

**Report to the Attorney-General  
on agencies' compliance with  
Part 15 of the  
*Telecommunications Act 1997***

FOR INSPECTIONS OVER 1 JULY 2021 TO 30 JUNE 2022  
COVERING RECORDS FROM 1 JULY 2020 TO 30 JUNE 2021

Report by the Commonwealth Ombudsman, Iain Anderson,  
under s 317ZRB(3) of the *Telecommunications Act 1997*



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## Executive summary

This report presents the results of inspections conducted by the Office of the Commonwealth Ombudsman (the Office) under Part 15 of the *Telecommunications Act 1997* (the Act) from 1 July 2021 to 30 June 2022 (the inspection period) in relation to records covering the period 1 July 2020 to 30 June 2021 (the reporting period).

The industry assistance framework under Part 15 allows interception and intelligence agencies to request or compel a designated communications provider (DCP) to provide certain types of technical assistance for a specified purpose under the Act. The definition of DCP (s 317) covers an expanded range of communications industry providers beyond traditional carriers and carriage service providers. Under the Act, 'interception agency' means the Australian Federal Police, the Australian Criminal Intelligence Commission, and the police force of a state or the Northern Territory – 9 agencies in total.

Agencies can seek industry assistance through 3 mechanisms: Technical Assistance Requests (TAR; voluntary), Technical Assistance Notices (TAN; compulsory), and Technical Capability Notices (TCN; compulsory).

Part 15 includes procedural requirements and safeguards to ensure any request or notice given to a DCP is reasonable and proportionate, and that compliance with the request or notice is practical and technically feasible.

Agencies' use of industry assistance powers is subject to independent oversight by the Commonwealth Ombudsman for interception agencies, and the Inspector General of Intelligence and Security (IGIS) for intelligence agencies.

### Agencies' use of powers in the reporting period

During the reporting period, 4 of the 9 interception agencies used industry assistance powers under Part 15 of the Act. In total, 26 TARs and 1 TAN were given by agencies. This was the first TAN to be issued under Part 15. TCNs require joint approval of the Attorney-General and Minister for Communications. None were given in the reporting period.

Under Part 15 of the Act, industry assistance powers must be used to:

- enforce the criminal law as it relates to serious Australian offences (punishable by a maximum penalty of 3 years' imprisonment or more)
- assist the enforcement of criminal laws in a foreign country, as it relates to serious foreign offences

- safeguard national security.

The TARs given during the reporting period sought industry assistance in relation to organised offences, homicide, illicit drug offences, sexual assault, cybercrime offences and acts intended to cause injury. The TAN given during the reporting period sought industry assistance in relation to homicide.

## Inspection outcomes

In 2021-22 we made no recommendations, **7 suggestions** and **16 better practice suggestions** to improve agencies' compliance with the Act. This is a decrease in the number of findings compared to 2020-21 (when we made 2 recommendations, 29 suggestions and 58 better practice suggestions), however there was also a decrease in the number of inspections we conducted since only 4 agencies used the powers during the reporting period.

Agencies with an established framework and governance to use the industry assistance powers and a maturing culture of compliance generally presented with fewer findings. We found all agencies had taken steps to implement the outcomes from our 2020-21 health checks and significantly progressed their frameworks, governance, policy, procedures and training to apply the industry assistance powers. In our observation, agencies with a mature culture of compliance, supported by good governance and administration, were able to use the powers with industry more effectively than agencies with less mature arrangements.

We observed the industry assistance powers being used in more complex circumstances, including in conjunction with powers under State and Territory laws and to assist agency functions with respect to enforcing the criminal law. We expect that as more agencies use the powers and increasingly seek assistance from industry for more complex investigative solutions or tailored arrangements with DCPs, new or unanticipated compliance risks will arise. Given the dynamic nature in which industry assistance powers are applied, we expect that it will take some time to grow consistency and maturity in all agencies application and administration of the powers.

We identified several key themes and issues through our inspections:

- a mature culture of compliance and good governance and administration enabled agencies to use the powers more effectively to seek a broad range of assistance from industry
- an isolated instance of an agency attempting to use TARs where it appeared a related telecommunications data authorisation was not in place

- limited instances where a DCP began preparatory work or provided assistance outside of the 'in-force' period for a TAR
- internal agency instruments delegating powers requiring updates or closer management
- enhancements required to training material and delivery to target audiences using the powers
- limitations on our ability to consider warrants or authorisations used in conjunction with an industry assistance mechanism, – notably when state or territory laws limit agencies' ability to share information about warrants or authorisations that are used alongside industry assistance, but for which we are not the oversight body.

We also inspected records of the first TAN issued under Part 15 of the Act, by NSW Police Force.

The details of these matters and our findings are discussed further in Part 3 of this report.



# Part 1: Introduction

## 1.1 Legislative background

In December 2018, Schedule 1 of the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* (TIA Act) amended the *Telecommunications Act 1997* (the Act) introducing a Part 15 to the Act. The legislation created a comprehensive framework for interception and intelligence agencies to obtain assistance from industry to support their functions.

