

RECOMMENDATIONS

Recommendation 1

3.18 The Committee recommends that the Bill be amended to include a provision amending Section 280 and subsections 282(1) and (2) of the *Telecommunications Act 1997*, effective from the same date as the Bill, to make it clear that covert access to stored communications is not permitted without a stored communications warrant.

Recommendation 2

3.42 The Committee recommends that the enforcement agencies able to access stored communications should be limited to those agencies eligible under the existing arrangements for telecommunications interception.

Recommendation 3

3.43 The Committee recommends that the Bill be amended to permit stored communications warrants to be issued only in relation to criminal offences.

Recommendation 4

3.52 The Committee recommends that the Bill be amended to require applications for stored communications warrants, and the warrant itself, to include information that clearly identifies the person who will be the subject of the warrant and the telecommunications for which access is sought.

3.53 The Committee suggests that the existing provisions for named person warrants provide a suitable example of the type of information that ought to be required.

Recommendation 5

3.60 The Committee recommends that the Bill be amended to allow issuing authorities to only include those currently able to issue interception warrants.

Recommendation 6

3.67 The Committee recommends that, consistent with the existing arrangements for telecommunications interception, immediate action be taken to ensure the enforceability of the stored communications provisions on State and Territory agencies by requiring complementary legislation to be enacted as a precondition to being granted the powers of an enforcement agency under the stored communications regime.

Recommendation 7

3.68 The Committee also recommends that as an interim measure, the definition of an enforcement agency in the Bill be amended to allow for the ability to exclude an agency specified in the *Telecommunications Interception Regulations* from being able to obtain a stored communications warrant.

Recommendation 8

3.72 The Committee recommends that the Bill be amended to allow issuers of stored communications warrants to have regard to the length of time stored communications may have been held on a carrier's equipment and whether the communications sought can be sufficiently identified in order to minimise the impact on privacy.

Recommendation 9

3.73 The Committee also recommends that the Bill be amended to require issuers of stored communications warrants to consider whether the stored communications are likely to include communications the subject of legal professional privilege and whether any conditions may be implemented to prevent the disclosure of such communications.

Recommendation 10

3.81 The Committee recommends that the Bill be amended to specify time limits within which an agency must both review their holdings of information accessed via a stored communications warrant and destroy information as required under the proposed section 150.

Recommendation 11

3.91 The Committee recommends that Bill be amended to require agencies and the Minister to report on the use and effectiveness of stored communications warrants in a manner equivalent to the existing reporting obligations for telecommunications interception warrants.

Recommendation 12

3.92 The Committee recommends that additional resources be provided to the Ombudsman to enable the Office to fulfil the expanded functions under this Bill.

Recommendation 13

3.93 The Committee recommends that the Bill be amended to extend the timeframe for section 153 reports to six months.

Recommendation 14

3.107 The Committee recommends that the Bill be amended to ensure that copies of communications can not be accessed without a stored communications warrant.

Recommendation 15

3.108 The Committee recommends that the definition of 'record' be amended so that it applies in relation to accessing a stored communication.

Recommendation 16

3.109 The Committee recommends that the issue regarding whether or not access to stored communications is accessible via the sender is settled and the Bill be amended as necessary.

Recommendation 17

3.110 The Committee recommends that prior to the passage of the Bill the definition of stored communications be amended so that the Australian Communications and Media Authority's ability to enforce the Spam Act is not limited.

Recommendation 18

4.43 The Committee recommends that as a precondition to issuing a warrant under subsection 9(3), there must be evidence that the B-party's telecommunications service is likely to be used to communicate or receive information relevant to the particular activities prejudicial to security which triggered the warrant.

Recommendation 19

4.56 The Committee recommends that the Bill be amended to require that an applicant for a B-party warrant demonstrate:

- evidence to support their belief that the information likely to be obtained from the intercept is material to the investigation; and,
- establish that it cannot be obtained other than by telecommunications interception or the use of a listening device.

Recommendation 20

4.57 The Committee also recommends that the proposed section 46(3) (which contains the requirement that the issuing authority must not issue a B-party warrant unless he or she is satisfied that the agency has exhausted all other practicable methods of identifying the telecommunications services used) be amended to exclude the word 'practicable', to ensure that before a person is subject to a B-party warrant no other way of approaching the problem is available.

Recommendation 21

4.61 The Committee recommends that the Bill be amended to state that B-party interception warrants cannot be renewed. If further interception is required after a warrant expires, it must be the subject of a fresh application.

Recommendation 22

4.80 The Committee recommends that Schedule 2 be amended to provide that certain material obtained under a B-party warrant will be exempted from use under the legislation. This material should include bona fide communications between solicitor and client; clergy and devotee; doctor and patient and communications by the innocent person with any person other than the person of interest to the law enforcement agency.

Recommendation 23

4.81 The Committee further recommends that the Bill be amended to introduce defined limits on the use and derivative use of material collected by B-party warrant.

Recommendation 24

4.97 The Committee recommends that:

- **there should be strict supervision arrangements introduced to ensure the destruction of non-material content in any form;**
- **the number and justification of B-party intercept warrants should be separately recorded by the Agency Co-ordinator and reported to the Attorney General; and**
- **the use of such warrants should be separately reported to the Parliament.**

Recommendation 25

4.111 The Committee recommends that the Bill should include a provision for the provisions to expire in five years, with a review at that time or earlier.

4.112 The Review should encompass the broader issues surrounding the suitability and effectiveness of AAT members in the warrant issuing regime, together with consideration of ways in which the Act may be amended to take account of emerging technologies such as peer-to-peer technology.

Recommendation 26

4.126 The Committee recommends that the recommendation contained at paragraph 3.2.5 of the Blunn report be adopted, and priority given to developing a unique and indelible identifier of the source of telecommunications and therefore as a basis for access.

Recommendation 27

5.25 The Committee recommends that the amendments proposed in Schedule 6 of the Bill be passed.

Recommendation 28

5.26 Subject to the amendments set out above, the Committee recommends that the Bill be passed.