

10 September 2018

Department of Home Affairs

Public Consultation of the Assistance and Access Bill 2018 (Cth)

By Email: [REDACTED]

Dear Minister,

**RE: Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018 (Cth)**

I thank the Minister for the opportunity to comment on the Telecommunications and other Legislation Amendment (Assistance and Access) Bill 2018 (Cth) ('the Bill') and to express my concerns regarding the same. I fully appreciate the need to have a strong and effective mechanism by which criminals may be brought to justice, regardless of the means by which they choose to conduct their criminality. Equally however, the civil rights of persons in Australia, particularly our right to privacy, must be protected from unlawful or arbitrary governmental interference and to ensure strong and effective protections against the undermining of technological security. To this end, I make the following submissions for consideration:

#### **Undermining the Rule of Law and the Separation of Powers**

As currently drafted, the Bill undermines principles of the rule of law and seeks to limit access to the courts by persons affected by the Bill, thereby undermining the separation of powers. The document released entitled *Limitations and Safeguards Factsheet* specifically notes that inherent review by the courts is open to those wishing to challenge the issuing of the warrants under the Bill. However, proposed amendments to the *Telecommunications Act 1997* (Cth), notably the inclusion of s 317ZF, makes it an offence for any person to disclose the existence of any warrant issued under the Bill. It is inherently disingenuous to state that courts are able to review the decision to issue a warrant under the Bill if the disclosure of the mere existence of such a warrant is a criminal offence punishable by 5 years' imprisonment; in other words, a person the subject of such a warrant simply will not know that such a warrant exists and therefore will not be able to put such a warrant to the test in a court of law.

#### **Opening Private and Personal Information to Abuse**

It is a known fact that throughout Australia, systems available to the police and other authorised bodies have been abused to stalk, harass, intimidate, and spy on individuals contrary to legal authorisations and protections. Whenever there are systems in place without adequate protections, and bi-annual reports tabled to Parliament cannot be considered adequate protections, there will be people seeking to exploit them for nefarious purposes. Without an effective oversight system, personal and private information of persons in Australia – citizens and visitors alike – are open to abuse by successive governments and criminals seeking to exploit technological weaknesses. However unlikely future governmental abuse may be in practice, the

mere existence of such a possibility cannot and should not be discounted as the threat to individual liberty and dare I say – liberal democracy, is great.

Once again, I recognize that in the 21<sup>st</sup> century, digital world, there is a need to ensure that criminals are adequately surveilled and brought to justice for their misdeeds; however, the right to privacy of the individual is of fundamental importance ensuring the possibility of people to exercise other associated rights, such as the freedom of religion, freedom of speech, and freedom of association just to name a few. Thus, I respectfully submit that the Bill must be amended to ensure meaningful oversight by Chapter III courts is possible in all circumstances. There are several other difficulties with the Bill that may be noted but the preceding two points are of paramount importance and I strongly urge the Minister to consider my submission.

I thank the Minister for their time and consideration and make myself available at the Minister's convenience should the Minister have any further questions that I may be able to assist with.

Yours sincerely,

Paul Maluga

Principal