

23 July 2014

The Hon John Rau MP  
Attorney-General  
Parliament House  
ADELAIDE SA 5000  
By email: [agd@agd.sa.gov.au](mailto:agd@agd.sa.gov.au)

Dear Attorney-General,

We write again to express our concerns regarding the *Surveillance Devices Bill 2014* (the Bill) following debate in the Legislative Council of the South Australian Parliament earlier this month. This follows previous correspondence from joint media organisations following the introduction of the Bill into the Parliament.

As we outlined in previous correspondence, significant amendments to the parts of the Bill dealing with the media and individuals would be required – in many cases replacing provisions of the Bill with provisions from the existing law.

In our view, amending the media elements of the Bill is neither the best course of action, nor an appropriate course of action given that the proposed changes affecting the media and individuals is a ‘solution’ in search of a ‘problem.’ We therefore believe that the Bill should be ‘split,’ enabling the police-related provisions to proceed and allow existing law – as it relates to the media – to continue to operate without unnecessary change.

#### No evidence of a problem

As outlined in that prior correspondence – and also in correspondence regarding the *Surveillance Devices Bill 2012* – there is no evidence of a problem with the existing law, the *Listening and Surveillance Devices Act 1972*, as it pertains to the media. Given the absence of any public policy failure, there is no need to ‘fix’ the existing law in this regard.

This fundamental issue renders the media elements of the Bill unjustified and unwarranted. We therefore recommend that the media elements of the Bill should not be progressed on this basis alone.

#### The Bill stifles the free flow of information in the public interest

In prior correspondence we articulated that notwithstanding the absence of an evidenced problem, the Bill before the Parliament contains a number of significant flaws – specifically regarding the media provisions – that render those provisions of the Bill unworkable, including:

- The public interest exception is too narrow;
- The scope for protecting lawful interests is too narrow; and
- The requirement for pre-publication judicial approval is unwarranted, expensive and unworkable.
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The result of these concerns is a Bill that does not properly balance the competing interests of protection of privacy and the public interest, nor does it give the proper weight to the principles of freedom of speech and communication, and the free flow of information in the public interest.

Recommendation: 'split' the Bill

Given all of the serious issues outlined above – including the fundamental flaws of the Bill – we recommend that the media elements of the Bill should not be progressed.

This could be achieved by 'splitting' the Bill.

This would enable the provisions dealing with police powers – on which the joint media organisations make no comment – to be progressed, and allow the operation of the existing law (as it pertains to the media) to continue without change. The media-related provisions of the Bill would therefore not be progressed.

We trust this is useful input into your ongoing deliberations regarding the *Surveillance Devices Bill 2014*.



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