

26 May 2020

Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Committee Secretary,

I wish to put onto the record, the robust processes NSWPF have in place for the assessment and processing of applications under the *Telecommunications (Interception and Access) Act 1979* (the Act). NSWPF are likely to adopt a similar model in the processing of International Production Orders to maintain integrity and accountability of the regime.

Current process:

Requests for assistance drafted by applicants are reviewed and scrutinised by a specialist 'Assessment Committee' at the Telecommunications Interception Branch. This committee is comprised of specialist officers led by a Superintendent of Police, who to date, has been a qualified lawyer. The committee assesses the application for compliance with the Act, ensuring reasonable grounds for suspicion that a requisite 'serious offence' for interception or 'serious contravention' for stored communications, has been committed or is likely to be committed and the person for whose service the matter applies can be adequately connected to use of that service.

If the application is approved, the proposed deponent drafts an affidavit, which is quality reviewed by a Detective Inspector of Police. The reviewing officer completes a 'checklist' and acknowledges they have reviewed relevant aspects of the application for accuracy and compliance with legislative and organisational requirements.

The affidavit is then forwarded to the NSWPF Covert Applications Unit, a specialist unit comprised of Legal Consultants and Solicitors, who review the affidavit for legal compliance, assess its appropriateness to be submitted to an issuing authority, and work with the applicant to ensure all legal considerations are adequately addressed. In circumstances where the Covert Applications Unit determines an individual's privacy is unjustifiably breached, or alternate, less intrusive means have not been exhausted, the investigator is informed and requested to address any of these concerns.

Once an affidavit has been settled by a legal consultant at the Covert Applications Unit, it is reviewed by a supervisor or senior legal officer at the Covert Applications Unit. The senior legal officer again ensures compliance with each clause within the legislation and must sign off on the application for it to proceed to the issuing authority.

The application is then presented to the issuing authority, being a Senior Member or Deputy President of the Commonwealth Administrative Appeals Tribunal (AAT) or a Federal Court Judge. The issuing authority, in accordance with the Act, must have regard to, amongst other considerations, "*how much the privacy of any person or persons would be likely to be interfered with.*" AAT members can and have, conditioned NSWPF warrants by recording privacy provisions or other restrictions on the warrants to restrict their use to an appropriate level as they see fit. Examples of this include minimising the duration of a warrant.

Once a warrant is served on a Carrier, the connection is provisioned. NSWPF investigators are provided training, and processes are in place, to limit or prevent access to privileged information, such as, conversations between a lawyer and their client.

Calls or any communication such as SMS that fall within legal professional privilege must be quarantined and are not able to be transcribed or exhibited.

The NSWPF will adopt similar procedures under this proposed regime to ensure legislative compliance.

Currently, the Commonwealth Ombudsman and NSW Inspector of the Law Enforcement Conduct Commission conduct regular, scheduled audits of all applications, warrants and affidavits for strict review in accordance with legislative compliance.

International Production Order:

It is my intention that a similar process will be implemented in support of the International Production Order regime to ensure strict compliance and multiple levels of oversight, ensuring an individual's right to privacy is not unjustifiably breached.

Every International Production Order will also be reviewed by the Australian Designated Authority for compliance with the Act and International Agreement before it is forwarded to the overseas Designated Communications Provider.

The NSWPF will undertake that any protected information obtained pursuant to International Production Orders will be used in strict accordance with this legislative regime.

I assure the Committee NSWPF will have secure systems in place with necessary practices and procedures in respect of the International Production Order regime to ensure accountability, integrity, transparency and compliance with the law.

Yours faithfully,

Michael Fitzgerald APM
Assistant Commissioner of Police
Commander
Forensic Evidence & Technical Service Command
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