



Submission No 168

Inquiry into potential reforms of National Security Legislation

Organisation: Australian Customs and Border Protection Service



Australian Government

**Australian Customs and
Border Protection Service**

AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE

**Submission to the
Parliamentary Joint Committee
on Intelligence and Security**

**Inquiry into Potential Reforms
of National Security Legislation**

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INTRODUCTION

The Australian Customs and Border Protection Service (Customs and Border Protection) protects the safety, security and commercial interests of Australians through border protection designed to support legitimate trade and travel and ensure collection of border revenue and trade statistics.

Customs and Border Protection's focus on the border exposes us to a variety of serious border-related offences, often involving organised crime syndicates.

OVERVIEW OF SUBMISSION

This submission aims to highlight three key points for consideration by the Parliamentary Joint Committee on Intelligence and Security: :

- Customs and Border Protection investigates a broad range of border related offences and as part of this activity can frequently encounter high levels of criminality with associated links to organised crime syndicates;
- Customs and Border Protection's current capabilities under the *Telecommunications (Interception and Access) Act 1979* (the TIA Act) form an essential part of our ability to investigate and prosecute serious border-related offences and without these capabilities, our ability to undertake such investigations would be severely impacted; and
- As a prescribed criminal law enforcement agency under the TIA Act, Customs and Border Protection is seeking access in our own right to already lawfully intercepted information, obtained by interception agencies for the purpose of investigating and prosecuting serious border-related offences. Customs and Border Protection does not seek to be included as an interception agency.

OUR ENVIRONMENT

Customs and Border Protection's role as Australia's key border agency means we are regularly exposed to criminal networks that are sophisticated, experienced and well resourced. Criminal networks have developed over time a good working knowledge of law enforcement processes, detection capabilities, investigative approaches and actively attempt to exploit any perceived vulnerabilities.

Customs and Border Protection is responsible for investigating and prosecuting a broad range of border-related offences, many of which fall into the definition of serious offence for the purpose of the TIA Act. These offences include importing and exporting goods such as illicit drugs and precursors, firearms, child exploitation material and wildlife, and can carry significant custodial sentences.

LAWFUL ACCESS TO TELECOMMUNICATIONS – OUR CURRENT CAPABILITIES

Sharing of intelligence and operational resources between government agencies is critical to the protection of our national security. Effective and lawful access to telecommunication interception (TI) product is an integral part of this, and Customs and Border Protection supports the reform of the TIA Act in light of the current and evolving telecommunications environment.

Customs and Border Protection currently utilises a number of capabilities under the TIA Act to investigate and prosecute serious border-related offences against the Commonwealth. As a prescribed criminal law enforcement agency under the TIA Act, Customs and Border Protection is able to access stored communications using the warrant provisions of the TIA Act. Authorised officers of Customs and Border Protection are also able to access prospective telecommunications data and existing

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telecommunications data such as subscriber details, call charge records (CCRs), reverse call charge records (RCCRs), and past locations of a telephone.

It is important to note that this authority does not permit Customs and Border Protection to access the content of conversations or similar information made using a telecommunications service.

The Terms of Reference for this Inquiry include considering reducing the number of agencies eligible to access telecommunications data. While Customs and Border Protection has limited access to telecommunications data, information and content under the TIA Act, our existing stored communications warrant and prospective telecommunications data powers form an integral part of our investigative role. Any reduction in these capabilities would severely limit Customs and Border Protection's ability to investigate and prosecute many serious border-related offences.

Example:

In 2012 Customs and Border Protection arrested a person suspected of illegally importing a marketable amount of pseudoephedrine, which carries a penalty of up to 15 years imprisonment.

During the investigation, Customs and Border Protection accessed supplier details which confirmed the use of a false name and address to import the pseudoephedrine. CCRs obtained by Customs and Border Protection also confirmed the existence of links to other known criminals and provided information about the location of the parties involved.

The use of prospective telecommunications data during this investigation also contributed to the overall strength of the evidence which enabled Customs and Border Protection to proceed with the prosecution of the alleged offender. We also rely heavily on our powers under the TIA Act when investigating other serious offences which are known to have links to organised criminal syndicates, such as firearm offences.

