



Submission No 166

Inquiry into potential reforms of National Security Legislation

Organisation: Northern Territory Police



COMMISSIONER'S OFFICE

: Your Ref

HQ2012/0098 : Our Ref

The Honourable Anthony Byrne MP
Chairman
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Mr Byrne

I refer to your letter to the Chief Minister dated 10 July 2012, regarding the inquiry into potential reforms of national security legislation. I am responding on behalf of the Chief Minister, due to the Government being in caretaker period.

The Northern Territory (NT) submission is in relation to the *Telecommunications (Interception and Access) Act 1979* (Cth) (the Act). More specifically, the definition of 'serious offence', the use of information obtained under the Act, warrants for intelligence purposes, oversight, authorisations and the warrant regime.

Serious Offence Definition

The current definition at s 5D of the Act is five and a half pages long and is seen as overly complex, with some notable omissions.

- The current definition does not include sexual assault. Sexual assault can only be a serious offence where 'serious personal injury' can be shown. A sexual offence against a person under 16 is included, but only where it involves: two or more offenders, planning and organisation and sophisticated methods and techniques. The NT position is that sexual assault should be included.
- Subsection 5D(7) provides for conduct amounting to 'accessory after the fact' to be a serious offence, but only in respect of 5D(1) offences, being murder, kidnapping or acts of terrorism. The NT seeks for this to cover a broader range of offences, including drug and sexual offences.
- Pervert justice is not specifically included as a serious offence. The NT position is that it should be included.



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In general, the NT would favour a shift away from an offence list based criteria to a penalty based criteria, such as 'all offences punishable by a term of imprisonment of at least 5 years'. By comparison, the *Surveillance Devices Act* (NT), which also involves potential significant impact on privacy only requires 'an offence...' and then the Judge to be satisfied of the 'nature and gravity' of the offence.

Use of Information

Section 5B outlines exempt proceedings and covers 3 pages. Section 6L covers relevant proceedings and is a further 2 pages. This regime is difficult to navigate. The distinction between relevant proceeding and exempt proceeding is not clear and could be simplified.

Warrants for Intelligence Purpose

At present a telephone intercept warrant can only be obtained to collect 'evidence'. Conversely, the *Surveillance Devices Act* (NT) permits a warrant to obtain 'evidence or information'. The Act should provide for warrants for evidence or information (intelligence) in relation to the serious offence being investigated.

Oversight

At present, telephone intercept warrant records are subject to oversight by the NT Ombudsman, while stored communications warrants are subject to oversight by the Commonwealth Ombudsman. It would be preferable if all records were subject to inspection by the one authority, in our case the NT Ombudsman, who also oversees the *Surveillance Devices Act* (NT) records.

The purpose and role of the oversight could be better defined. An example of this is the Commonwealth Ombudsman's insistence on reading affidavits to post the issue of a warrant, whereas the NT Ombudsman is satisfied that a warrant has been issued.

Authorisations

There are a number of sections throughout the Act providing for authorisation for people to carry out their respective functions under the Act.

- Section 40(3) enables authorisation of an officer to make telephone applications for warrants.
- Section 55(3) enables approval of officers to exercise authority conferred by warrants.
- Section 55(7) enables the declaration of a designated officer for the purpose of s 55(5) (provide technical assistance).
- Section 66(2) enables authorisation of an officer to receive information obtained by interception.
- Section 68 enables the authorisation of an officer to lawfully communicate information to another agency.

- Section 111(3) enables the authorisation of an officer to make telephone applications for stored communications warrant.
- Section 127(2) enables authorisation of an officer to exercise authority conferred by a stored communications warrant.
- Section 135(2) enables authorisation of an officer to receive information obtained under a stored communications warrant.

The NT position is that authorisations under the Act can be summarised in one section requiring a single delegation from the Chief Executive Officer of the Agency.

Warrant Regime

The review should consider a warrant regime that relates to content, with one warrant that specifies either 'historical' content (stored communications) and/or 'prospective content' (intercept). Currently, there are three forms of warrant that can be applied for under the Act, being a stored communications warrant (s 111), telephone intercept warrant (ss 46, 46A) and prospective warrant (s 180). Sections 46, 46A and 180 can be condensed to one section providing for one form of warrant, being a telephone intercept warrant, with variable conditions that include the current prospective warrant.

Should you require any further information, the NT contact officer for this submission is Assistant Commissioner Reece Kershaw of Crime and Specialist Services, Northern Territory Police, email Reece.Kershaw@pfes.nt.gov.au or telephone (08) 8901 0266.

Thank you again for the opportunity to provide input into this review.

Yours sincerely

John McRoberts
Commissioner of Police

22 August 2012