



## Australia's telecoms regulator reviews call monitoring

The privacy committee of Austel, Australia's telecommunications regulator, of which Australia's new federal Privacy Commissioner, Moira Scollay, is a member, is looking at the detailed legal and policy issues surrounding call monitoring. As the legal status of call monitoring under Australia's interception law is unclear, the consequence is that businesses and other organisations may be unwittingly breaching the law.

Australia's Interception Act prohibits the interception of a telephone call using certain devices and also extends to the recording of a communication by one of the parties to a communication without the other party's knowledge.

### Call centre exemption

The methods to which the Interception Act refers are not the common methods of interception used in recording conversations in call centre situations.

If an interception in the form of call monitoring takes place in a call centre, there is an exception to the prohibition in the Interception Act. If a person who is lawfully on premises to which a telecoms service is provided, listens to or records a communication, then the listening or recording does *not*, for the purposes of the Act, constitute interception of the communication.

### Consent exemption: Does a bleep imply consent to recording?

There is also a general exception to the prohibition of intercepting a telephone call where both parties to the conversation *consent* to the recording of the communication. In some industries, a bleep sounds every five seconds or so to indicate to both parties that the conversation is

being recorded. It has not yet been tested whether the hearing of a bleep by a party to a conversation means they have given their consent (probably implied) to the recording.

Some organisations have experienced staff resentment at the use of call monitoring of employees, especially where the finding brought to light by the call monitoring had been used to take disciplinary action against those employees.

### Privacy Commissioner critical of legal loopholes

The Privacy Commissioner has been critical of the scope of the Interception Act regarding monitoring. Inductive monitoring, where a device is attached to the system itself i.e. bugging, is regulated. But acoustic monitoring is not regulated, where for example, a supervisor at a call centre listens as a matter of routine or for training purposes. So, it appears that devices which are purpose-built to record the conversation where it leaves the telecom system are unregulated by any laws. The Committee is preparing a paper on this loophole.

### Verifying identity by telephone

Austel is being approached quite regularly for advice as to appropriate privacy procedures for verifying identity over the telephone. There seems to be a trend towards organisations wanting to deal with requests from the general public for access to their own information over the telephone rather than in writing.

This edited report is by Sue Colman, Senior Policy Officer at Australia's Federal Privacy Commissioner's Office. We also acknowledge as a source the report by Angus Henderson in *Privacy Law & Policy Reporter* Vol. 2 No. 7 on the background to the Telecoms Interception Act.