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Uncertainty about side-stepping warrants and detention must be resolved under encryption bill

The Australian Government's encryption access bill raises serious questions about the ability of law enforcement and intelligence agencies to access encrypted private information without a warrant, as well as the power detain individuals in certain circumstances.

Law Council of Australia President-elect, Arthur Moses SC, told a [Parliamentary Committee](#) today that while there was significant value in allowing law enforcement and national security agencies faster access to encrypted information, the proposed Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018 needed considerable amendment.

"The Bill will authorise the exercise of intrusive covert powers with the potential to significantly limit an individual's right to privacy, freedom of expression, and liberty," Mr Moses said.

"It would allow law enforcement agencies and ASIO to make 'technical assistance requests' or 'voluntary assistance requests' on designated communications providers.

"Under these requests a provider may be asked to undertake certain acts or things, including telecommunications interception, for which authorities would otherwise require a warrant.

"It is our strong concern that these requests could side-step the need for a warrant.

"Where law enforcement or intelligence agencies would otherwise require judicial or Administrative Appeals Tribunal, or Ministerial authorisation or approval, they should not be able to make a voluntary assistance request or a technical assistance request.

"It is hard to imagine an internet provider refusing a written 'request' from law enforcement."

Among other concerns raised by Mr Moses were proposed new powers that would allow law enforcement or ASIO to effectively detain individuals if they were required to provide compulsory assistance.

"If a person is required to attend a place to provide information or assistance this may arguably amount to detention of that person, particularly as they may be arrested on suspicion of an offence if they attempt to leave," Mr Moses said.

"Appropriate safeguards need to be in place for detention. Detained people should be allowed to contact a lawyer or family member, for example.

"There should also be prescribed maximum periods for giving assistance, requiring an explanation of legal rights and responsibilities, and the availability of interpreters where required."

Mr Moses also alerted the committee to other concerns, including that for computer access warrants, agencies may obtain telecommunications interception on the basis of lower thresholds than those that currently apply. They may also have an ability to use force against persons or things to engage in telecommunications interception.

You can read the Law Council's [Opening Committee Statement here](#). And our [submission here](#).

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