

Attachment B



**Submission by the
Commonwealth Ombudsman**

**INQUIRY INTO THE TELECOMMUNICATIONS
AMENDMENT (GET A WARRANT) BILL 2013**

Submission by the Commonwealth Ombudsman, Colin Neave

July 2013

1 Introduction

On 20 June 2013 the Senate referred the Telecommunications Amendment (Get a Warrant) Bill 2013 (the Bill) to the Standing Committee on Legal and Constitutional Affairs for inquiry. The Bill seeks to amend the *Telecommunications (Interception and Access) Act 1979* (the TIA Act) to require standard warrant authorisation procedures for law enforcement and intelligence agencies that wish to access telecommunications data.

This submission addresses the impact this Bill, if passed, would have on the Commonwealth Ombudsman's oversight role under the TIA Act.

2 Proposed amendments to the TIA Act

Currently under the TIA Act, enforcement agencies can internally authorise the disclosure of telecommunications data – these agencies do not need to seek a warrant to obtain this information. The Bill proposes to amend the stored communications access warrant regime so that enforcement agencies need to apply for a warrant that authorises access to stored and 'other' communications (for example, telecommunications data).

The Commonwealth Ombudsman, under s 152 of the TIA Act, is required to inspect the records of all Commonwealth, state and territory agencies in respect of the stored communications access regime. During the 2011-12 financial year 483 warrants authorising access to stored communications were issued to enforcement agencies,¹ and we inspected the records relating to all issued warrants.

Also during 2011-12, 293,501 authorisations were made by agencies to access existing information or documents in the enforcement of the criminal law (namely telecommunications data).² If the Bill were passed, enforcement agencies would require warrants to gain access to telecommunications data. In light of the number of authorisations made in 2011-12, it is reasonable to suggest that the number of warrants issued to enforcement agencies would substantially increase. If the current oversight arrangements relating to access to stored communications extended to access to telecommunications data, then we would need to be appropriately resourced. We are currently not resourced to undertake this proposed function.

3 Other inquiries into the TIA Act

We note that in its Inquiry into Potential Reforms of Australia's National Security Legislation, the Parliamentary Joint Committee on Intelligence and Security also addressed access to telecommunications data, as well as the oversight arrangements, under the TIA Act.

¹ Page 61, *Telecommunications (Interception and Access) Act 1979 - Annual Report for the year ending 30 June 2012*, Commonwealth Attorney-General's Department.

² Page 66, *Telecommunications (Interception and Access) Act 1979 - Annual Report for the year ending 30 June 2012*, Commonwealth Attorney-General's Department.