

The Secretariat  
Senate Legal and Constitutional Committee  
Room S1.61, Parliament House  
Canberra ACT 2600



Dear Sirs

The Australian Crime Commission welcomes and supports the Surveillance Devices Bill 2004. The Bill is a significant reform and will assist the ACC in protecting the community from organised criminal activity. This will be further complemented as other jurisdictions enact similar legislation guided by the model provisions resulting from the SCAG Joint Working Group on National Investigative Powers.<sup>1</sup>

The Australian Crime Commission's functions include the investigation of serious and organised crime. At present the ACC carries out those duties using a patchwork of Commonwealth, State and Territory legislation. As many of the ACC's investigations are into the commission of federal or federally-related offences, the proposed Bill provides a clear basis in a single piece of legislation for the use of new surveillance device technologies in that important and complex work.

The Bill will enable the ACC to respond to the quickly changing circumstances of major investigations. Those involved in the organisation of major criminal syndicates are experienced criminals and aware of police investigative practices. They frequently employ anti-surveillance techniques to avoid detection and frustrate investigations. Part 2 of the Bill will enable the use of modern surveillance technologies in various circumstances through the ability to obtain warrants in a wide range of investigative activity. Of particular significance is the expansion of the serious offences for which warrants may issue. This will permit warrants to be obtained for the investigation of, for example, firearms trafficking and money laundering, the previous unavailability of which was a significant impediment to effective investigation.

Part 3 of the Bill will permit emergency authorisations to be given in specific circumstances, so allowing the ACC to quickly respond where there is, for instance, a serious risk to person or property, or the risk of loss of evidence. The latter could be very useful, as in the closing stages of a recent investigation, for instance, persons subject to investigation attempted to destroy a large quantity of amphetamines.

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<sup>1</sup> See Nov 2003 report *Cross-Border Investigative Powers for Law Enforcement* from pg 345

Part 4 of the Bill sets out the circumstances in which a surveillance device may be used without a warrant. At present, the law on this topic varies from jurisdiction to jurisdiction. The enactment of the provisions in the Bill will provide a uniform code for the use of devices in such situations and enable a uniform practice to be adopted. This will provide clarity and certainty in multi-jurisdictional investigations.

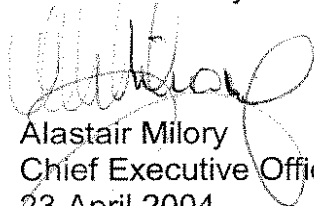
Part 6 of the Bill contains provisions relating to compliance and monitoring. These are important guarantees concerning the privacy of information obtained by the use of surveillance devices, and an accepted regime of accountability for agencies using the legislation. The ACC welcomes such legislation which complements its internal operational governance arrangements oversighted by the ACC Board. Of particular importance are the restrictions on the use of information obtained from surveillance devices and the duties of the Chief Executive Officer concerning the safe-keeping and destruction of material. There are also provisions concerning reporting and inspection of records. There are further accountability duties on the ACC under the *Australian Crime Commission Act 2002*.

The ACC has in place internal procedures relating to the application for, use of surveillance devices and the safe-keeping of records and information obtained from the use of devices. For instance, an application for a surveillance device must first go through an internal assessment and approval process in which the need for a device is assessed by the relevant team leader, and all documentation is vetted by an ACC lawyer. Once a warrant is obtained, care is taken to ensure that anyone acting under the warrant is properly authorised to do so, and that all records are properly maintained and available for internal audit and external inspection.

It may be observed that the Bill differs in some ways from the model proposed by the Joint Working Group. However, it seems prudent to vary the model Bill where necessary to address the specific needs of Commonwealth law enforcement and the accepted levels and systems of accountability established in other Commonwealth legislation, such as the *Telecommunications (Interception) Act 1979*.

I trust that the above information is of use to the Committee. If required, I will arrange for senior officers to attend the Committee hearings currently scheduled for Monday 10 May to answer any questions from the Committee.

Yours sincerely



Alastair Milroy  
Chief Executive Officer  
23 April 2004