



**SENATOR THE HON. DAVID JOHNSTON**

Minister for Justice and Customs  
Senator for Western Australia

07/9556

Jackie Morris  
Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

14 AUG 2007

Dear Ms Morris

**Crimes Legislation Amendment (National Investigative Powers and Witness Protection)  
Bill 2006**

I am writing to thank the Standing Committee on Legal and Constitutional Affairs for its comprehensive report on the Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2006.

I attach the Government response to the recommendations contained in your report. I tabled this response in the Senate on 7 August 2007.

Yours sincerely

**David Johnston**  
Minister for Justice and Customs  
Senator for Western Australia

**Response to the Recommendations of the  
Senate Standing Committee on Legal and Constitutional Affairs  
Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill**

COMMITTEE RECOMMENDATION	PROPOSED GOVT RESPONSE	IMPLICATIONS/ EXPLANATION
Recommendation 1		
<p>The committee recommends that proposed subsection 15GE(3) be deleted from the Bill to prevent offences carrying a penalty of less than three years imprisonment being included in the definition of 'serious offence' by regulation.</p>	<p>Accepted</p>	<p>Although this departs from the national model legislation developed by a Joint Working Group of the Standing Committee of Attorneys-General and the Australasian Police Ministers Council, the recommendation is accepted as it would be rare that a controlled operation would be considered desirable in circumstances where no suspected offence with a maximum penalty of at least 3 years was involved.</p>
Recommendation 2		
<p>The committee recommends that the Bill be amended to retain the requirement for extensions of controlled operations for three month periods to be approved by a member of the AAT.</p>	<p>Accepted in part</p>	<p>The decision to extend a controlled operation is an operational decision that is best determined by senior executive employees of the relevant agency when such operations have not exceeded 12 months duration.</p> <p>It is proposed that extensions of controlled operations beyond 12 month periods be approved by a member of the AAT.</p>
Recommendation 3		
<p>The committee recommends that the Bill be amended to impose an absolute limit of 12 months on each authorised controlled operation.</p>	<p>Not accepted, but alternate recommendation (4) is accepted in part</p>	<p>Placing an absolute limit on the period for which an operation may be authorised could have serious operational ramifications (eg requiring a long running operation into money laundering or terrorist financing to be aborted at a sensitive stage).</p> <p>However, the acceptance of recommendations (2) and (4) in part ensure that concerns with recommendation (3) will be ameliorated.</p>
Recommendation 4		
<p>The committee recommends that if controlled operations are able to be extended indefinitely, proposed subsection 15HH(4) should be amended to require enforcement agencies to report to the Commonwealth Ombudsman on the progress of current operations every</p>	<p>Accepted in part</p>	<p>It is proposed to amend proposed subsection 15HH(2) to require enforcement agencies to report to the Commonwealth Ombudsman on the number of extensions beyond 12 months either granted or refused by a member of the AAT. The Ombudsman can seek additional information about any particular extension under proposed subsection 15HH(3) if required.</p>

six months.		
<b>Recommendation 5</b>		
<p>The committee recommends that proposed section 1SKP be amended to prohibit the retention, copying or recording by a presiding officer of any information or documentation provided to them under that provision.</p>	Accepted	<p>Although this will lead to a departure from the national model legislation developed by the Joint Working Group of the Standing Committee of Attorneys-General and the Australasian Police Ministers Council, this proposed amendment will ensure that the true identity of the operative is not revealed or compromised by the actions of a presiding officer.</p>
<b>Recommendation 6</b>		
<p>The committee recommends that the Federal Government limit the offences in relation to which delayed notification search warrants may be issued to offences involving:</p> <ul style="list-style-type: none"> <li>• terrorism or organised crime; or</li> <li>• death or serious injury with a maximum penalty of life imprisonment.</li> </ul>	Not accepted	<p>The delayed notification search warrant scheme will only apply to offences which justify the use of such warrants. These include specifically listed offences or offences which carry a penalty of 10 years imprisonment or more. The 10 year penalty threshold appropriately balances privacy concerns with the benefits that will flow from the use of delayed notification warrants when investigating serious offences. The threshold is greater than that required for invasive powers such as telecommunications interception and surveillance devices.</p> <p>If the recommendation is accepted, a range of serious offences may not be subject to the scheme including child pornography, sexual servitude and child sex tourism offences.</p> <p>The decision not to limit the type of offences also allows for the Government to respond to emerging categories of serious crime. It provides law enforcement agencies with the ability to undertake delayed notification search warrants immediately, rather than waiting for Parliament to make amendments to the legislation.</p> <p>The inclusion of a penalty threshold is only one of a number of safeguards included in the delayed notification warrants scheme. Before an application for a warrant can be made, a constable must be authorised by the chief officer of the relevant police force, or their delegate, to make an application. The chief officer, or delegate, must be satisfied that there are reasonable grounds to believe that it is necessary for search and entry to occur without the knowledge of the occupier of the premises.</p>

		An application to a judge or nominated AAT member must then be made. Before issuing a delayed notification warrant, the judge or nominated AAT member must have regard to a range of factors, including the existence of alternative means to obtain the evidence or information sought, the extent to which the privacy of any person is likely to be affected and the nature and seriousness of the relevant offences.
Recommendation 7		
The committee recommends that subsection 3SL(1)(b) be deleted so that applications to impersonate a person for the purposes of executing a warrant are subject to the same approval process as for other uses of an assumed identity.	Accepted in part	The Committee's view that this provision needs clarification is accepted. It is proposed that a note be added to the legislation under proposed paragraph 3SL(1)(b) to clarify that the paragraph does not remove the requirement to comply with the assumed identity provisions, should an assumed identity be required.  The explanatory materials will also reflect this understanding.
Recommendation 8		
The committee recommends that the Bill be amended to require the Ombudsman to conduct an inspection of agency files and issue a report to the Minister in relation to the administration of delayed notification search warrants at least every six months.	Accepted	Requiring the Ombudsman to conduct an inspection every six months will ensure that the inspection of records is more frequent, and that the Ombudsman has a more comprehensive external oversight role.  The recommendation is consistent with other requirements under the legislation
Recommendation 9		
The committee recommends that the definition of 'executing officer' in Schedule 3 be confined to sworn federal, state or territory police officers.	Accepted	This proposed amendment will eliminate the possibility of a non-police officer executing a search warrant and will also ensure that only a police officer has the capacity to exercise the use of force. This is consistent with the Crimes Act model and will reflect the original policy intention, which has not been clearly translated in the Bill.
Recommendation 10		
The committee recommends that proposed subsection 25B(2) be amended to:  • require an ACC examiner to adjourn an examination for	Accepted substantially	In response to the Committee's recommendations, it is proposed that proposed section 25B be removed from the Bill.  Removing proposed section 25B would

<p>an adequate time to enable a witness to engage an alternative legal representative; and</p> <ul style="list-style-type: none"> <li>• ensure that a witness will only be examined without representation when his or her decision to forego representation is express and informed.</li> </ul>		<p>ensure that no witness would be examined without a legal representative unless it is his or her express and informed desire to proceed without representation.</p> <p>This would retain the status quo in the Australian Crime Commission Act, which allows a person giving evidence to be represented by a legal practitioner.</p>
<p>Recommendation 11</p>		
<p>Subject to the preceding recommendations, the Committee recommends that the Senate pass the Bill.</p>	<p>N/A</p>	<p>N/A</p>