

Regulation of Interception of Communications in Selected Jurisdictions

1. Background

1.1 At the meeting of the Panel on Security on 2 April 2004, the Panel requested the Research and Library Services Division (RLSD) to conduct a research on the regulation of interception of communications in overseas jurisdictions to assist the Panel in deliberating matters relating to the Administration's current review of the Interception of Communications Ordinance which has not been brought into operation.

2. Scope of research

2.1 A detailed discussion on the statutory regulation of interception of communications in selected jurisdictions includes the following aspects:

- (a) legal framework of interception of communications;
- (b) authorities responsible for issuing interception warrants, and grounds on which such warrants are issued;
- (c) application procedures, and duration, termination and renewal of interception warrants;
- (d) lawful interception without a warrant;
- (e) supervision on the exercise of interception power by law enforcement agencies;
- (f) limit of discretion granted to the executive branch on putting laws relating to interception of communications into operation; and
- (g) monitoring mechanism by the public and the legislature.

2.2 Analysis: a comparison of the regulatory regimes relating to interception of communications in the selected jurisdictions.

3. Jurisdictions to be studied

3.1 RLSD proposes to study the following jurisdictions:

- (a) the United States of America (US);
- (b) the United Kingdom (UK); and
- (c) Australia.

3.2 These three common law jurisdictions are chosen not only because each of them has certain distinctive regulatory elements, but also because they have introduced in recent years significant legislative amendments impacting on individual privacy and interception power of law enforcement agencies. In particular, the US has recently passed a new act to enhance the surveillance procedures regarding terrorist activities. In the UK, an act has been enacted to create a new framework for the interception of communications. In Australia, the telecommunications interception legislation has been amended to cover terrorist acts that can be investigated by means of interception warrants.

3.3 In addition, the proposed selection of jurisdictions is consistent with the scope of a report, published by the Law Reform Commission of Hong Kong in 1996, entitled "*Privacy: Regulating the Interception of Communications*" in which the experience of these three jurisdictions were discussed.

4. Proposed Completion Date

4.1 RLSD proposes to complete the research by August 2004.