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To whom it may concern

Thank you for providing an opportunity to the Northern Territory Government to make a submission to the Australian Government's *Reform of Australia's Electronic Surveillance Framework* discussion paper (discussion paper).

The Northern Territory Government does not wish to make detailed submissions on all questions posed by the discussion paper at this point in time, but generally supports the simplification and modernisation of Australia's electronic surveillance legislative framework at the Commonwealth level, subject to the matters raised in this submission and throughout ongoing consultation on the proposed reforms through the Electronic Surveillance Reform Taskforce.

### **The Northern Territory context**

The Northern Territory Government understands that the reforms will involve the development of a new Act to replace the *Surveillance Devices Act 2004* (Cth), the *Telecommunications (Interception and Access) Act 1979* (Cth), and parts of the *Australian Security Intelligence Organisation Act 1979* (Cth) governing the use of computer access and surveillance device powers.

Further, it appears that states and territories may be asked to consider amendments to their surveillance device legislation as part of the reforms, although the extent of those amendments is not clear at this point in time. Law enforcement officers in the Northern Territory use powers under the *Surveillance Devices Act 2007* (NT). Although the Northern Territory Police may use powers under the *Surveillance Devices Act 2004* (Cth) for the purpose of investigating a federal offence, this happens rarely (if ever). The Northern Territory Government presently considers that the *Surveillance Devices Act 2007* (NT) is fit for purpose and generally operates well in the Northern Territory.

In these circumstances, the Northern Territory Government has a particular interest in being consulted on the detail of any proposals to amend state and territory surveillance device legislation. The Northern Territory Government would be reluctant to support any reforms which would diminish current law enforcement capabilities or impose additional responsibilities or resourcing requirements unnecessarily.

The Northern Territory Government also submits that any reforms which affect the Northern Territory should take into account its unique jurisdictional features. For example, there is only one Federal Circuit and Family Court of Australia Judge in the Northern Territory. Law enforcement agencies in the Northern Territory therefore do not have the same level of access to the federal court system for the purpose of obtaining warrants under Commonwealth legislation, as compared to agencies in other jurisdictions. The Northern Territory's access to electronic surveillance powers should not be prejudiced because of these factors.

The Northern Territory Government also makes the following further submissions in response to particular questions posed by the discussion paper.

### **Who can access information under the new framework?**

- In response to question 1, the Northern Territory Government notes that the discussion paper suggests that a Commonwealth surveillance device prohibition could create consistency across all jurisdictions. As foreshadowed by the discussion paper, the Northern Territory Government would wish to be consulted regarding this proposal in due course, noting that the *Surveillance Devices Act 2007* (NT) already prohibits the installation, use and maintenance of surveillance devices in the Northern Territory without a warrant or emergency authorisation.
- In response to question 4, the Northern Territory Government agrees that agencies seeking additional electronic surveillance powers should only be provided with those powers where a clear and compelling case is made that justifies the intrusion into personal privacy. The Northern Territory Government does not presently consider that there are any other additional considerations that the Australian Government should consider when deciding whether an agency should have access to particular powers under the proposed legislative framework.

### **What information can be accessed?**

- In response to question 10, without further detail, the Northern Territory Government does not presently consider that there would be benefits to distinguishing between different kinds of non-content information, or that particular kinds of non-content information should be treated as being more or less sensitive than others. However, the Northern Territory Government is open to further discussion of this issue.
- In response to question 11, the Northern Territory Government would in principle support the removal of the distinction between 'live' and 'stored' communications under the *Telecommunications (Interception and Access) Act 1979* (Cth) in a new Commonwealth legislative framework, provided that the threshold for accessing such communications is not unreasonably heightened and that there are appropriate processes by which industry can be required to retain communications. The Northern Territory Government would wish to be consulted specifically on questions relating to appropriate thresholds for access in due course.

- In response to question 14, the Northern Territory Government notes that the proposed approach refers to a possible way of regulating the types of information that can be obtained by surveillance devices under the *Surveillance Devices Act 2004* (Cth) and *Australian Security Intelligence Organisation Act 1979* (Cth), as opposed to specific types of devices.

The discussion paper states that the Australian Government will work closely with states and territories to ensure that any new concepts and definitions are considered alongside state and territory surveillance and tracking device legislation. As outlined above, the Northern Territory Government rarely uses the *Surveillance Devices Act 2004* (Cth) and presently considers that the *Surveillance Devices Act 2007* (NT) regulates the use of optical, listening, tracking and data surveillance devices in a way that is fit for purpose for the Northern Territory. The Northern Territory Government does not presently consider that amendments to the NT Act are justified and would wish to be consulted regarding the detail of any proposals for reform to state and territory legislation.

