

Wednesday, 21 August 2019

Law Council welcomes INSLM review, public consultation into encryption legislation

The Law Council of Australia has welcomed public consultations into encryption legislation that will form part of a review by the Independent National Security Legislation Monitor (INSLM), which was announced today.

The *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* (Cth), which has attracted significant public attention, was referred to the INSLM for review by the Parliamentary Joint Committee on Intelligence and Security (PJCIS).

Law Council President, Arthur Moses SC, said he welcomed the INSLM's recognition that transparency of national security laws was a prerequisite to obtaining public confidence in these laws.

"The consultation for this review will play a very important role in ensuring public trust in this legislation," Mr Moses SC said.

He said serious concerns remained in relation to the encryption legislation, which were rushed through the last parliament.

"The Law Council supports aspects of this Act that give agencies additional powers to help keep us safe," Mr Moses SC said.

"However, we continue to hold serious concerns about how encryption legislation could impact on the privacy and rights of law-abiding Australian citizens, the media and corporate sector.

"The Law Council looks forward to making a submission to the review to assist the INSLM's consideration of this important matter."

The Law Council's concerns with the Act include:

- The potential for notices to be issued to telecommunications providers requiring them to provide information that would otherwise require a warrant, and the absence of judicial oversight for such notices to be issued;
- Allowing law enforcement or ASIO to effectively detain individuals to provide 'compulsory assistance' without the necessary safeguards for detention, including being allowed to contact a lawyer;
- Failing to make clear that legal professional privilege is protected in all circumstances; and
- Allowing senior bureaucrats at ASIO to confer civil immunity, instead of the Attorney-General.

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