



Cayman Islands Human Rights Commission

promoting, protecting and preserving human rights

23 June 2016

Human Rights Commission's Statement on The ICTA (Amendment) Regulations, 2016

The Human Rights Commission published a report in 2013 setting out its concerns related to the Interception of Communications. The Commission had four main concerns at the time. Those included that:

1. there was no judicial oversight in the process of the issuance of telecommunication interception warrants;
2. based on the National Security Council's ("the NSC") constitutional mandate the Governor should be consulting with the NSC as a matter of course on any applications for an intercept warrant on matters relating to internal security;
3. members had not been appointed to serve on the Audit Committee; and
4. the Law appeared to contemplate the use of warrants in wider circumstances than as indicated by officials.

Having reviewed the recently proposed amendments the Commission offers the following comments as they relate to the concerns documented in 2013 as set out above:

1. the amendments do not address this and the concern of the Commission remains;
2. whilst the amendments do not change this specifically they do strengthen the oversight by requiring that the Audit Committee present written reports to the NSC no later than 30 days after an audit is complete (once every six months);
3. the amendments cannot address the appointment, or lack thereof, of members to the Audit Committee. The lack of a fully constituted Audit Committee continues to be a significant concern of the Commission; and
4. The amendments do address the 2013 concern by:
 - a. limiting the grounds on which a warrant may be issued – it now reads "The Governor may only issue a warrant..."; and
 - b. defining "serious crime" (a ground on which a warrant may be issued).

In addition the Commission recognises other safeguards have been engrained in the proposed amendments such as the:

1. provision for the destruction of any communication intercepted as soon as no longer needed for the purposes allowed under the regulations;

2. provision for disclosure to ensure the fairness of a criminal prosecution or in a case where a judge or magistrate is satisfied it is necessary in the interests of justice; and
3. prohibition of unauthorised disclosures (which becomes an offense).

The Commission is encouraged to see the proposed amendments but continues to urge the Governor to appoint members to the Audit Committee as a matter of priority.

Ends.