



WESTERN AUSTRALIA POLICE

LEGAL SERVICES

Your Ref:
Our Ref: 07/2496
Inquiries:

5TH FLOOR LAW CHAMBERS
573 HAY STREET, PERTH
WESTERN AUSTRALIA 6000
TELEPHONE : (08) 9268 7662
FACSIMILE : (08) 9268 7880

Ms Jackie Morris
Committee Secretary
Legal and Constitutional Affairs Committee

Dear Ms Morris

Inquiry into the Telecommunications (Interception and Access) Amendment Bill 2007

I refer to your email dated 21 June 2007, addressed to the Commissioner of Police, inviting submissions to your Committee's inquiry into the Telecommunications (Interception and Access) Amendment Bill 2007.

The following matters are submitted for consideration by the Committee:

- Definition of ***criminal law***. The inclusion of a definition of criminal law would assist law enforcement agencies in interpreting the provisions of the Act.
- Section 182 of the proposed amendments creates an offence of disclosure or use of information. In recognition of the seriousness of the offence, the Telecommunications Act 1997 carries a penalty of 2 years imprisonment, and this has been carried over to this Section. Included are notes stating "*A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the Criminal Code)*". Normally, the onus of proof would rest with the prosecution, and it would seem that to place the onus upon the defence would place an excessive burden on law enforcement agents (requiring the raising of recording standards to protect themselves against an erroneous prosecution.)
- The new Section 180 deals with telecommunications data currently covered by Section 282 of the Telecommunications Act. Whilst the restrictions or limitations are not a great issue, the form of authorisation is unclear. The amendment stipulates that the authorised person make certain considerations prior to authorisation, and under 183 (1)(e), that the authorisation must be in written form. Section 183 (2) allows that the *Communications Access Co-ordinator may, by legislative instrument, determine requirements for the purposes of paragraph (1)(f)*. It would appear that until such a legislative requirement is effected, that an "authorising officer declaration" be drafted to encompass the statutory requirements.

- When the WA Police Internal Affairs Unit are conducting criminal investigations against police, Call Charge Records (CCR's) are sometimes obtained. In some instances where criminal charges cannot be proven, serious disciplinary conduct may have been established resulting in the Commissioner's Loss of Confidence (section 8 Police Act 1892 [WA]) proceedings being instigated against the officer/s.

There have been instances where police officers have denied the misconduct and avoided being removed from the agency under the section 8 process. This has occurred because the Commissioner could not take into consideration the CCR's which would have corroborated the evidence and proved that the officer had been guilty of misconduct.

The WA Police consider it would administratively and managerially beneficial if there was an ability to use CCR's for the secondary use of disciplinary proceedings, when the CCR's have been obtained for use in the enforcement of the criminal law.

Thank you for the opportunity to make a submission to the inquiry.

Yours sincerely

Malcolm Penn
A/Assistant Director

13 July 2007