

Tuesday, 14 August 2018

## Decision to release exposure draft on encrypted access bill important step to getting the law right

The release of an exposure draft of the Australian Government's *Assistance and Access Bill 2018* prior to its final introduction into Parliament is something that has been long called for by the Law Council and a step that is strongly welcomed.

The President of the Law Council of Australia, Morry Bailes, said that while it is too early to provide in-depth comment on the contents of the exposure draft, releasing the draft is an important step to getting the law right.

"With a bill as serious as permitting government access to encrypted information, we need to ensure that there are no unintended consequences for the privacy and cybersecurity of individuals, or for the regulation of the telecommunications sector," Mr Bailes said.

"We called for the release of an exposure draft while [appearing](#) in front of the Parliamentary Joint Committee on Law Enforcement earlier this year. We're delighted the government has now gone down this path."

Mr Bailes said that in the context of acknowledging the bill's legitimate purpose of tackling criminal activity, the Law Council will now consider it in detail.

"The principals we will apply include ensuring that restrictions on encryption and online anonymity are precise, public, transparent and accord with [Article 19\(3\) of the ICCPR](#)," Mr Bailes said.

"The laws must conform with the strict tests of necessity and proportionality. This includes consideration of the possibility that encroachments on encryption and anonymity may be exploited by the same criminal and terrorist networks that the limitations deter.

"It is important to ensure that no one's right to privacy is unduly compromised and the use of powers by law enforcement is subject to mechanisms to safeguard against the misuse or overuse. This includes meaningful parliamentary and judicial oversight.

"We note that the exposure draft outlines that warrants to access encrypted information are to be issued by judges and AAT members. While we will look at this in closer detail, at first glance, this is a promising inclusion," Mr Bailes said.

The Law Council will prepare a full response to the exposure draft and looks forward to engaging closely with Parliament following the introduction of the final bill.

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