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**COMMISSIONER'S OFFICE**

Mr Phillip Bailey  
Acting Secretary  
Legal and Constitutional Legislation Committee  
Parliament House  
Canberra ACT 2124

Our ref: EDMS/2004/4719

Dear Mr Bailey,

I refer to your letter of 18 June 2004 inviting a submission on the provisions of the National Security Information (Criminal Proceedings) Bill 2004 and National Security Information (Criminal Proceedings) (Consequential Amendments) Bill 2004. The Bills have been examined by the Director of Legal Services and while they are generally supported, one area of concern has been raised.

It is questioned whether the principal Bill will be able to be applied when a police prosecutor in New South Wales appears on behalf of a New South Wales police officer in a case dealt with summarily in a Local Court. The Bill will only apply if the proceeding begins on or after the day the proposed section 6 commences and the prosecutor gives notice to the court and defendant that the Act applies to the proceeding. The term "prosecutor" is defined in the proposed section 7 as meaning "the Director of Public Prosecutions or a person representing the Director in relation to the proceeding". The reference to the Director of Public Prosecutions means the Commonwealth Director of Public Prosecutions. This means that the Bill will only apply when the Commonwealth Director of Public Prosecutions or someone representing him gives the required notice. In New South Wales, police prosecutors (who are members of NSW Police) regularly appear in Local Courts for New South Wales police officers who have charged defendants with offences against Commonwealth law. Police prosecutors will often deal with cases being heard summarily in Local Courts. In these cases it is doubted they could be said to be representing the Commonwealth Director of Prosecutions. Therefore, it appears the Bill would be incapable of being applied where proceedings for Commonwealth offences were being heard and determined in a Local Court with a police prosecutor appearing. This is despite the fact that information relating to national security may still arise in these proceedings. For example, "national security" includes "law enforcement interests". One law enforcement interest set out in the proposed section 11 is the protection and safety of informants. Summary prosecutions can often be instituted on information provided by informants. If the above interpretation of the Bill is correct, it is suggested it should be rectified to allow its provisions to be applied in matters being dealt with summarily by police prosecutors.

Yours sincerely

  
K.E. Moroney  
Commissioner