The industry assistance framework allows interception and intelligence agencies to request or compel a designated communications provider (DCP) to give certain types of assistance, in connection with any or all the eligible activities of the DCP, for a specified purpose under the Act. Section 317C of the Act defines what constitutes a DCP. This covers an expanded range of communications industry providers beyond traditional carriers and carriage service providers.

The industry assistance mechanisms through which agencies can obtain assistance are: Technical Assistance Requests (TARs); Technical Assistance Notices (TANs), and Technical Capability Notices (TCNs). The glossary of terms in **Annex 1** provides additional detail about these mechanisms.

Industry assistance mechanisms do not replace the warrant and authorisation regimes under the *Telecommunications (Interception and Access) Act 1979* (the TIA Act), the *Surveillance Devices Act 2004* (the SD Act), or other state or territory laws, and must not provide a new basis for interception. For example, to intercept communications, agencies still need to seek a telecommunications interception warrant under the TIA Act. However, industry assistance mechanisms can be used to seek technical assistance to help give effect to a separate warrant or authorisation.

Part 15 of the Act allows agencies to seek reasonable and proportionate assistance directly from DCPs in conjunction with existing warrants and authorisations for specified purposes.

Part 15 includes a range of procedural requirements and safeguards to ensure:

- any request or notice given to a DCP is reasonable and proportionate
- that compliance with the request or notice is practical and technically feasible
- that the agency is not requiring or requesting the DCP to implement or build a systemic weakness, and

- in the case of interception agencies, that requests or notices are used to enforce the criminal law, as far as it relates to serious offences punishable by a maximum term of imprisonment of 3 years or more.

## 1.2 Our oversight role

Under section 317ZRB(1) of the Act, an Ombudsman official may inspect the records of an interception agency to determine the extent of its compliance with Part 15 of the Act. Interception agencies and the Attorney-General are also required to notify the Ombudsman within 7 days of undertaking certain activities such as giving, varying or revoking a TAR or TAN.

Industry assistance mechanisms can be used to compel DCPs to provide technical assistance to agencies. The assistance provided by a DCP may contribute to significant intrusions on individuals' privacy during an investigation. The covert nature of these powers means members of the public will rarely know of their use (other than in high level, de-identified reporting). The Ombudsman's oversight role provides information to Parliament and the public on agencies' compliance with legislative requirements in using industry assistance powers.

The Commonwealth Ombudsman's oversight function does not extend to compliance by DCPs.

During our inspections, we examined interception agencies' records and interviewed key agency staff to determine the extent of their compliance with Part 15 of the Act and identify potential compliance risks in agency procedures. We assessed agencies' progress in taking remedial action following compliance and health check findings made by our Office during the health checks conducted in the 2020–21 inspection period.

Following each inspection, we provided agencies with an inspection report detailing our findings. An Ombudsman inspection may identify a range of issues, from minor administrative errors through to serious non-compliance and systemic issues. If an issue is sufficiently serious, the Ombudsman may make formal recommendations for remedial action. On other issues, we may make suggestions for improvement to encourage agencies to take responsibility for identifying and implementing practical solutions. We may also make better practice suggestions where we consider an agency's existing practice may expose it to a risk of non-compliance.

## Part 2: Inspections overview

In 2021–22, we inspected the 4 interception agencies that used industry assistance powers within the reporting period (see **Table 1** below). The remaining 5 interception agencies did not use the powers within this period.

**Table 1: Summary of inspections conducted**

Agency	Powers used	Compliance assessment conducted
Australian Criminal Intelligence Commission (ACIC)	✓	✓
Australian Federal Police (AFP)	✓	✓
New South Wales Police Force (NSWPF)	✓	✓
Northern Territory Police Force (NTPFES)	✗	✗
Queensland Police Service (QPS)	✗	✗
South Australia Police (SA Police)	✗	✗
Tasmania Police	✗	✗
Victoria Police	✓	✓
Western Australia Police Force (WA Police)	✗	✗

### 2.1 Inspection methodology

We reviewed interception agencies' records to assess the extent of their compliance with Part 15 of the Act. We assessed whether agencies:

- sought and exercised industry assistance in accordance with the requirements in Part 15 of the Act
- managed information obtained through use of industry assistance in accordance with legislative requirements
- met notification and reporting obligations, and
- demonstrated a culture of compliance during their use of industry assistance powers.

All agencies inspected in this reporting period had previously undergone a health check by our Office in 2020–21. A health check assesses agencies' readiness to commence using industry assistance powers and helps agencies identify potential

risks and areas for improvement. During inspections in 2021–22 we reviewed remedial action undertaken by agencies in response to both compliance and health check findings made in our previous inspections.

We also interviewed key staff to assess their understanding of their roles and responsibilities under Part 15 of the Act.

