



New South Wales  
Council for Civil Liberties

**NSWCCL SUBMISSION**

**to**

**Department of Home Affairs**  
**Consultation**

**on**

**Exposure Draft**  
**Telecommunications and Other**  
**Legislation Amendment**  
**(Assistance and Access) Bill 2018**

10<sup>th</sup> September 2018

### **About NSW Council for Civil Liberties**

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts; attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

### **Contact NSW Council for Civil Liberties**

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## Introduction

- 1 The NSW Council for Civil Liberties (NSWCCL) welcomes the opportunity to respond to the consultation on the Exposure Draft Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018 (The Bill).
- 2 NSWCCL is a party to a joint submission from a number of civil society bodies<sup>1</sup> which covers the substance of our major concerns with this Bill. We accept that the extent and strength of encryption protections around electronically communicated data is a real problem for the Government and our police, security and intelligence agencies in protecting Australians from the threat of terrorist violence. We also accept that there must be some trade-off of privacy in the interest of public safety in this context, as long as it is proportionate, necessary and balanced.
- 3 As argued in the joint submission referenced above, the provisions in this Bill go well beyond what is proportionate, necessary or balanced.
- 4 We provide this brief separate submission to address an additional issue relating to the consultation process for this significant and controversial exposure draft Bill.

## The exposure draft Bill consultation process

- 5 Key provisions in this Bill will, if enacted, have major ramifications for individual privacy and the security of all kinds of information of Australians. It also entails a major extension in the surveillance powers of Government over its citizens and others.
- 6 The discussion as to the appropriate balance between surveillance powers given to police, national security and intelligence agencies and the rights of Australians to the security and privacy of their information is a complex and controversial one. Such an important discussion should, in a democracy, be widely canvassed and responses assessed in a trusted and transparent context.
- 7 This exposure draft Bill has been drafted by the Department of Home Affairs:

*The Department of Home Affairs has drafted the legislation in close cooperation with agencies, including the Australian Criminal Intelligence Commission (ACIC), Australian Federal Police (AFP) and ASIO. Throughout the drafting process, the Government has consulted with a range of international and domestic technology companies about the proposed reforms. The Department of Home Affairs has drafted the legislation in close cooperation with agencies, including the Australian Criminal Intelligence Commission (ACIC), Australian Federal Police (AFP) and ASIO. Throughout the drafting process, the Government has consulted with a range of international and domestic technology companies about the proposed reforms<sup>2</sup>*

We note the list of bodies consulted in this process does not appear to extend to civil society organisations.

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<sup>1</sup> Joint Submission by: Australian Privacy Foundation, Digital Rights Watch, Electronic Frontiers Australia, Future Wise, The Queensland Council for Civil Liberties, The New South Wales Council for Civil Liberties, Access Now, Blueprint for Free Speech. 10<sup>th</sup> September 2018.

<sup>2</sup> The Exposure Draft Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018: Explanatory Memorandum. P7.

- 8 Although this is an exposure draft and will presumably be subject to further review as a formal bill, NSWCCCL considers it would have been more appropriate and more productive if this initial public consultation had been undertaken by a relevant parliamentary committee or some other more open and independent process, rather than by the Department of Home Affairs which has a justified reputation for excessive secrecy.
- 9 Public servants/officials are not independent and may have difficulty in making recommendations reflecting the full range of responses to such a politically charged issue as this one - particularly when it is clear that the Minister for Home Affairs is a strong and publicly committed proponent of the exposure draft Bill.
- 10 Nor is it appropriate that submissions in response to this Bill are being considered by the Department encompassing key agencies who will be empowered by the Bill and who have - presumably - largely shaped its provisions.
- 11 This makes it particularly important that the next iteration of this draft legislation as a formal Bill should be reviewed in a more transparent and trusted environment. This may well be the Government's intention but, just in case, we make two formal recommendations to improve the process at the next iteration of this Bill.
- 12 We are not aware of any official information as to whether or not it is the intention of the Minister to make the submissions to this consultation public. We consider it important and appropriate that they are made public.

#### **Recommendation 1**

**The NSWCCCL urges the Minister and the Department of Home Affairs to make the submissions to this consultation process public immediately after the closing date for receipt of submissions (ie 10/9/2018)**

#### **Recommendation 2**

**The NSWCCCL considers it is inappropriate that the review of this exposure draft Bill is being conducted by the Department of Home Affairs and the Home Affairs Minister and strongly recommends a more transparent review process by a relevant parliamentary committee for the next iteration of the Bill before it proceeds to debate within the Parliament.**

#### **Conclusion**

This supplementary submission was written by Dr Lesley Lynch, Vice President and convenor of the National Security and Counter Terrorism Action Group of the NSWCCCL.



**Therese Cochrane  
Secretary  
NSW Council for Civil Liberties**

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**Dr Lesley Lynch**

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