

SENATE ESTIMATES COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT
OUTPUT 1.2
QUESTIONS ON NOTICE

Senator Carr asked the following question at the hearing of 20 November 2002:

Please advise what audit arrangements exist for the use of telephone intercepts.

I am advised that the answer to the honourable Senator's question is as follows:

Sections 79, 80 and 81 of the *Telecommunication (Interception) Act 1979* (the Act) impose detailed record-keeping requirements on the Commissioner of the Australian Federal Police (AFP) and the Chairman of the National Crime Authority (NCA). The Act provides for the records of the AFP and NCA to be inspected regularly by the Commonwealth Ombudsman to assess the level of compliance by those agencies with the provisions of sections 79, 80 and 81 of the Act. The Ombudsman is required to make a full report to the Attorney-General on the results of these inspections.

Before State police forces and other law enforcement agencies can be declared "intercepting agencies" entitled to obtain Part VI warrants, the relevant State government must pass legislation requiring the agency to maintain records of the same kind as those maintained by the AFP and the NCA. This State legislation must also provide for those records to be inspected on a regular basis by the relevant State Ombudsman or an equivalent, independent officer.

In addition, under sections 81A and 81C of the Act, the Commissioner of the AFP must maintain a General Register of Warrants and a Special Register of Warrants recording the details of every warrant issued to intercepting agencies in each Australian jurisdiction. The Act further requires that the Attorney-General must personally inspect each General and Special Register.

At the end of each financial year, agencies and eligible authorities are required to provide the Attorney-General's Department with the statistical information prescribed in Part IX of the Act. This statistical information includes the number of warrants obtained, the duration of the warrants, and the number of arrests, prosecutions and convictions obtained on the basis of lawfully obtained information. The information is compiled by the Department and published in an annual report under section 99 of the Act. The annual report is tabled in Parliament as required by section 104 of the Act.

SENATE ESTIMATES COMMITTEE
ROYAL COMMISSION INTO THE BUILDING AND CONSTRUCTION
INDUSTRY
QUESTIONS ON NOTICE

Senator Carr asked the following question at the hearing of 20 November 2002:

Please advise if the construction company "South Eastern Construction";

- a. have communicated with the Royal Commission regarding a mistakenly served adverse evidence notice and
- b. if as a consequence of this, the company had to pay legal costs of \$500,
- c. and further, that the recompense that that the commission offered to the proprietor of this particular company was an apology-no recompense or compensation for the legal costs incurred?

I am advised that the answer to the honourable Senator's question is as follows:

In relation to South Eastern Construction, the Royal Commission:

- a. was approached by Connah Steed & Co Solicitors on several occasions in June 2002 concerning the issue of a notice of adverse evidence on that company;
- b. was advised by Connah Steed & Co via email that the company had incurred 'financial disadvantage' but was not informed of an amount;
- c. replied to the correspondence on 25 June 2002 by letter providing an apology and advising that the *Royal Commissions Act 1902* makes no provision for the payment of compensation.

SENATE ESTIMATES COMMITTEE
ROYAL COMMISSION INTO THE BUILDING AND CONSTRUCTION
INDUSTRY
QUESTIONS ON NOTICE

Senator Carr asked the following question at the hearing of 20 November 2002:

Please advise if the Royal Commission will examine whether an Act of Grace payment could be made under the Financial Management and Accountability Act in recompense for the mistaken service of the adverse evidence notice to the construction company South Eastern Construction.

I am advised that the answer to the honourable Senator's question is as follows:

The Royal Commission is seeking legal advice on whether or not an Act of Grace payment or other form of compensation would be appropriate in these circumstances, in accordance with Finance Circular 2001/01.

SENATE ESTIMATES COMMITTEE
ROYAL COMMISSION INTO THE BUILDING AND CONSTRUCTION
INDUSTRY
QUESTIONS ON NOTICE

Senator Ludwig asked the following question at the hearing of 20 November 2002:

With regard to section 6P of the Royal Commission's Act, what determinations have been made by the Royal Commission and, flowing from those, how many referrals have been made and to whom?

I am advised that the answer to the honourable Senator's question is as follows:

At 20 November 2002 the Royal Commission into the Building and Construction Industry had communicated information under section 6P of the *Royal Commissions Act 1902* to the following agencies.

Agency	Number
National Crime Authority	3
Australian Taxation Office	3
City of Port Adelaide Enfield	1
Australian Federal Police	1
Office of the Employment Advocate	1

SENATE ESTIMATES COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT
OUTPUT 1.2
QUESTIONS ON NOTICE

Senator Carr asked the following question at the hearing of 20 November 2002:

Please advise whether there are any arrangements in place to audit the use of the material derived from telephone intercepts.

I am advised that the answer to the honourable Senator's question is as follows:

The *Telecommunication (Interception) Act 1979* (the Act) allows certain national security and law enforcement agencies to obtain warrants for the interception of communications passing over a telecommunications system. Warrants are available to these agencies in limited circumstances in the course of investigating threats to Australia's national security or serious breaches of the criminal law.

