



WESTERN AUSTRALIA POLICE

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Ms J Morris  
Standing Committee on Legal and Constitutional Affairs  
via email: LegCon.Sen@aph.gov.au

Dear Ms Morris

**Re: *Inquiry into the Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2006***

Your letter of 11 December 2006 to Commissioner Karl O'Callaghan was referred to me for direct response.

In reviewing the *Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2006*, it appears to contain four main areas of amendment, namely:

1. enactment of legislation dealing with model laws concerning controlled operation, assumed identities and protection of witness identity [undercover officers];
2. provisions for delayed notification search warrants in relation to terrorism offences;
3. amendments to the Commonwealth Witness Protection Act; and
4. amendments to the Australian Crime Commission Act.

Following consideration, the Western Australia Police (WA Police) is providing comment on the first three areas.

## **Controlled operations, assumed identities and protection of witness identity**

As the Committee would be aware, in November 2003, the Leaders Summit on Terrorism and Multi-Jurisdictional Crime released draft uniform legislation for covert investigative powers (Uniform Covert Bills) that would enable police in one participating jurisdiction to conduct covert investigations in another participating jurisdiction.

The Uniform Covert Bills have been considered and endorsed by both the Standing Committee of Attorneys' General (SCAG) and the Australasian Police Ministers' Council (APMC). These Uniform Covert Bills consist of four Bills relating to Controlled Operations, Assumed Identities, Witness Identity Protection and Surveillance Devices.

In terms of the draft provisions contained in Schedule 1 of the *Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2006*, they are consistent with the uniform Bills agreed to by SCAG and APMC and on that basis are supported by the WA Police.

The WA Police have been instructed to commence development of legislative proposals to give effect to the enactment of the Uniform Covert Bills in Western Australia. I am hopeful that the Bills can be drafted in time to enable them to be introduced into the Western Australian Parliament before the end of 2007.

### **Delayed notification search warrants**

The provisions contained in Schedule 2 of the *Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2006* are largely consistent with the provisions contained in Part 3 of the *Terrorism (Extraordinary Powers) Act 2005* [WA] which is based on similar legislation enacted in Queensland, New South Wales and Victoria in recent years.

There are however a couple of differences that are worth noting. Under the provisions contained in Schedule 2 of the Bill, a warrant can only be applied for in relation to a relevant offence [which is defined on page 87 of the Bill]. Under the provisions of the *Terrorism (Extraordinary Powers) Act 2005* [WA], and similar legislation in other States, such a warrant can be applied for "to assist in preventing or investigating a terrorist act". On that basis it may be that the provisions in Schedule 2 of the Bill are limited in their application in the context of preventing terrorist acts from occurring or responding in the aftermath of a terrorist act.

In addition, while it is noted that the provisions of Schedule 2 of the Bill contain mechanisms for the notification to occupiers of premises, such a requirement is not contained in the *Terrorism (Extraordinary Powers) Act 2005* [WA]. This is on the basis that terrorism investigations may go on for several years and given that there was a need to obtain the warrant covertly in the first instance, this need is not necessarily reduced over time.

## **Commonwealth Witness Protection Act**

The proposed changes to the Commonwealth Witness Protection Act have been reviewed in relation to the *Witness Protection (Western Australia) Act 1996*. No matters have been identified that require comment.

Yours sincerely

*Gary Prior*

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