- In response to question 15, the Northern Territory Government agrees that the Commonwealth legislative framework could be simplified to reflect the functional equivalency of many existing warrants but is not in a position to make a suggestion on how that can be achieved at this point in time. The Northern Territory Government emphasises that any corresponding proposals to amend the *Surveillance Devices Act 2007* (NT) will be carefully examined.

#### **When will information be accessed?**

- In response to question 17, the Northern Territory Government agrees in principle that it would be appropriate to harmonise legislative thresholds for covert access to private communications, content data and surveillance information in Commonwealth legislation where existing warrants can be said to be functionally equivalent, but would wish to be consulted further on the appropriate thresholds for access in due course. The Northern Territory Government supports reform regarding the particular offences which will allow a law enforcement agency to make a warrant application. Current provisions under the *Telecommunications (Interception and Access) Act 1979* (Cth) are complex and can be overly restrictive. For example, the offence of attempting to pervert the course of justice carries a maximum sentence of 15 years' imprisonment in the Northern Territory, but does not presently amount to a 'serious offence' for the purpose of the *Telecommunications (Interception and Access) Act 1979* (Cth).

Again, the Northern Territory Government does not presently consider that any corresponding amendments to the *Surveillance Devices Act 2007* (NT) are justified, and would wish to be consulted regarding the detail of any proposals for reform.

- In response to question 18, the Northern Territory Government does not presently consider that there are any other changes that should be made to the framework for accessing information about communications.
- In response to question 19, the Northern Territory Government notes the proposed thresholds in relation to access to information about a person's location or movements under Commonwealth legislation. The Northern Territory Government does not have a particular view on this proposal, but again preserves its position regarding any corresponding proposals for amendments to the *Surveillance Devices Act 2007* (NT).

- In response to question 20, the Northern Territory Government presently supports the proposed framework requiring warrants and authorisations to be targeted at a person in the first instance (with exceptions for objects and premises where required).
- In response to question 21, the Northern Territory Government presently considers that the proposed additional warrant threshold for third parties, namely that obtaining information under a person-based warrant would be impractical or ineffective, is appropriate.
- In response to question 22, the Northern Territory Government presently considers that the proposed additional warrant threshold for criminal networks and groups, namely that obtaining information under a person-based warrant would be impractical or ineffective, is appropriate.
- In response to question 23, the Northern Territory Government presently considers that the proposed approach to the question of proportionality is appropriate. The Northern Territory Government does not propose any further matters should be considered by an issuing authority when considering necessity and proportionality.
- In response to question 24, the Northern Territory Government presently considers that magistrates, judges and Administrative Appeal Tribunal members should continue to issue warrants for law enforcement agencies seeking access to electronic surveillance information. In the Northern Territory, Local Court Judges and Supreme Court Judges should retain their responsibilities under the *Surveillance Devices Act 2007* (NT).
- In response to question 25, the Northern Territory Government in principle supports the proposed principles-based, tiered approach to the use and disclosure of information derived from electronic surveillance activities. Current information-sharing rules under the Commonwealth electronic surveillance legislative framework can be complex and unduly restrictive. For example, the Northern Territory Police are aware of an instance where a telephone intercept warrant revealed information that could be relevant to matters of child protection. However, despite Northern Territory mandatory reporting requirements, Northern Territory Police were advised it could not lawfully be disclosed to the relevant Northern Territory agency.
- In response to question 26, the Northern Territory Government agrees that destruction provisions will need to balance agencies' operational needs and continued performance of their functions, appropriate oversight and the privacy of individuals.

### **Safeguards and oversight**

- In response to question 31, the Northern Territory Government presently considers that the Northern Territory Ombudsman should retain oversight for the use by Northern Territory Police of telephone intercept powers under the *Telecommunications (Interception and Access) Act 1979* (Cth), in addition to powers under the *Surveillance Devices Act 2007* (NT). Requirements imposed by oversight frameworks should be clear and consistent across all jurisdictions.

- In response to questions 32 and 33, the Northern Territory Government does not presently consider that any additional reporting or record-keeping requirements are justified, and considers that existing requirements should be rationalised where possible. For example, where reporting requirements do not assist meaningful transparency, consideration should be given to their removal.

The Northern Territory Government looks forward to contributing to the detailed development of these reforms through the Electronic Surveillance Reform Taskforce.

Yours sincerely



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