

Mr Owen Walsh
Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600

Dear Mr Walsh

I refer to your email dated 16 May 2005, inviting the Western Australia Police Service (WAPS) to make a submission in relation to the *Crimes Legislation Amendment (Telecommunication Interception and Other Measures) Bill 2005*.

The following comments are provided to assist the Committee with its inquiries into the Bill.

The proposed extension of the definition of a law enforcement officer in section 473.1 of the *Criminal Code Act 1995* (Cwth) to include a reference to the Corruption and Crime Commission of Western Australia will assist that agency with its investigative powers concerning corruption within the Public Sector and organised crime.

In terms of the proposed reforms which will permit the interception of personal mobile phone calls and emails within an emergency services facility the following is submitted:

Mobile Phones

Firstly, the only occasion on which personal mobile phone conversations might require recording would be if an officer was under investigation, however this would not be undertaken at the WAPS Communications Centre. This type of recording would be done by the WAPS Telecommunication Interception Unit in accordance with a warrant obtained in relation to that specific mobile phone ID.

Secondly, the recording of mobile telephone conversations both personal and those made over a Western Australia Police issued mobile telephone is a far more complex issue in general circumstances and cannot be recorded as a broad base connection.

As mobile telephone calls are made as an initial over the air connection between the mobile telephone and the carrier's network towers the call does not pass through or over any of WAPS telecommunications infrastructure within the its emergency service facility. WAPS technical staff are aware of multiple technologies (eg GSM, CDMA, 3G) deployed by multiple carriers. The ability to capture conversations made to or from any mobile telephones within an emergency service facility is technically complex and costly.

It should be noted that the proposed amendment only allows the interception of a personal mobile phone that is being used in the emergency service, once a person is outside the facility and the interception is to continue a warrant will be need for this interception to be lawful.

Further, the technical ability to constrain interception of mobiles only to a small complex would seem problematic and there is a high risk that other (non Police staff) mobile users in the same area may also be recorded. Current WAPS business rules do not allow the use of any mobile phones within the Emergency Communications Centre.

Emails

Although the proposed amendment may allow the interception of emails, technical ability to isolate a small number of messages that are sent from an emergency services facility would also be difficult. Legal advice received by WAPS indicates is that the opening and reading emails is not an "interception" within the meaning of section 6(1) of the *Telecommunication (Interception) Act 1979* because there is no 'recording' of the message. If, however, the employer preserves a copy of the email that can be retrieved, this will constitute an 'interception' within section 6(1) of the Act, unless it is done with the knowledge of the person sending the email.

On another matter the proposed The inclusion of an 'accessory after the fact' for Class One offences will assist law enforcement agencies in Western Australia Police in combating organised crime.

Thank you for providing the Western Australia Police Service with an opportunity to comment in relation to the *Crimes Legislation Amendment (Telecommunication Interception and Other Measures) Bill 2005*. I trust the above comments will be of use to the Committee in its deliberations on this matter.

Vince Hughes

A/Manager Office of the Commissioner

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