

Committee Secretariat
Parliamentary Joint Committee on Intelligence and Security
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Parliament House
Canberra ACT 2600

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Dear Committee

This is the submission of the NSW Independent Commission Against Corruption (ICAC) for the review of the Crimes and Other Legislation Amendment (Omnibus No. 1) Bill 2024 (the Bill) being conducted by the Parliamentary Joint Committee on Intelligence and Security.

The ICAC was established by the *Independent Commission Against Corruption Act 1988* (ICAC Act) and commenced operations in 1989.

The ICAC's principal role is to investigate, expose and prevent corruption involving or affecting NSW public authorities and public officials.

The ICAC has been entrusted with significant powers under the ICAC Act and other legislation to enable it to conduct its investigations both efficiently and effectively. These include powers under the *Telecommunications (Interception and Access) Act 1979* (TIA Act).

Schedules 1 to 4 to the Bill would amend the *Crimes Act 1914* (Cth), *Proceeds of Crime Act 2002* (Cth) and the *National Anti-Corruption Commission Act 2022* (Cth) in various ways. As these proposed amendments do not directly affect the ICAC, the ICAC makes no submissions with respect to them.

This submission deals with relevant amendments proposed in Schedule 5 to the Bill.

One of the changes proposed in Schedule 5 to the Bill is to amend the TIA Act to give the ICAC Inspector and other state and territory oversight bodies the broad ability to receive interception warrant information and interception information under the TIA Act.

The ICAC Inspector provides important oversight of the ICAC. The principal functions of the ICAC Inspector are set out in s 57B of the ICAC Act. These functions are to:

- audit the operations of the ICAC for the purpose of monitoring compliance with the law of NSW,
- deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the ICAC or officers of the ICAC,

- deal with (by reports and recommendations) conduct amounting to maladministration (including delay in the conduct of investigations and unreasonable invasions of privacy) by the ICAC or officers of the ICAC, and
- assess the effectiveness and appropriateness of the procedures of the ICAC relating to the legality or propriety of its activities.

The Bill would amend the TIA Act so that the definition of 'permitted purpose' in the TIA Act in relation to the ICAC Inspector corresponds to the ICAC Inspector's functions under s 57B of the ICAC Act.

The ICAC regards this as an important amendment because s 67 of the TIA Act provides that an officer or staff member of an agency may, for a permitted purpose, or permitted purposes, in relation to the agency, and for no other purpose, communicate to another person, make use of, or make a record of the following:

- a) lawfully intercepted information other than foreign intelligence information, general computer access intercept information, data disruption intercept information or network activity warrant intercept information, and
- b) interception warrant information.

As an "eligible authority", the ICAC Inspector is an agency for the purposes of s 67 of the TIA Act. The proposed amendment would therefore permit the ICAC Inspector (and staff of the Inspectorate) to communicate, make use of or make a record of warrant intercept information and interception warrant information for the purposes of exercising one or more of the ICAC Inspector's functions under the ICAC Act.

It is also proposed to amend s 68 of the TIA Act. That section permits the chief officer of an agency to communicate lawfully intercepted information obtained by the agency or interception warrant information to certain specified entities. At present, the chief officer of the ICAC may communicate such information to the ICAC Inspector but arguably only if the information relates, or appears to relate, to a matter that may give rise to an investigation by the ICAC Inspector.

The proposed amendment to s 68 of the TIA Act would broaden the circumstances under which the chief officer of the ICAC could communicate lawfully intercepted information or interception warrant information to the ICAC Inspector so that information that relates or appears to relate to a matter referred to in the definition of 'permitted purpose' in relation to the ICAC Inspector can be communicated to the ICAC Inspector.

It is also proposed to amend Schedule 1 to the TIA Act, which provides for a scheme to facilitate cooperation in law enforcement matters between Australia and those countries that are party to a designated international agreement. It is proposed to broaden the definition of 'eligible purpose' to mirror the ICAC Inspector's functions under the ICAC Act. That will permit protected information obtained in accordance with an international production order to be provided to the ICAC Inspector where provision of such information is necessary for the purposes of one or more of the ICAC Inspector's functions.

The need for the ICAC Inspector to have access to interception warrant information and interception information held by the ICAC was identified in the ICAC Inspector's October 2020 report *Telecommunications (Interception and Access) Act 1979 (Cth) – Serious Gap in Inspector's Powers*. The ICAC Inspector there noted the long-standing deficiency in the current statutory scheme under the TIA Act whereby the ICAC Inspector is unable to access ICAC telecommunications interception material for the purpose of conducting an audit (as opposed to conducting a specific investigation).

The ICAC has consistently supported amendment of the TIA Act to enable the ICAC Inspector to have access to its telecommunication interception records so that the ICAC Inspector is able to effectively fulfil the functions set out in s 57B of the ICAC Act.

The ICAC supports each of the above amendments as being appropriate to ensure the ICAC Inspector has access to all relevant material when performing the ICAC Inspector's functions under the ICAC Act.

Schedule 5 to the Bill would also amend the TIA Act by omitting references throughout that Act to "Independent Commission Against Corruption" and "Independent Commission Against Corruption Act" and replace them with, respectively, "Independent Commission Against Corruption (NSW)" and "Independent Commission Against Corruption Act (NSW)". The ICAC understands the purpose of these amendments is to ensure the ICAC and ICAC Act are distinguished from similarly named agencies and Acts in other jurisdictions. The ICAC supports these amendments.

The ICAC is happy to provide any further information that may assist the Committee.

Yours sincerely



The Hon John Hatzistergos AM
Chief Commissioner

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