

Office of the Chief Commissioner

52145/1365

1 May 2024

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Committee Secretary

Crimes and Other Legislation Amendment (Omnibus No.1) Bill 2024

The Law Enforcement Conduct Commission (LECC) welcomes the opportunity to provide a submission to the Parliamentary Joint Committee on Intelligence and Security, for the review of the *Crime and Other Legislation Amendment (Omnibus No.1) Bill 2024* ('Omnibus Bill').

The *Law Enforcement Conduct Commission Act 2016* ('LECC Act') entrusts the LECC with significant powers and responsibilities for the investigation and oversight of law enforcement misconduct in New South Wales (NSW), including powers declared within the *Telecommunications (Interception and Access) Act 1979* ('TIA Act').

Part 9 of the LECC Act, established the Inspector of the LECC, whose purpose is to provide oversight to the duties of the LECC and monitor our agencies compliance with the legislation.

Section 122 of the LECC Act sets out the specific functions of the Inspector as follows;

- (a) *to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and*
- (b) *to deal with (by reports and recommendations) conduct amounting to agency maladministration on the part of the Commission and conduct amounting to officer misconduct or officer maladministration on the part of officers of the Commission, whether or not the subject of a complaint, and*
- (c) *to assess the effectiveness and appropriateness of the policies and procedures of the Commission relating to the legality or propriety of its activities.*

This submission will discuss only those amendments which directly relate to the LECC and the Inspector of the LECC, set out in Schedule 5 of the Omnibus Bill.

The LECC is required to supply certain information and documentation relating to the agency's operations and investigations to the Inspector. However, the LECC is currently limited in its ability to provide Telecommunication Interception Information to the Inspector for oversight purposes.

Permitted Purpose

As it stands, under section 68 of the TIA Act, the communication of lawfully intercepted information or interception warrant information may only be provided to the Inspector of the LECC by the Chief Officer when that information may give rise to an investigation by the Inspector. The current status of the Act therefore limits the Inspector's ability to properly scrutinise and audit the interception powers of the LECC and ensure our compliance with the TIA Act.

The proposed amendment of section 68(fa) will expand these powers by broadening the circumstances with which the Chief Officer of the LECC can disclose this information to the Inspector. Specifically, the proposed amendment states, disclosure will be authorised 'if the information relates, or appears to relate to, a matter for a 'permitted purpose'.

The Omnibus Bill has proposed the amendment of 'permitted purpose' under section 5(1) of the TIA Act to encompass;

- *auditing the operations of the Law Enforcement Conduct Commission (NSW) for the purpose of monitoring compliance with the law of New South Wales; or*
- *dealing with (by reports and recommendations) conduct amounting to agency maladministration (within the meaning of subsection 122(3) of the Law Enforcement Conduct Commission Act (NSW)) on the part of the Law Enforcement Conduct Commission (NSW), whether or not the subject of a complaint; or*
- *dealing with (by reports and recommendations) conduct amounting to officer misconduct (within the meaning of subsection 122(3) of the Law Enforcement Conduct Commission Act (NSW)) or officer maladministration (within the meaning of that subsection) on the part of an officer of the Law Enforcement Conduct Commission (NSW), whether or not the subject of a complaint; or*
- *assessing the effectiveness and appropriateness of the policies and procedures of the Law Enforcement Conduct Commission (NSW) relating to the legality or propriety of that Commission's activities; or*

The LECC recognises the significance of these powers in ensuring holistic and robust oversight of its operations and supports the proposed amendments to section 5(1) and section 68 of the TIA Act.

Additionally, the LECC requests that the Committee consider the extension of these powers to include Telecommunications Data under Chapter 4 of the TIA Act, and Stored communications information under Chapter 3 to further support the oversight functions of the Inspector and better align with the purposes of the amendments set out by the Attorney-General.

Eligible Purpose

Schedule 1 of the TIA Act provides for a scheme to facilitate cooperation in law enforcement matters between Australia and each foreign country that is a party to a designated international agreement. The schedule enables LECC to apply for International Production Orders, seeking electronic information directly from overseas based prescribed communications providers for assistance with Investigations.

Under section 157(1)(zi) of Schedule 1 of the TIA Act, protected information obtained in

accordance with an International Production Order may be used, disclosed or recorded, or may be admitted in evidence for an 'eligible purpose' of the Inspector of the LECC. The proposed amendments to the TIA Act expand the scope of an 'eligible purpose', in section 157(2)(i) to better reflect the Inspector's functions under the Act.

As per the proposed amendments to 'permitted purpose', the LECC supports the proposed amendments to 'eligible purpose' to ensure holistic and robust oversight of its operations.

Definitions

Schedule 5 of the Omnibus Bill aims to clarify the jurisdiction of the LECC. The amendments seek to omit any reference to the 'Law Enforcement Conduct Commission', 'Commission' and 'Inspector of the Law Enforcement Conduct Commission', instead substituting, 'Law Enforcement Conduct Commission (NSW)', and 'Inspector of the Law Enforcement Conduct Commission (NSW)' respectively.

The LECC recognises the purpose of these proposed amendments to provide further clarity and distinguish between oversight and integrity agencies with similar names, and therefore supports their implementation within the TIA Act.

Where necessary, the LECC is happy to provide further comment in relation to the proposed amendments if it will be of assistance to this Committee.

Yours sincerely



The Hon Peter Johnson SC
Chief Commissioner

