



**Submission No 226**

**Inquiry into potential reforms of National Security Legislation**

**Organisation: Australian Federal Police**

PARLIMENTARY JOINT COMMITTEE ON INTELLIGENCE AND SECURITY

Potential reforms of national security legislation

AUSTRALIAN FEDERAL POLICE

**Question No. 1**

**The Committee asked the below question at the hearing on 26 September 2012:**

**Mr RUDDOCK:** There are things you have to produce. You have to go before a prescribed officer. If you were issuing another 10,000 warrants, would you want to have to go back that additional number of times? I suppose the question is: how often do you roll over a warrant?

**Mr Scipione:** It depends how long a warrant runs for.

**Mr RUDDOCK:** Would you roll over 50 per cent of warrants issued?

**Mr Scipione:** I have not got that information with me. But, as you would know, you only roll it over if you reach the expiry date and you have a valid reason to keep going.

**Mr RUDDOCK:** Yes, I understand. But I am asking whether you could provide us with evidence at some point in time as to whether you roll over 20 per cent, 50 per cent—

**Mr Scipione:** I am getting advice that would suggest it is five to 10 per cent. Unfortunately, that figure is taken off the ceiling. So can I qualify that by saying we can provide that to you; I would rather get the facts on that.

**Senator STEPHENS:** There have been some suggestions that the act is too complex in establishing the grounds for a warrant to be made available. Would anyone like to comment on that? It has come through in several of the submissions that it is too complicated and it does not adequately provide for the issuing of warrants in urgent circumstances.

**Mr Negus:** Most of the comments today have been about simplifying what has become a very complex piece of legislation over time as it has been amended and updated in trying to keep pace with what is happening in that technological environment.

I think we are reasonably comfortable with the processes that are in place. If they could be simplified that would make it a lot easier for us.

To go back to Mr Ruddock's question, whilst five to ten per cent of New South Wales police warrants may be turned over, the AFP conducts significantly longer investigations as our core business. I think there would be a much higher percentage where we would go for warrants to be reindorsed to go forward in that context. I think broadly we are comfortable with the proposal you have just outlined.

**Mr RUDDOCK:** I think it would be helpful if you could give us data on that.

**Mr Negus:** Certainly, we retain those records. We could provide that to the committee.

**The answer to the Committee's question is as follows:**

Over the last 3 financial years the total number of warrants issued to the AFP and the percentage of that represent renewals is as follows:

FY11/12 540 total warrants issued of which 135 were renewals (25%).

FY10/11 523 total warrants issued of which 173 were renewals (33%).

FY09/10 641 total warrants issued of which 220 were renewals (34.5%).

These figures can be further contextualised by understanding the following:

During FY11/12 the 540 total warrants were issued to assist 127 Operations. The 135 renewals related to 42 ongoing Operations. (33% of all Operations)

During FY10/11 the 523 total warrants were issued to assist 120 Operations. The 120 renewals related to 53 ongoing investigations. (44% of all Operations)

During FY09/10 the 641 total warrants were issued to assist 112 Operations. The 220 were renewals related to 45 ongoing investigations. (40% of all Operations)

These renewal figures are indicative of the often protracted nature of AFP investigations.

PARLIMENTARY JOINT COMMITTEE ON INTELLIGENCE AND SECURITY

Potential reforms of national security legislation

AUSTRALIAN FEDERAL POLICE

**Question No. 2**

**The Committee asked the below question at the hearing on 26 September 2012:**

**CHAIR:** Why do you think the European law enforcement agencies are asking for data that is held for less than 12 months?

**Mr Negus:** I think that would be consistent with what we would see in this country as well, but as you draw the curve, the longer you go back the less you would use, but it still can be important in that context.

**CHAIR:** So in the AFP's case, if I can ask this question in public, in terms of the time frame of 12 months or whatever, when are the bulk of your requests made to telecommunications companies?

**Mr Negus:** We would not have that exact data—

**CHAIR:** Could you take that on notice, please?

**Mr Negus:** We will take that on notice, but I think in the broader sense they are made reasonably contemporaneously with the event. We investigate particular cases. These are a key part of the investigation going forward and they end up pre-empting what will happen after that. Particularly with metadata, we end up using that to target our resources, target our surveillance and target a whole range of things based on what the analysts can get from that original metadata.

**CHAIR:** So would most of the information you are seeking more contemporaneously be heading off threat. You would see a foreseeable threat and I presume that would apply to the state police law enforcement agencies at the same time. Would that be correct?

**Mr Negus:** A threat in the context could be a narcotics importation, the threat could be whole range of different things rather than looking at the conventional what we would term a threat to public safety or those sorts of things.

**CHAIR:** Section 5D: the number of your organisations have made submissions about their frustrations with 5D, which is the capacity to initiate a telecommunications intercept. You are basically seeking, I think, a reduction of the threshold for the issuing of telecommunications warrants. Could you talk to that, please?

**Mr Negus:** Most of the offences we would investigate would be certainly be the seven-year threshold that has been talked about. I think there are some that fall outside that. I read the Northern Territory submission, which suggests that sexual assault, for instance, does not meet that threshold so therefore telephone interception is not capable of being achieved and whether the community would be comfortable with that in that context from that investigation. But from a Commonwealth perspective most of the matters we do reach that threshold. I will let Andrew and others speak on that.

**The answer to the Committee's question is as follows:**

Automated AFP systems record the dates Historical Telecommunication Requests (Historical Subscriber Requests and Call Charge Requests) under the Telecommunications (Interception and Access) Act 1979 (TIA Act) are created and processed. This enables the AFP to report against its obligations under Section 186 of the TIA Act, to provide the Attorney General with the total number of Authorisations made under the TIA Act annually.

Current AFP systems do not record the information requested by this Question on Notice (QoN) in a retrievable form. Therefore, the AFP is not able to automatically retrieve and collate the requested information for this QoN, being the number of Historical Telecommunication Requests categorised by the actual retention period e.g. the date/s the information came into existence against the date the request for information was made.

Obtaining the requested information would require the manual retrieval and interrogation of a significant number of documents recorded on AFP systems.

Due to the number of requests processed by the AFP, it would be impractical for the AFP to retrieve the information for the QoN.