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10 June 2014

Senator Ian Macdonald
Chair
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator

I am writing to you in your capacity as the Chair of the Senate Standing Committee on Legal and Constitutional Affairs to clarify the evidence given by myself at the Budget Estimates hearing on 26 May 2014 in relation to questions asked by Senator the Hon Nicholas Xenophon.

Senator Xenophon sought confirmation that under the under the application of the *Telecommunications (Interception and Access) Act 1979*, the act prohibits the disclosure of warrant information which is defined as including the existence or non-existence of an interception warrant. A contravention of section 63 is an offence against that section by virtue of section 105 the Act. In responding to Senator Xenophon's questions I incorrectly referenced the sections of the Act to which the disclosure of information and warrant information is applicable.

As such, I am seeking to correct the record on page 23 of the Proof Committee Hansard dated Monday 26 May 2014, to reflect the following:

Under the act, chapter 4, division 6 prohibits the disclosure of information relating to the authorisations, including 'the existence of non-existence of such an authorisation'. So we cannot even confirm or deny that an intercept has actually occurred. The penalty for that is two years' worth of imprisonment. Section 63 of the Act prohibits disclosure of warrant information, even its existence and so on. Contravention of that is also an offence by virtue of section 105 of the Act. The AFP is permitted to use intercepted information for investigation and prosecution purposed. In relation to exempt proceedings, the parliamentary committee framework is not specified under the act as an exempt proceeding, so we are not able to do that.

If you have any questions in relation to this matter, please feel free to contact me directly on

Yours faithfully

M Phelan APM
Deputy Commissioner Operations