

Submission in response to Discussion Paper on Electronic Surveillance Reform 2022-11-15

First, let me commend the authors of this discussion paper for their thorough treatment of the issues, in particular the listing of specific questions for consideration. The overall rationale and strategy for this reform seem promising, and I look forward to seeing the consultation process evolve in the coming year.

This submission addresses only three concerns, which, however, are not tied to any particular question:

1. **Competition:** Care should be taken that the electronic surveillance reforms do not put Australian companies at an unfair competitive disadvantage with respect to overseas companies, particularly for Internet-based services for which Australian users can easily access overseas providers. This was a concern raised by a number of Australian companies about the TOLA(A&A) Bill of 2018, and it is also relevant here. Nor should the reforms put small companies at a similar unfair competitive disadvantage with respect to big companies. Much of the innovation, especially in Information and Communications Technology, comes from small companies. Big companies, who more often have the ear of Government, are too often more interested in maintaining their position and eliminating competition than in real innovation.

(This is most relevant to Part 6, but also to Part 1 and other parts.)

2. **Reporting and Disclosure:** More emphasis should be put on the public reporting of the operations of electronic surveillance of all agencies involved. This is essential for proper operation of our democracy.

(Most relevant to Part 5.)

3. **Journalists:** Not only has the technical landscape of communication changed greatly over recent decades, but also has the media landscape. Traditional outlets, particularly newspapers, have greatly lost advertising revenue, and therefore can employ far fewer professional journalists. But then ordinary citizens now have far greater recording and communication capabilities, in particular on their mobile phones, bringing us more into an age of “citizen journalists”. Julian Assange is a case in point. To many, including this writer, he is a journalist acting for the good of society and democracy by uncovering government wrongdoing, but he stands accused of espionage.

It is reasonable that special provisions be made for journalists. However in a age with fewer paid journalists and more citizen journalists, keeping

the same definitions of *journalist* would lead in effect to a reduction in scrutiny of governments and institutions, putting our democracy at greater risk. While it would require careful definition, protections afforded to journalists should be extended to anyone acting in the public interest in a journalistic capacity.

(Most relevant to Part 4.)

Thank you for considering this submission.