



CORRUPTION
AND CRIME
COMMISSION

Inquiry into the Telecommunications Amendment (Get a Warrant) Bill 2013:

Submission to Legal and Constitutional Affairs Legislation Committee

July 2013

INTRODUCTION

The Corruption and Crime Commission of Western Australia ('the Commission') was established on 1 January 2004 to '*combat and reduce the incidence of organised crime; [and] to reduce the incidence of misconduct in the public service*'. In order to perform these functions significant powers have been afforded.

The Commission is both an "interception agency" and an "enforcement agency" as defined by the *Telecommunications (Interception and Access) Act 1979 (Cth)* ('the Act').

The Commission adopts contemporary investigative methods to investigate instances and allegations of corruption and serious misconduct in the state of Western Australia. The analysis of information and documents from telecommunications carriers ('telecommunications data') is a fundamental methodology within these investigations, as it is for Police investigations.

As an enforcement agency, the Commission's investigations would be significantly and adversely impacted by the proposed legislative changes to the Act by the Telecommunications Amendment (Get a Warrant) Bill 2013 ('the bill'). Therefore, the Commission does not support the amendments proposed by the bill.

DISCUSSION

The bill seeks to amend or repeal a number of sections of the Act. Of particular interest and concern to the Commission is the proposal to repeal sections 178 and 180 and to place these provisions under section 116 (s 116) which deals with the issuing of stored communications warrants.

The Commission principally accesses two categories of telecommunications data for investigative purposes. The first category is commonly known as "subscriber information". This information provides details of the telecommunications account holder, similar to the information contained in a telephone directory. The second category can be described as "traffic data" (both historic and prospective). This information gives details about communications, such as the services involved, the date and time, and in some cases, location information. Telecommunications data does not include the content of communications, i.e. the voice content of a telephone call or the contents of a text message or email.

In simple investigations, telecommunications data is used to provide information and evidence that directly relates to the investigation. In complex investigations telecommunications data is used to build a picture of suspected offences by identifying participants, and establishing relationships and levels of contact. The use of telecommunications data to identify methods of communication is a crucial investigative tool, particularly when investigating criminal activity conducted by a syndicate of people. Telecommunications data is also used in excluding people from further investigation.

The bill groups access to telecommunications data under the same regime as access to stored communications (data and content) within s 116 of the Act. Telecommunications data is distinctly different to telecommunications content because its access is less intrusive and raises fewer privacy concerns. The

Commission supports judicial authorisation for access to the content of telecommunications, including access to stored communications under s 116 of the Act. The Commission believes, however, that access to telecommunications data under the warrant provisions of s 116 of the Act is unnecessary and will be impractical for enforcement agencies. Currently, each authorisation under sections 178, 179 and 180 of the Act is made by a senior Commission officer with consideration to his/her statutory obligations as defined by the Act.

The Commission would be adversely impacted by the proposed amendments within the bill due to the following reasons:

Resource Impacts

In the 2011/2012 financial year, the Commission made 1,305 authorisations for data for the enforcement of the criminal law under section 178 of the Act. Warrant application processes under the Act involve significant legal and investigative resources. The Commission would not have the resources to undertake a warrant application process under s 116 of the Act for even a small percentage of the authorisations required for its investigations. The resultant resource impact on issuing authorities (judges and AAT members) would also be significant.

The resource implications of the proposed amendments within the bill would be significant and result in fewer investigations being undertaken, delays within investigations, and make investigations less effective. As a result, the Commission's ability to combat and reduce the incidence of misconduct in the Western Australian public service would diminish.

Access issues

Currently the Commission accesses telecommunications data under s 178 of the Act for the "enforcement of the criminal law". Accessing this telecommunications data under s 116 of the Act, as proposed by the bill, would only be granted for the investigation of a "serious contravention". The bill effectively raises the offence threshold. Notably, the bill proposes to retain access to telecommunications data (without warrant) under s 179, for the "enforcement of law imposing a pecuniary penalty or protection of the public revenue".

The bill would also require that "there are reasonable grounds for suspecting that a particular carrier holds information or a document" under s 116(c)(ii) for a warrant to be granted. Currently the Commission conducts subscriber checks to ascertain a suspect's telecommunications account details. With the multitude of carriers in the Australian market, forming reasonable grounds under this section would be problematic and hinder this basic investigative technique.

CONCLUSION

As outlined above, the Commission's investigations would be adversely impacted by the proposed legislative changes to the Act by the Telecommunications Amendment (Get a Warrant) Bill 2013. Therefore, the Commission does not support the amendments proposed by the bill.