Information gathered through the execution of a telecommunications interception warrant, referred to as "lawfully obtained information", may be used by the intercepting agency for a "permitted purpose" as defined in section 5 of the Act.

In certain limited circumstances, lawfully obtained information may be passed by the intercepting agency to another intercepting agency or to an eligible authority. Where this occurs, the Act requires detailed records to be kept of the transfer of that information.

The Act places strict record-keeping requirements on the National Crime Authority and the Australian Federal Police. Those State law enforcement agencies that have been declared as intercepting agencies for the purposes of the Act are also required by State legislation to maintain detailed records of the warrants issued to them and the use made of all lawfully obtained information. These records are subject to regular inspection by the Commonwealth Ombudsman and its counterpart in other jurisdictions.

Other record-keeping requirements also apply. The Commissioner of the AFP must maintain a General Register of Warrants and a Special Register of Warrants recording the details of every warrant issued to intercepting agencies in each Australian jurisdiction. The Act further requires that the Attorney-General must personally inspect each General and Special Register. The statistical information prescribed in Part IX of the Act is provided by intercepting agencies and eligible authorities to the Attorney-General's Department at the end of each financial year and published in an annual report, which is also tabled in Parliament.

SENATE ESTIMATES COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT
OUTPUT 1.2
QUESTIONS ON NOTICE

Senator Carr asked the following question at the hearing of 20 November 2002:

With regard to the use of information derived from telephone intercepts, please advise what redress people have if they feel that their civil liberty rights have been abused.

I am advised that the answer to the honourable Senator's question is as follows:

The *Telecommunications (Interception) Act 1979* (the Act) prohibits the interception of communications passing over a telecommunications system without a warrant issued under Part III or Part VI of the Act. A contravention of this general prohibition is an offence punishable by imprisonment for a maximum period of 2 years.

Further safeguards apply to the handling of information that has been lawfully obtained by interception under warrant. It is a criminal offence under the Act, punishable by imprisonment for a maximum period of 2 years, for a person to use or communicate lawfully obtained information for other than a permitted purpose. In such cases, civil remedies, such as an injunction or the payment of damages, may also exist for any person whose communications were intercepted and then unlawfully communicated.

In addition, the activities of Commonwealth and state law enforcement agencies may be examined by the Ombudsman's office in the relevant jurisdiction. People who have a complaint in relation to the activities of the Australian Security Intelligence Organisation may approach the Inspector General of Intelligence and Security. The Inspector General of Intelligence and Security is an independent statutory officer whose role is to ensure that ASIO and other security and intelligence organisations conduct their activities within the law, behave with propriety, comply with ministerial guidelines and directives, and have regard to human rights.

SENATE ESTIMATES COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT
OUTPUT 1.2
QUESTIONS ON NOTICE

Senator Ludwig asked the following question at the hearing of 20 November 2002:

With regard to information derived from telephone intercepts that is passed to an external agency, please advise what arrangements are in place that ensure such information is used by these agencies within the terms of the original warrant.

I am advised that the answer to the honourable Senator's question is as follows:

Information obtained under a warrant issued to an intercepting agency in connection with the investigation of a Class 1 or Class 2 serious offence may be passed, in certain circumstances, to another intercepting agency. This "lawfully obtained information" may also be passed in certain circumstances to specified "eligible authorities", which are able neither to obtain interception warrants themselves nor to ask intercepting agencies to conduct interceptions on their behalf.

Lawfully obtained information may be passed by the chief officer of an intercepting agency to the chief officer of an eligible authority pursuant to section 68 of the *Telecommunications (Interception) Act 1979*. Section 68 provides that this information may only be passed to the eligible authority where, in the opinion of the intercepting agency, it relates or appears to relate to a matter that may give rise to specified investigations by the eligible authority.

An intercepting agency is required to keep records of any lawfully obtained information that is passed to an eligible authority. The agency's records are subject to inspection by the relevant Commonwealth or State Ombudsman. In addition, an agency must report to the Attorney-General on the use and effectiveness of each warrant within three months of expiry or cessation of that warrant. Such reports must include details of any communication of intercepted information to other agencies or eligible authorities.

SENATE ESTIMATES COMMITTEE
ROYAL COMMISSION INTO THE BUILDING AND CONSTRUCTION
INDUSTRY
QUESTIONS ON NOTICE

Senator Carr asked the following question at the hearing of 20 November 2002:

Please advise who the Royal Commission spokesperson was in connection with the Melbourne Age report on telephone intercepts which was published on 10 July.

I am advised that the answer to the honourable Senator's question is as follows:

The spokesperson for the Royal Commission into the Building and Construction Industry was the Media Director, Mr Rick Willis. His comments were given to the reporter as background about the process under which the Royal Commission received telephone tap material from other agencies. These comments were consistent with evidence given to the Senate Committee by the Secretary of the Commission.

