



Premier
& Cabinet Law Enforcement Policy Branch

- 6 MAY 2010

Ms Julie Dennett
Committee Secretary
Standing Committee on Legal and Constitutional Affairs
PO Box 6100
CANBERRA ACT 2600

M105380

Dear Ms Dennett,

I refer to your Committee's correspondence to the NSW Police Commissioner inviting the NSW Police Force to comment on the *National Security Legislation Amendment Bill 2010* and the *Parliamentary Joint Committee on Law Enforcement Bill 2010*.

I trust you will accept this as a response to that approach.

Whilst the NSW Police Force has advised that the changes proposed in the *National Security Legislation Amendment Bill 2010* do not appear contentious, I would like to draw one aspect of the amendments to your attention.

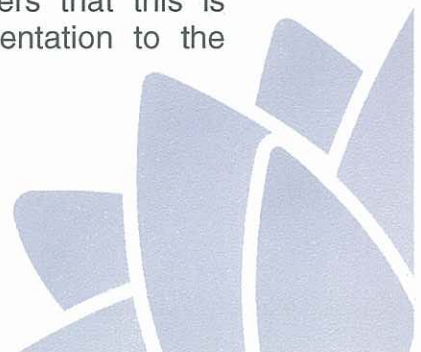
Currently, s23E of the *Crimes Act 1914* provides that an application to extend the investigation of both a non-terrorism offence (s23D) and a terrorism offence (s23DA) may be made in the same ways: in person before a judicial officer, or in writing, by telephone or other electronic means. Under this provision, the person under arrest must be informed that they (or their legal representative) may make representations to the judicial officer about the application.

The proposed amendments will have the effect of differentiating the application process, depending on whether the offence is a terrorism or a non-terrorism offence.

The Bill will repeal s23E. The effect is that under the proposed s23D(2), an application in respect of a non-terrorism offence must be made by telephone or in writing, whereas for terrorism offences (s23DE) the application may only be made in writing, with telephone applications no longer permitted.

The Explanatory Memorandum is silent as to why an application under s23DE cannot be made by telephone while under s23D it can.

The NSW Police Force contends that the ability to make an application by telephone should be retained. If the policy intent behind this differentiation is to promote procedural fairness, the NSW Police Force considers that this is achieved by the detained person's right to make a representation to the magistrate.



Further, a continued ability to make an application by telephone would promote some operational flexibility if the circumstances permit, and not unnecessarily limit the policing response.

With regard to the *Parliamentary Joint Committee on Law Enforcement Bill 2010*, I am advised that the Bill has no direct impact on the function and operational aspects of the NSW Police Force.

Should you require any further information, the contact officer in this regard is
Policy Manager, Law Enforcement Policy Branch of the NSW
Department of Premier and Cabinet.

I trust this information is of assistance.

Yours sincerely

Les Tree
Deputy Director General
Law Enforcement and Security Coordination Division