



THE CABINET OFFICE  
NEW SOUTH WALES

**FACSIMILE TRANSMISSION**

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Acting Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
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**SUBJECT:** *INQUIRIES INTO THE CRIMES LEGISLATION AMENDMENT  
(NATIONAL INVESTIGATIVE POWERS AND WITNESS  
PROTECTION) BILL 2006 AND THE CUSTOMS LEGISLATION  
AMENDMENT (AUGMENTING OFFSHORE POWERS AND OTHER  
MEASURES) BILL 2006*

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Please find attached the NSW Government submission to the Senate Standing Committee on Legal and Constitutional Affairs on its inquiries into the *Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2006* and the *Customs Legislation Amendment (Augmenting Offshore Powers and other Measures) Bill 2006*.

Thank you.

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NEW SOUTH WALES

TCO/10206

Ms Jackie Morris  
Acting Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
Parliament House  
CANBERRA ACT 2600

Dear Ms Morris

I refer to your emails to the Premier of 11 December 2006, inviting the NSW Government to make a submission to the Committee's inquiry into the *Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2006* and the *Customs Legislation Amendment (Augmenting Offshore Powers and other Measures) Bill 2006*.

The Premier has asked me to provide you with the following comments on the Bills on behalf of the NSW Government.

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

As a preliminary point, I note that this Bill contains a number of major policy initiatives, many of which potentially will have a significant impact on NSW public administration. The NSW Government would, in future, appreciate the opportunity to comment on such proposals prior to the introduction of legislation.

The proposed Commonwealth delayed notification warrant scheme will enable police to covertly enter and search premises, without giving prior notice to the occupier of the premises. While these provisions largely adopt the NSW covert warrant scheme, there is a significant difference in the range of offences to which the scheme applies.

Unlike the NSW scheme, which has an exclusive focus on preventing and responding to terrorist acts, the proposed Commonwealth scheme would allow covert search warrants to be issued for every Commonwealth offence (and State offence with a federal aspect) carrying a maximum penalty of 10 years imprisonment or more. In this regard, NSW notes that several hundred offences would come within the reach of the scheme, including labelling offences under section 8A of the *Imported Food*

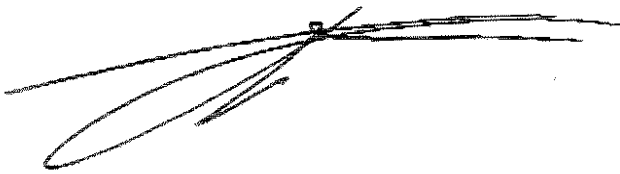
*Control Act 1912 (Cth)* and damaging navigational aids under section 19 of the *Lighthouse Act 1911 (Cth)*. NSW questions whether there is a clear policy justification for exempting such a broad range of offences from the safeguards that accompany general search warrant schemes.

NSW notes that it is proposed to use NSW judicial officers as issuing authorities for these delayed notification search warrants. In light of the broad reach of the scheme and the complex nature of warrant applications, this would place a significant administrative and financial burden on the State. NSW further notes that under the NSW scheme, only Supreme Court judges are eligible to issue covert search warrants.

The Commonwealth scheme allows for the authorisation of a delayed notification search warrant application by the NSW Police Commissioner or a single delegate. Given the large size of NSW Police, NSW considers that the NSW Police Commissioner should be able to delegate this role to at least two officers of Assistant Commissioner rank or above.

Thank you for the opportunity to comment on these matters.

Yours sincerely



J. L. Schmidt  
Acting Director-General