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// January 2019

Mr Andrew Hastie MP
Chair
Parliamentary Joint Committee on Intelligence & Security
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email to: pjcis@aph.gov.au

Dear Mr Hastie

Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018

Thank you for the opportunity to provide additional comments following the passing of the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* on 6 December 2018. I trust the information my Office has provided in its appearances and submissions to date have been helpful to the Committee's inquiry.

As Ms Hinchcliffe outlined in her letter of 6 December 2018, we welcome the inclusion of notification, inspection and reporting arrangements for law enforcement agencies' use of Schedule 1 powers. We also acknowledge the amendments made to the Bill to ensure the requirements for making, using and storing computer access warrants under Schedule 2 are consistent with those for other warrants issued under the *Surveillance Devices Act 2004*.

In Ms Hinchcliffe's letter dated 6 December 2018, she expressed concern regarding s 317ZRB(7) of the Act. That subsection provides that the Home Affairs Minister may – before tabling a report from my Office under the *Telecommunications Act 1997* – delete information that, if made public, could reasonably be expected to prejudice an investigation or prosecution, or compromise an interception agency's operational activities or methodologies. This power is not available to a Minister in any other legislation under which my Office may issue a report and, in my view, is inconsistent with the Commonwealth Ombudsman's role as an independent and impartial office.

As Ms Hinchcliffe's letter explained, my Office routinely consults with agencies to identify whether a draft report contains operationally sensitive material that should be removed or amended before it is published. It should also be noted my Office only inspects and reports on records that have ceased or expired so as to avoid any risk to ongoing operations. In turn, I would reiterate Ms Hinchcliffe's view that s 317ZRB(7) is unnecessary and ask that, in the course of its ongoing review, the Committee considers removing that subsection.

Although my Office has yet to receive funding to assist with the new and expanded functions arising from the Act, my staff have commenced developing frameworks for the notification, inspection and reporting requirements. My Office wrote to the Department of Home Affairs on 5 December 2018 to seek additional resources to ensure our capacity to effectively deliver these functions. We will continue to pursue this matter with Home Affairs.

If Committee staff would like to discuss this letter they may contact acting Senior Assistant Ombudsman, Emma Cotterill, on [REDACTED] If you or other members would like to speak with me directly, I am available on [REDACTED]

Yours sincerely

[REDACTED]

Michael Manthorpe PSM
Commonwealth Ombudsman

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