 22 July 2004. However, given the potential impact on the Act, the ACA would like the opportunity to consider the matter thoroughly.

Hence I would appreciate your early response regarding a deadline for a more considered ACA submission to the committee.

The contact officer on this matter is Ellie Calero, A/g Senior Policy Analyst, Community and National Interests Team on (03) 9963 6816.

Yours sincerely



For: Joan Wilkinson
Manager
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Telecommunications
2 July 2004