

060530pcjustice
(060530lea) ✓

06 IMB 6

COMBINED INPUT BY THE LAW ENFORCEMENT AGENCIES TO THE PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT REGARDING THE REGULATION OF INTERCEPTION OF COMMUNICATIONS AND PROVISION OF COMMUNICATION-RELATED INFORMATION AMENDMENT BILL, 2006

1. INTRODUCTION

1.1 The Law Enforcement Agencies (hereinafter referred to as the LEA's) thank the Portfolio Committee on Justice and Constitutional Development for the opportunity to make representations on the Regulation of Interception of Communications and Provision of Communication-related Information Amendment Bill, 2006 (hereinafter referred to as the Bill), which will amend the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (the Act), so as to further regulate the registration of cellular phones and SIM-cards.

1.2 The LEA's were consulted in the drafting of the Bill and suggestions and inputs made in respect thereof were included in the Bill. The LEA's support the Bill.

1.3 The Bill will assist the LEA's to identify and track criminals who use cellular phones for their criminal activities. It will also support other initiatives of Government, such as the reporting of lost, stolen or destroyed cellular phones or SIM-cards and the blacklisting process in respect of which stolen phones and SIM-cards will be rendered unusable.

1.4 It is a well known fact that criminals exploit the anonymity of pre-paid SIM-cards to avoid detection. Law enforcement efforts are thwarted by criminals who buy handsets and SIM-cards anonymously.

1.5 The type of regulation envisaged by the Bill is not unique to South Africa. Similar provisions have already been adopted in Thailand, Taiwan, Malaysia, Philippines, Singapore, Switzerland and Australia.

1.6 This representation will cover the following areas:

- (a) Problem areas identified in respect of the current section 40 of the Act which relates to the collection and storing of customer information.
- (b) Problem areas identified in respect of the current section 62(6) of the Act which relates to the collection and storing of customer information of cellular phones and SIM-cards already in circulation when section 40 of the Act commences.
- (c) The advantages of the Bill over the current sections 40 and 62(6) of the Act from the perspective of the LEA's.
- (d) The time-period allowed for the registration of cellular phones and SIM-cards.

2. PROBLEM AREAS IDENTIFIED IN RESPECT OF THE CURRENT SECTION 40 OF THE ACT

2.1 The current section 40 of the Act provides that the seller of a cellular phone or SIM-card must obtain certain information from the receiver of the cellular phone or SIM-card, which information must be verified and be retained by the seller of the cellular phone or SIM-card.

2.2 This section has the following practical difficulties:

- (a) In terms of section 40 of the Act the collecting and storing of information relating to newly acquired cellular phones and SIM-cards is based on a decentralised paper based system (information is not stored at a central point). The effect of this decentralised paper based system is that it will be cumbersome for the LEA's to obtain the required information during an investigation. In practice a mobile cellular operator will be approached

with a cellular phone number in order to obtain the identity of a person. The mobile cellular operator will then direct the LEA to a region where the SIM-card was sold by one of its agents. The regional branch of the mobile cellular operator then has to be approached to enquire to whom or where a SIM-card has been distributed. SIM-card vendors down the line then have to be approached until the final vendor of the SIM-card has been traced who should then be in possession of the particulars of the person who purchased the SIM-card from him or her.

- (b) Due to the fact that many SIM-cards are distributed in the informal distribution chain, for example to small shops or sometimes even to individuals, the securing and retaining of this information is problematic in the sense that it may get lost, information may be inaccurately recorded, etc.
- (c) To obtain the information recorded and stored in accordance with section 40 will be time consuming and will place an additional workload on the human and other resources of the LEA's.

3. PROBLEM AREAS IDENTIFIED IN RESPECT OF THE CURRENT SECTION 62(6) OF THE ACT

3.1 The current section 62(6) of the Act places an obligation on a person, who at the date of commencement of the Act, is the owner of a cellular phone or SIM-card, to provide information provided for in section 40 to a person who sold or provided the cellular phone or SIM-card to him or her.

3.2 This section has the following practical difficulties:

- (a) Non-compliance with section 62(6) of the Act is not criminalised and therefore not enforceable.

- (b) Information relating to cellular phones and SIM-cards is not stored centrally and to obtain the required information may be problematic.
- (c) There is no mechanism to ensure that all cellular phones and SIM-cards are registered.
- (d) Information about cellular phones and pre-paid SIM-cards that were sold informally will be particularly difficult to trace.

4. ADVANTAGES OF THE BILL OVER THE CURRENT SECTIONS 40 AND 62(6) OF THE ACT FROM THE PERSPECTIVE OF THE LEA'S

The proposed amendments have the following benefits:

- (a) Time and resources of the LEA's will be saved, since the necessary customer information will be available centrally at each mobile cellular operator.
- (b) Compliance with section 62(6) is enforced both through discontinuation of service and criminalisation. This will act as an incentive for people to register. It will also ensure that the mobile cellular operators will participate pro-actively in the registration process in order to ensure that they do not suffer financial losses.
- (c) The process will ensure that all SIM-cards and cellular phones throughout the Republic are registered. This, in turn, will ensure that the use of cellular phones as a communication medium in the commission of crime will decline.

- (d) The current provisions of the Bill will further ensure that the particulars of visitors to the Republic who want to make use of a cellular phone will be readily available to law enforcement agencies.
- (e) The storing of customer information in a secured storage facility will ensure the integrity of information and may help to assist with evidentiary requirements during criminal proceedings.
- (f) Loss of information will be kept to a minimum due to the fact that the mobile cellular operators are required to keep the prescribed information.
- (g) The proposed amendments will have the effect that, when applied in conjunction with section 41 of the Act, stolen cellular phones and SIM-cards can effectively be blocked from being used. This will assist to reduce theft of cellular phones due to the fact that the person's particulars which are captured in conjunction with the IMEI-number of the cellular phone are readily available.

5. TIME PERIOD ALLOWED FOR THE REGISTRATION OF CELLULAR PHONES AND SIM-CARDS

5.1 In general the LEA's support the time period of 12 months within which all cellular phones and SIM-cards must be registered.

5.2 The use of cellular phones as a communication medium in the planning and commission of crimes, such as terrorism, organised crime and serious violent crimes has increased drastically and the LEA's are of the opinion that it would be in the public interest to ensure compliance with the proposed section 62(6) of the Bill as soon as possible.

6

5.3 The provisions of the Bill are essential for the proper application of the Act as a whole. In order to obtain a direction for the purposes of interception, the LEA's must identify the subject which must be intercepted.