



THINKSTOCK

**CYBERPRINT:** Using computer data to track criminals

## CYBERSAFETY

## Increased powers to trace cybercrime

### Legislation to allow data exchange with other countries.

**N**ew powers to fight cybercrime will be given to Australian law enforcement agencies under legislation passed by the House of Representatives.

The Cybercrime Legislation Amendment Bill 2011 empowers authorities to request the preservation of specific communications, and to work with international agencies to collect data and exchange information.

The amendments are necessary for Australia to accede to the Council of Europe Convention on Cybercrime, the only binding international treaty covering the area.

After the legislation is approved by both houses, Australia will join nearly 50 nations as signatories to the convention, including Canada, Japan and the United States.

Federal Attorney-General Robert McClelland said acceding to the convention is crucial to help Australian agencies better prevent, detect and prosecute cyber intrusions and criminal activity conducted over the internet.

“The increasing cybercrime threat means that no nation alone can

effectively overcome this problem and that international cooperation is essential,” Mr McClelland said.

However civil liberty groups have raised concerns about the amendments in submissions to the Joint Select Committee on Cyber-Safety, particularly in relation to preserving communications ahead of a warrant being issued.

Australian law enforcement agencies will be able to require carriers to preserve stored communications for up to 90 days where they believe a serious offence has been committed.

Information preserved could include computer data, as well as emails, SMS messages and other communications transmitted through the phone or internet provider.

The Australian Federal Police will also be able to require carriers to preserve communications on behalf of foreign law enforcement agencies, under the mutual assistance obligations of the Convention on Cybercrime.

While carriers will be required to preserve communications on request, law enforcement agencies will only be able to access the

communications once they are granted a relevant warrant.

Agencies will also be required to take into account privacy considerations and determine there are reasonable grounds that a carrier holds relevant communications before making a preservation request.

These protections don’t go far enough for groups such as the Law Council of Australia, which expressed concern about the proposed threshold tests for preserving communications.

Communications will be able to be preserved if agencies reasonably believe they relate to a serious offence punishable by at least three years imprisonment.

The Law Council is concerned that the seriousness of the offence only needs to meet this threshold under the laws of the country requesting the information.

“Such penalties may be considerably out of sync with, and much more severe than, the penalties imposed in Australian jurisdictions for like conduct,” the Law Council said in its submission.

The New South Wales Council for Civil Liberties also holds serious concerns about sharing information with foreign law enforcement agencies.

“Chief among these concerns is that some requesting parties employ torture and the death penalty,” the council said in its submission. “Information sharing that results in a person being subject to torture or the death penalty is under no circumstances acceptable.

“A second significant worry is that covert surveillance of a suspect already comes at the cost of privacy; sharing that information with overseas law enforcement significantly increases the breach of privacy this represents.”

Mr McClelland downplayed the impact of the amendments on privacy and international justice, stating that assistance to foreign agencies is subject to protections under the Mutual Assistance in Criminal Matters Act.

Shadow Minister for Justice Michael Keenan said the Coalition supported the objectives of the bill and was broadly satisfied with the safeguards in place around the legislation, ensuring its passage through the House. •