

A1944217

7 April 2020

Mr Andrew Hastie MP
Chair
Parliamentary Joint Committee on Intelligence & Security
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Mr Hastie

Telecommunications Legislation Amendment (International Production Order) Bill 2020

This letter represents my submission to the Parliamentary Joint Committee on Intelligence and Security's inquiry into the effectiveness of the Telecommunications Legislation Amendment (International Production Orders) Bill 2020 (the Bill).

Officers from the Department of Home Affairs (the Department) consulted with my Office as the Bill was developed and drafted, and the comments we provided to the Department were appropriately addressed. With this in mind, I do not have any comments on the Bill, noting that the powers would be largely consistent with existing provisions in the *Telecommunications (Interception and Access) Act 1979* (TIA Act) in respect of which my Office already has oversight.

The Bill would provide my Office with responsibility for inspecting and reporting on law enforcement and integrity bodies' use of international production orders (IPOs) to intercept telecommunications provided by organisations overseas, or gain access to stored communications and telecommunications data held by these organisations. While my Office currently inspects those bodies' use of the above powers within Australia,¹ the Bill would create three new, parallel regimes which would impose an additional set of requirements to access data and content held overseas.

My Office would be able to leverage its existing knowledge and expertise from inspecting use of domestic access regimes to develop and implement approaches for inspecting the use of IPOs. Further, we would look to minimise costs by scheduling multiple inspections with a single agency wherever possible.

However, the Bill proposes requirements that my Office inspect and report about the use of IPOs separate from the inspection reporting requirements for the domestic regime. For this reason, my staff would likely need to inspect both a full sample of IPOs and a full sample of domestic authorisations for each type of access and for each agency.

Under the Bill, six Commonwealth agencies and 15 State and Territory agencies could gain access to data and information held overseas under each of the three IPO regimes. The Office would also have the function of inspecting the records of the Australian Designated Authority. This could result in up to 65 additional inspections each year.²

¹ Apart from State/Territory agencies' use of telecommunications interceptions powers, which are oversighted by State/Territory authorities.

² One inspection per year of each of the three regimes at each of the 21 Commonwealth, State and Territory agencies, plus one or two inspections per year at the Australian Designated Authority.

If passed, the IPO Bill will make it easier for law enforcement agencies to obtain certain electronic information under proposed and future bilateral or multilateral agreements, when compared to current mutual legal assistance arrangements. For example, it is not currently possible to provide mutual legal assistance under the *Mutual Legal Assistance in Criminal Matters Act 1987* in respect of telecommunications interceptions, but this would be possible under the Bill.

On this basis, I anticipate that not only will the number of inspections my Office is required to perform increase, but so too will the volume of electronic information accessed by Australian law enforcement agencies which my staff will need to assess.

While I am broadly comfortable with the oversight role the Bill provides my Office, if the Bill is passed without appropriate funding, my Office will not be able to undertake the activities necessary to assure the Parliament these new powers are being used appropriately. I note that my Office is engaged in conversations with the Government, with funding proposed to be determined in an upcoming budget process.

Further, I am of course mindful that the current coronavirus pandemic has placed Australia's economy under significant strain. However, it remains important to ensure that, where agencies are given significant new powers to covertly intrude on individuals' privacy, appropriate oversight is provided for, both in law and in practice.

I would be happy to appear before the Committee to answer questions or provide additional information if this would assist the current inquiry. If the Secretariat would like to discuss this submission, they may contact [REDACTED], Senior Assistant Ombudsman – Assurance, [REDACTED]

Yours sincerely

[REDACTED]

Michael Manthorpe PSM
Commonwealth Ombudsman

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