

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Police Powers (Surveillance Devices) Amendment Bill 2022

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Mr Speaker, I move that the Bill now be read a second time.

The Police Powers (Surveillance Devices) Amendment Bill 2022 (the Bill) facilitates a review into the use of surveillance devices in correctional facilities that was announced by now former Commissioner of Police on 31 August 2022. It will also allow for any future review into operational matters under the *Police Powers (Surveillance Devices) Act 2006* (the Act).

The review follows the Supreme Court decision in *Tasmania v Thompson (No 2)* [2022] TASSC 55, where, due to a defect in the warrant authorising the use of a surveillance device, Justice Brett exercised his discretion to exclude the evidence obtained by the use of a surveillance device.

An examination of the circumstances in this case found that an installed device was left recording continuously in a meeting room which may have been used by lawyers and their clients. Although there is no suggestion that any conversations, other than those of the targets of the investigation, were listened to or accessed, the likely recording of privileged conversations was sufficient for the Court to exercise the discretion to exclude the evidence, despite police acting in accordance with what they believed to be a valid authority under the warrant.

A factor in this decision was that it was not made clear to the magistrate, to whom the warrant application was made, that the continuous recording would be undertaken. If it had been, the magistrate may either have refused to issue the warrant or may have placed conditions on any warrant they issued.

The identification of this issue led to the decision of then Commissioner of Police to appoint former Solicitor-General, Michael O'Farrell SC (the reviewer) to conduct a review of all surveillance device warrants issued over the last decade that authorised the use of devices in prisons, with a particular focus on the adequacy of the information provided in the applications for those warrants.

Mr Speaker, the decisive action taken by the then Commissioner of Police to implement the review should reassure the community that Tasmania Police takes the powers it is entrusted with very seriously, and has no hesitation in being accountable for their use. Further, if there are any learnings from the review, I have the greatest confidence that the new Commissioner of Police will ensure they are implemented.

However, following the announcement of the review, and the tabling in this Parliament of its Terms of Reference, it has been identified that the existing provisions of the Act limit the information that can be provided to reviewer.

As the Act deals with covert investigative techniques, it includes restrictions on the use of information. For these investigative techniques to be successful, there needs to be a degree of secrecy regarding law enforcement methodology and capability. The restrictions also extend to any information captured through the use of a device, acknowledging that any information captured can be extremely private to the persons under surveillance.

Section 32 of the Act classifies a range of information as 'protected information', with section 33 creating an offence for the use or communication of such information, outside of the permitted uses specified.

Mr Speaker, while there are already permitted uses for the inspection of records by the inspection entity, and for investigations undertaken by the Ombudsman, these do not extend to the type of review proposed in this instance. As a result, the Bill seeks to amend the existing provision by providing for the announced review, and any future inquiries. It does this by amending the Act to allow the use or communication of protected information for the purposes of an inquiry, review, or investigation, approved by the chief officer of a law enforcement agency. These are reviews into the operation of the Act or the performance or exercise of functions and powers under the Act by officers of the law enforcement agency.

The Bill also provides for the publication of any report resulting from an inquiry, review, or investigation.

In approving an inquiry, review, or investigation, the chief officer may also impose conditions on the use, communication, or publication, of protected information. For example, this can ensure investigative techniques are not unduly compromised, and privacy of persons is appropriately protected. This ensures that the Commissioner of Police can authorise a review without concern that the review may result in the disclosure of information that should be kept confidential.

It also allows the Commissioner to approve publication in a public forum where that is desirable, such as will be the case for the aforementioned review. As the Minister for Police, Fire and Emergency Management advised the House when he tabled the updated Terms of Reference for the review, the report resulting from this review will be tabled in Parliament.

It should also be noted that section 33(3) of the Act does not restrict the communication of protected information once it has entered the public domain. As a result, there will be no restrictions on the use or communication of information in the report following its tabling.

Mr Speaker, Tasmania Police believes strongly in transparency and accountability, as demonstrated by the swift announcement of the review following the Court's decision. The Government strongly supports this review, which is designed to give the community confidence that any operational issues arising will be addressed. The Bill facilitates this commitment, by not only allowing for the immediate review to be undertaken by the reviewer, but by providing a mechanism to ensure greater accountability into the future.

Mr Speaker, I commend the Bill to the House.