SENATE ESTIMATES COMMITTEE
ROYAL COMMISSION INTO THE BUILDING AND CONSTRUCTION
INDUSTRY
QUESTIONS ON NOTICE

Senator Carr asked the following question at the hearing of 20 November 2002:

With regard to the distribution of legal fees to Messrs Agius and Robberds, please advise the number of days each appeared in court.

I am advised that the answer to the honourable Senator's question is as follows:

During hearings of the Royal Commission into the Building and Construction Industry Senior Counsel Assisting Lionel Robberds QC appeared on 37 days and Senior Counsel Assisting John Agius SC appeared on 39 days.

SENATE ESTIMATES COMMITTEE
FEDERAL COURT OF AUSTRALIA
QUESTIONS ON NOTICE

Senator Ludwig asked the following question at the hearing of 20 November 2002:

Please advise the outcome of the meeting planned for 2 December to decide the matter of introducing Casetrack into the court.

I am advised that the answer to the honourable Senator's question is as follows:

The Court's consideration of a new case management system remains ongoing, with two possible alternatives under consideration. A firm decision is not expected until the end of December 2002.

SENATE ESTIMATES COMMITTEE
FEDERAL COURT OF AUSTRALIA
QUESTIONS ON NOTICE

Senator Ludwig asked the following question at the hearing of 20 November 2002:

Please advise whether the court will continue the practice of making judges available to hear appeals from the ACT Supreme Court in the new Court of Appeal and will the Federal Court still be making judges available to hear appeals from the ACT Supreme Court in the new Court of Appeal. Perhaps we can then find out, if that it still going to be undertaken, who will do that and so be able to make clear what the position is?

I am advised that the answer to the honourable Senator's question is as follows:

The Federal Court is making judges available to hear appeals in the new ACT Court of Appeal and will continue to do so. The judges concerned are, and will be, those who also hold commissions as additional judges of the Supreme Court of the ACT, of which there are presently eight as follows: Justices Wilcox; Spender; Ryan; von Doussa; Cooper; Whitlam; Madgwick and Gyles.

There have been discussions between the Chief Justice of the Federal Court and the President of the ACT Court of Appeal (also the acting Chief Justice of the Supreme Court) to maintain the cooperative arrangements that have existed between the two courts in relations to appeals. To this end it is proposed that the sitting of the Court of Appeal will coincide with sittings in Canberra of the Full Court of the Federal Court. This will assist with the availability of Federal Court judges to hear appeals.

SUPPLEMENTARY SENATE ESTIMATES COMMITTEE
FEDERAL MAGISTRATES SERVICE
QUESTIONS ON NOTICE

Senator Kirk asked the following question at the hearing of 20 November 2002:

Can you provide figures about the pro bono scheme established by the Federal Magistrates Court.

I am advised that the answer to the honourable Senator's question is as follows:

The Federal Magistrates Service (FMS) has established pro bono schemes to assist litigants who appear before it in general federal law matters without legal representation - particularly in relation to migration matters. The schemes operate differently in various states because there are varying levels of need and availability of other assistance to litigants in each locality.

When establishing each scheme the FMS has been conscious of the demands that are placed upon the members of the legal profession who agree to act on a pro bono basis. Accordingly, the schemes are not intended to be a substitute for legal aid and complement other pro bono schemes. Litigants are encouraged to explore other avenues of assistance when they are available.

The FMS's schemes operate similarly to the Federal Court's scheme, with the judicial officer deciding whether a person will be referred for assistance. Referrals are made when a federal magistrate believes that representation is appropriate in the interests of the administration of justice. When deciding whether to refer a litigant under the scheme, a federal magistrate may consider the litigant's financial circumstances, their ability to obtain assistance elsewhere and the nature of the case.

In addition to the formal referral scheme established by the rules of court, an informal scheme has been established in Sydney on a trial basis. This scheme is administered by a group of Sydney law firms, which provide initial advice once a referral is made and, if appropriate, assist with representation at the hearing after receiving a formal referral. A similar scheme operates in Adelaide. It is hoped to extend the informal scheme to Melbourne.

During the year approximately 66 matters were referred under the various schemes. Greater specificity is not possible, as data has not been maintained in relation to all referrals.

The pro bono scheme does not operate in relation to family law matters. To assist litigants in family law matters, the FMS provides a website with all of the Service's court forms, pro forma applications, legal information, the rules of court, and links to legal sites. The Service also maintains a 1300 number and staff provide litigants with information about all areas of the FMS's jurisdiction including family law and child support and information about how to complete forms. The FMS also regularly refers litigants to legal aid offices and community legal centres.

SUPPLEMENTARY SENATE ESTIMATES COMMITTEE
FEDERAL MAGISTRATES SERVICE
QUESTION ON NOTICE

Senator Ludwig asked the following question at the hearing of 20 November 2002:

How much do individuals pay for a transcript from the commercial transcript provider?

I am advised to answer to the honourable Senator's question is as follows:

The cost of a transcript ranges from \$2.50 to \$2.91(GST inclusive) per 100 word folio, depending on location and transcript provider, for normal production, ie within five days.