INFORMATION SHARING PROVISIONS – ADDITIONAL ACCESS SOUGHT

In addition to our existing capabilities under the TIA Act, it would be highly beneficial for Customs and Border Protection to be able to access already lawfully intercepted information for the purpose of investigating and prosecuting serious border-related offences.

The TIA Act currently allows TI product to be passed from an 'interception agency' (e.g., the Australian Crime Commission or Australian Federal Police) to certain other 'interception agencies' for specific investigative purposes. However, Customs and Border Protection is not defined as an 'interception agency' under the TIA Act. Consequently, where TI product held by interception agencies uncovers offences of interest to Customs and Border Protection, we are only able to receive this information by establishing a joint operation with the 'interception agency'.

As many border-related offences do not fall within the responsibility of other law enforcement agencies, the ability to commence a joint operation is difficult and at best, an inefficient process to gain access to already lawfully intercepted information. One of the key difficulties in establishing joint operations is the often competing priorities and responsibilities of interception agencies and those of Customs and Border Protection. As a result the ability to commit resources to these arrangements is often constrained and not of primary interest to the interception agencies.

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Where Customs and Border Protection has commenced a joint operation with an interception agency it is still difficult for Customs and Border Protection to access TI product. Before accessing TI product, our officers must be sworn as 'special members' of the interception agency and are then only able to use TI product for the purpose of the joint operation.

Additionally, where evidence of serious border-related offences have been obtained as part of the joint agency arrangements but these arrangements do not endure, Customs and Border Protection is unable to pursue further investigation and prosecution of these matters in its own right utilising the lawfully intercepted information obtained by the interception agency under the joint agency arrangements.

Joint operations have shown that the use of already lawfully obtained TIs often provides evidentiary material not able to be obtained elsewhere and enables an increased understanding of criminal syndicate structures, resources and assets. This in turn contributes to more efficient and effective investigations and better outcomes for our community.

Example:

Customs and Border Protection received a referral from the AFP regarding the alleged importation of a container of illicit drugs. The referral was made to Customs and Border Protection based on evidence the AFP had received through the execution of TI warrants.

The referral was accepted by Customs and Border Protection and resulted in the detection of a container load of illicit smuggled tobacco.

Customs and Border Protection were unable to establish a joint operation with the AFP in this instance and were therefore not able to access TI product for use as evidence in the prosecution of this matter.

Without access to the TI product there was insufficient evidence for Customs and Border Protection to prosecute the alleged importer of the container.

As a prescribed criminal law enforcement agency under the TIA Act, Customs and Border Protection is seeking, in its own right, the ability to access already lawfully intercepted information for the purpose of investigating and prosecuting serious border-related offences.

Importantly, Customs and Border Protection does not seek to be included as an interception agency. Rather, Customs and Border Protection seeks access to lawfully intercepted information when investigating and prosecuting serious border-related offences without having to enter into a joint agency operation or having to be a sworn officer of an interception agency,

As part of this revised approach,, the current information sharing provisions under section 68 of the TIA Act would also need to be reviewed to ensure interception agencies are empowered to share already lawfully intercepted information with Customs and Border Protection when we are conducting investigations into these serious border offences.

Expanding the information sharing provisions of the TIA Act would allow Customs and Border Protection to access relevant information for the purpose of investigating serious border-related offences, without substantially increasing its powers as an interception agency.

SUMMARY

Customs and Border Protection's ability to effectively investigate and prosecute serious border-related offences relies greatly on our current access to stored communications and prospective telecommunications data powers under the TIA Act. Any reduction in these capabilities would have a damaging effect on our continued efforts to investigate and prosecute these matters.

Additionally, enhancing the information sharing provisions in the TIA Act to give Customs and Border Protection the ability in its own right to access already lawfully intercepted information obtained by interception agencies is essential to the investigation and prosecution of serious offences that threaten the Australian border. As criminal entities become more sophisticated with increased capabilities and resourcing, it is essential that Customs and Border Protection's capabilities match those attempting to breach our borders and harm our community.