

**From:** Michael Cashman  
**Sent:** Sunday, 15 July 2007 1:56 PM  
**To:** Legal and Constitutional, Committee (SEN)  
**Subject:** INQUIRY INTO TELECOMMUNICATIONS (INTERCEPTION AND ACCESS)  
AMENDMENT BILL 2007

Ms Jackie Morris  
Committee Secretary  
Senate Legal and Constitutional Committee

**INQUIRY INTO THE TELECOMMUNICATIONS (INTERCEPTION AND ACCESS)  
BILL 2007  
SUBMISSION/COMMENT**

I refer to my telephone conversation with you on Tuesday 10 July 2007 which flagged the Commission's intentions in respect of a submission or comment to your Committee's inquiry.

The Commission notes that the Bill amends the *Telecommunications (Interception and Access) Act 1979* (Cth) ('TIA Act') to implement further recommendations from the Report on the Review of the Regulation of Access to Communications by Mr Tony Blunn AO. The Commission welcomes the Bill and supports its passage through the Parliament. As a declared agency and eligible authority under the TIA Act, the Commission has given fairly detailed consideration to the Bill, particularly in relation to the Exposure Draft circulated by the Commonwealth Attorney General's Department ('AGD').

The Commission further notes that there are two other matters which are not within the scope of the Bill affecting the Commission which your Committee might consider for inclusion in the Bill, viz -

**Extension of the Commission's 'permitted purposes'**

The Commission notes that Bill does not address the Commission's previous submissions to AGD for an extension of the Commission's permitted purposes to allow it to communicate intercepted information to a person who is not an eligible authority, for the purposes of consideration for disciplinary action and without the need for a formal Commission report.

**Limitations on the Commission's ability to adequately report on use of intercepted information**

The Commission mentions this matter briefly as it has not previously raised this matter formally with AGD and it may not be possible for it to be addressed in this Bill. The issue is that ss. 96 and 102 of the TIA Act require that the Commission's and the AGD's annual reports report on the number of arrests and prosecutions resulting from the use of intercepted information obtained by the Commission under warrants. The Commission seeks amendments to s. 102 to reflect additional measures of effective use that are appropriate for the Commission, considering its misconduct functions, that is, dealing with allegations of misconduct in the Western Australian public sector by assessing, forming opinions about, investigating and/or making recommendations as to such misconduct.

Due to its inquisitorial role and the nature of the serious misconduct within its jurisdiction (corruption and similar well-hidden offences), the Commission may investigate for an extended period of time before any prosecutorial action may result, including by conducting

examinations for which intercepted information may be used. Therefore, the intercepted information may be used effectively in the early stages of an investigation, well before a prosecution eventuates. There seems little or no scope under ss. 96 and 102 to report on such “early stage” use. Further, intercepted information may lead to other valuable outcomes before or in conjunction with a prosecution, such as serious disciplinary outcomes as well as changes to public sector policies and processes to detect and prevent the commission of corruption and other serious offences. Similarly, there seems to be little scope to report on such outcomes.

In the current reporting framework, including the requirement to report on the percentage of Commission warrants that qualify as “eligible warrants”, the Commission’s view is that it is unable to adequately reflect the extent to which it has effectively used intercepted information.

If you need additional information and/or clarification, please contact me at this address and on telephone numbers 08 9215 4866 (D) and 0418 908 466 (M).

Michael Cashman  
**Director Legal Services**  
Corruption and Crime Commission of WA