

Mr Peter Hallahan  
Committee Secretary  
Legal and Constitutional Affairs Committee  
Department of the Senate  
PO Box 6100 Parliament House  
Canberra, ACT 2600

Dear Mr Hallahan

**Inquiry into the Telecommunications (Interception and Access)  
Amendment Bill 2008**

On 19 March 2008, the Senate referred the Telecommunications (Interception and Access) Amendment Bill 2008 to the Senate Standing Committee on Legal and Constitutional Affairs Committee for inquiry and report by 1 May 2008.

This bill will amend the Telecommunications (Interception and Access) Act 1979 (the TIA Act) in a number of areas. The basis of this submission is the amendment intended to improve the effectiveness of the Australian telecommunications access regime by clarifying that multiple telecommunications devices can be intercepted on the one named person warrant.

The TIA Act currently allows Law Enforcement Agencies (LEA's) to apply to an eligible Judge or nominated Administrative Appeals Tribunal (AAT) member for a warrant in respect of a telecommunications service or a 'named' person. Currently, named person warrants can relate to either telecommunications services (eg. telephone numbers) being used by a particular person or a particular telecommunications device (eg. telephone handset). The bill proposes the existing device-based named person warrant regime be extended to authorise the interception of communications made by multiple telecommunications devices.

Device-based named person warrants were introduced to assist LEA's to counter measures undertaken by suspects to evade telecommunications interception such as adopting multiple telecommunications services. It had become common practice for criminals to use many different Subscriber Identity Module (SIM) cards and rotate them through a single handset in quick succession. The change in legislation enabled LEA's to quickly identify the

new telecommunications service being utilised and intercept it before the suspect changed the SIM card being used.

The evolving practice by the criminal element of utilising multiple SIM cards in multiple handsets has become a significant inhibitor to the detection of crime and the apprehension of offenders. LEA's once again will be at a disadvantage when trying to identify and subsequently intercept telecommunications in a timely manner. The "educated" criminal element is already utilising such practices to defeat current methods of telecommunications interception and will continue to do so. The use of such tactics will certainly increase as it becomes more commonly known.

There is clearly an operational need for LEA's to be able to obtain a single warrant which authorises the interception of multiple devices used or likely to be used by the suspect and which allows additional devices to be added to a warrant if and when they are identified. The amendment merely extends the existing device-based named person warrant regime to authorise the interception of communications made by multiple telecommunications devices.

Service-based named person warrants exist to allow multiple services to be intercepted in connection with one named person warrant and allow additional services to be added to a warrant if and when they are identified. The proposed amendment will allow the provisions governing the issue of device-based named person warrants to be brought into line with the provisions governing the issue of service-based named person warrants.

The expanding use of telecommunications interception powers as an investigative tool and the associated concerns that this may give rise to, such as issues of privacy and the expansion of police powers, are always relevant factors. However, the amendment merely provides a means of obtaining evidence in a more timely manner than is currently possible under the existing legislation.

Sufficient privacy protections exist within the named person warrant regime and these will still be applied to applications for device-based named person warrant applications. The privacy issue is addressed by the eligible Judge or nominated AAT member when considering whether to grant a named person warrant. An issuing authority may impose conditions or restrictions on an interception warrant.

There are ample accountability mechanisms in existence under the named person warrant regime that will continue to apply under the proposed amendment. Examples include the requirement to revoke a warrant when the grounds for the warrant no longer exist, intercepted material must be destroyed where it is not relevant to the permitted purposes of the agency and the independent oversight of the conduct of LEA's in carrying out interception. In the case of Victoria Police, the Special Investigations Monitor is the relevant inspecting authority.

Victoria Police strongly support the proposed amendments to the TIA Act. The amendments will greatly assist LEA's to defeat measures undertaken by criminals to evade telecommunications interception in a more timely manner

than previously available. The proposal ensures that LEA's have the necessary tools to combat crime.

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Yours sincerely

Christine Nixon, APM  
Chief Commissioner of Police

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