

Wednesday, 25 August 2021

Concern that recommendations to add crucial safeguards to surveillance bill were ignored

The Law Council of Australia is concerned that the Surveillance Legislation Amendment (Identify and Disrupt) Bill 2020 as passed today, did not adopt key recommendations of the Parliamentary Joint Committee on Intelligence and Security (PJCIS) that included the implementation of critical safeguards.

President of the Law Council, Dr Jacoba Brasch QC said, “failing to implement the Committee’s recommendation that there be judicial issuing of the new, extraordinary warrants is particularly disappointing.”

“The Law Council believes the significant breadth and intrusive scope of these warrants demands consideration by judicial officers, as the PJCIS recommended.

“These warrants have the potential to cause significant loss, damage or disruption to lawful computer users who are not suspected of any wrongdoing.

“While the Law Council understands that there is an intention to consider these matters in the longer-term development of new electronic surveillance legislation, the PJCIS’s recommendations were specific to the three new warrant-based powers in this legislation, which are novel, extraordinary and intrusive.

“The Law Council agrees with the views of the PJCIS that all of its recommendations – and especially those directed to judicial issuing of warrants – are crucial to the reasonable and proportionate exercise of the new powers, and public confidence in their exercise at any point in time at which those powers are in force.

“Deferring consideration and implementation for an open-ended period, potentially years, fails to provide a meaningful safeguard or assurance.

“Despite the disappointment, the Law Council acknowledges several of the amendments made to the legislation during Parliamentary debate, implement valuable safeguards recommended by the PJCIS, which in turn endorse recommendations of the Law Council made to its inquiry.

“This is particularly the case for the issuing criteria, including the insertion of explicit necessity and proportionality thresholds, and requiring the specific examination of potential impacts on lawful computer users who are not under any suspicion of wrongdoing.”

ENDS

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