



REVIEW OF THE TELECOMMUNICATIONS (GET A WARRANT) BILL 2013

NSW COUNCIL FOR CIVIL LIBERTIES SUBMISSION

1. The NSW Council for Civil Liberties (NSWCCL) did not receive notice that the Senate Committee on Legal and Constitutional Affairs was reviewing Senator Ludlam's Telecommunications Amendment (Get a Warrant) Bill 2013 (the Bill) and we remained unaware of the review until a few days ago. This late submission is therefore brief and offers only generalised comment.

We thank the Committee secretariat for agreeing, under these circumstances, to accept a late submission.

2. **The NSWCCL strongly supports the purpose of the Bill as set out in the explanatory memorandum:**

"The Bill amends the Telecommunications (Interception and Access) Act 1979 to require normal warrant authorisation procedures for law enforcement and intelligence agencies that wish to access telecommunications data."

3. **NSWCCL supports the proposed amendments to the TIA Act in the Bill.**

In their totality, the proposed amendments go some way to addressing current weaknesses in the Telecommunications (Interception and Access) Act 1979 (the TIA Act) in relation to the protections of privacy and adequate oversight and accountability of agencies exercising lawful intrusions into telecommunications data.

They are consistent with arguments NSWCCL has previously put forward in relation to the TIA Act

4. **The changing world of surveillance**

This review is occurring in the context of the astonishing revelations by Edward Snowden as to the scope, volume, analytic capacity and international sharing of systemic internet/telecommunications surveillance by NSA and other intelligence agencies. The implications of the massively increased capacity of the State to monitor, collect, store and analyse unprecedented volumes of data are immense and deeply disturbing.



The collapse of any meaningful distinction between the level of intrusiveness between collecting ‘content’ and so-called ‘meta-data’ with current communications technology has significant implications. Electronic communications surveillance over extended periods of time, even if restricted to meta-data, allows the compilation of a comprehensive profile of an individual as well as of their family, friends and associates. Such a profile will incorporate their movements, their interests, their political and religious beliefs, their health - to flag but the obvious.

The potential damaging effects of such intrusions into privacy are significant both in relation to individuals and to the health and robustness of democratic societies.

It has never been more important that lawful surveillance and intrusions upon privacy, which a democratic nation determines to be necessary and proportionate for its security, are subject to strong independent oversight, accountability and maximum transparency.

The amendments proposed in this Bill, if enacted, will provide a significant strengthening of these protections.

5. NSWCCL supports a more comprehensive review and amendment of the TIA Act.

While supporting the current Bill, the NSW CCL also supports a more comprehensive review of the TIA Act.

Senator Ludlam in his second reading speech, acknowledged the need for a comprehensive review of the TIA Act:

“The Australian Greens strongly support the Australian Law Reform Commission (ALRC) recommendation that the Telecommunications Interception and Access Act (TIA) be reviewed in its entirety.

Until an Australian government has the sense to implement the ALRC's recommendation, the TIA must be amended piecemeal, such as with this Bill, in an effort to return Australian law enforcement procedures to protecting the hard-won rights fundamental to a liberal democracy.”¹

The need for more extensive amendment is supported by the recent report into Potential Reforms of Australia’s National Security Legislation by the Parliamentary Joint Committee on Intelligence and Security (PJCIS).² In particular, the PJCIS made recommendations in relation to the adequacy of privacy protections: the proportionality tests (Rec 2), reporting requirements (Rec 3), the numbers of agencies able to access telecommunications data (Rec 5) and the sharing of information provisions (Rec 8).

¹ Second reading Speech, Telecommunications Amendment (Get A Warrant) Bill 2013, Senate Hansard 18th June 2013.

² Tabled in Parliament 24th June 2013.



NSWCCL recommends that the Committee incorporate into its consideration the relevant recommendations –especially 2-8) of the PJCIS report.

As noted, this submission is a brief statement of the NSWCCL position. We would be happy to assist the Committee and elaborate with further evidence if the Committee decides to hold hearings at a later date.

This submission was prepared on behalf of the NSWCCL by Dr Lesley Lynch, member of the Executive and NSWCCL Convenor of the National ASIO Campaign.

Yours sincerely

Dr Lesley Lynch

NSW Council For Civil Liberties

The New South Wales Council for Civil Liberties (CCL) is committed to protecting and promoting civil liberties and human rights in Australia.

CCL is a Non-Government Organisation (NGO) in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

CCL was established in 1963 and is one of Australia's leading human rights and civil liberties organisations. Our aim is to secure the equal rights of everyone in Australia and oppose any abuse or excessive power by the State against its people.