

Additional Comments and Points of Dissent by Senator Brian Greig on behalf of the Australian Democrats

The Australian Democrats welcome the fact that the Government has finally responded to the recommendations made by Mr Tom Sherman AO in his Review of Named Person Warrants, which was completed in June 2003. However, we are also frustrated that it has taken two years to respond to Mr Sherman's recommendations, given that the Parliament has debated at least two telecommunications interception bills during that time.

Mr Sherman's report sets out a number of constructive amendments for improving the current named person warrants regime, with a particular focus on improving accountability mechanisms. While the Democrats are pleased that the Government has decided to implement a number of these recommendations, we are disappointed that it has chosen not to implement others.

Most particularly, we are disappointed that the Government will not be implementing Recommendation 5 of Mr Sherman's report, which calls for the Australian Security Intelligence Organisation (ASIO) to publish in the public version of its Annual Report the total number of telecommunications interception warrants and named person warrants applied for, refused and issued in the relevant reporting year.

The Democrats have long advocated for the introduction of a basic public reporting mechanism in relation to ASIO's telecommunications interception activity. Indeed we have sought to amend a number of bills to achieve exactly this. On the most recent such occasion, the Government indicated that it would not support our amendment because:

"Mr Tom Sherman conducted an independent review of parts of the telecommunications interception regime in June last year. He recommended that ASIO publish in the public version of its annual report the total number of warrants applied for, refused and issued in the relevant reporting year. The government have not yet made any decisions in relation to whether and in what form Mr Sherman's recommendations are to be implemented, and we believe that to do so on the run would be inappropriate.¹"

The Government also indicated its belief that "a considered approach to Mr Sherman's report is the way to go". Yet, now that the Government has had two years to formulate a response to Mr Sherman's report, it has decided against this recommendation.

In doing so, it apparently disregarded the views of the Federal Privacy Commissioner, which were sought in March 2004 to assist the Government in formulating its

¹ Senator the Honourable Chris Ellison, Minister for Justice and Customs, speaking to the *Telecommunications (Interception) Amendment Bill 2004*, 1 April 2004, Senate Hansard, page 22648.

response to the report. The Commissioner recently indicated that she supports Mr Sherman's recommendation that ASIO should publicly report on its interception activity².

The Democrats maintain our view that ASIO should be required to publicly report on the extent of its interception activity in Australia and we recommend that this Bill be amended to achieve this.

Recommendation:

That the Bill be amended to implement Recommendation 5 in Mr Sherman's Review of Named Person Warrants, so that ASIO is required to publish in the public version of its Annual Report the total number of telecommunications interception warrants and named person warrants applied for, refused and issued in the relevant reporting year.

Senator Brian Greig

² Office of the Privacy Commissioner , Submission No 48, Inquiry into the Privacy Act 1988.