Where industry assistance gave effect to a warrant or authorisation, we also reviewed records to determine the extent of the agency's compliance with the legislation governing the use of these affiliated warrants or authorisations. We could not do this where the warrant or authorisation was issued under a legislative framework which our Office does not oversee. For example, this arose during the inspection of the NSWPF use of relevant state-based powers in conjunction with industry assistance. This limitation also applied to other interception agencies using, or likely to use, state-based powers or an agency's function in conjunction with industry assistance. Our Office is continuing to explore options to oversight industry assistance powers used in conjunction with powers or functions outside of our Office's remit.

The *Industry Assistance Inspection Criteria* document at **Annex 2** provides further information about our compliance assessment methodology.

## Part 3: Inspection findings

### 3.1 Inspections findings summary

The 4 agencies using industry assistance powers during the reporting period issued a total of 26 TARs.

- ACIC (3 TARs)
- AFP (2 TARs)
- NSWPF (16 TARs)
- Victoria Police (5 TARs).

These TARs sought industry assistance in relation to organised offences and/or criminal organisations, homicide, illicit drug offences, sexual assault, cybercrime offences and acts intended to cause injury.

One agency (NSWPF) issued one TAN. This was the first TAN to have been issued under Part 15 of the Act. The TAN sought industry assistance in relation to homicide.

None of the agencies our Office oversees sought or were issued a TCN.

Our 2021–22 industry assistance inspections resulted in 21 findings (individual issues or categories of issue we identified during our inspections). From these findings, we made no recommendations, 7 suggestions and 16 better practice suggestions (see **Table 2** below). A recommendation reflects a serious or systemic compliance issue or an issue on which an agency has not made sufficient progress in implementation. A suggestion reflects less serious and/or isolated issues where we consider an agency should take action to improve. Better practice suggestions highlight ways an agency might refine its practices where an existing practice may expose the agency to a risk of noncompliance.

Agencies with established frameworks and governance to use the industry assistance powers and a maturing culture of compliance generally presented with fewer findings, suggestions and better practice suggestions. The decrease in the number of findings made to these agencies in 2021-22 compared to 2020-21, alongside increased use of the powers, suggests enhancing these frameworks reduces the risk of non-compliance.

**Table 2: findings, recommendations, suggestions and better practice suggestions**

<b>Inspection results—compliance assessments</b>				
<b>Agency</b>	<b>Findings</b>	<b>Recommendations</b>	<b>Suggestions</b>	<b>Better practice suggestions</b>
ACIC	5 (13)	0 (0)	0 (12)	5 (5)
AFP	4 (11)	0 (0)	3 (10)	2 (9)
NSW Police Force	6 (5)	0 (0)	3 (2)	3 (1)
Victoria Police*	6	0	1	6
<b>Total</b>	<b>21 (29)</b>	<b>0 (0)</b>	<b>7 (24)</b>	<b>16 (15)</b>

\* There are no comparative numbers for Victoria Police as they did not use industry assistance powers in 2020-21.

We observed industry assistance powers being used in more complex circumstances. This included using industry assistance powers to execute powers

under State and Territory laws and to assist an agency's function with respect to enforcing the criminal law.

We expect that as agencies increase their use of the powers to seek complex investigative solutions or tailored arrangements with DCPs, new or unanticipated compliance risk will arise. Similar, as more agencies commence using the powers, we expect there will be varying levels of maturity in agencies frameworks for using the powers and compliance cultures.

Given the dynamic nature in which industry assistance powers are applied, we expect that it will take some time to grow consistency and maturity in agencies application and administration of the powers. Our office is working with agencies to provide advice on compliance risk and actions that may reduce the risk of non-compliance.

### 3.2 Agency progress from health checks

We reviewed the action taken by all 4 agencies we inspected in relation to the findings of our previous health checks. We observed that all agencies had progressed their governance framework to support use of industry assistance powers.

Our previous health checks aimed at assessing an agencies readiness to use the industry assistance powers and providing agencies with advice on potential risk and areas for improvement. While the 4 agencies had made progress on improving their policies, procedures, training, and record-keeping in response to our health checks, some residual areas for improvement and risk mitigation remained outstanding.

We did not observe serious or systemic non-compliance in these residual areas. However, we remain concerned about the risk of future non-compliance with increased use of industry assistance powers without the appropriate frameworks being in place.

For example, during our inspection we noted the AFP had not yet prepared a guidance framework for managing disclosure of information related to the use and administration of industry assistance powers, captured under s 317ZF of the Act. We acknowledge the AFP's advice that it was finalising advice in relation to the application of the provisions to its members. However, we were concerned that in the absence of clear information and guidance about disclosure requirements, AFP officers may be unclear about their obligations and risk associated with disclosing information not permitted by s 317ZF of the Act. We reiterated our previous suggestion from the health check that AFP should, as a matter of priority, finalise

its framework for managing information disclosure. In response, the AFP advised it would review the finalised legal advice and update governance and guidance documentation addressing the points raised by our Office.

We will continue to monitor the implementation of previous advice from our health checks during future inspections; where required, we make suggestions and better practice suggestions to address any residual risks of non-compliance.

### 3.3 Inspection spotlight issues

#### *Benefits of a mature culture of compliance*

In general, we found all 4 agencies had made significant progress with establishing their governance and administrative frameworks to apply the industry assistance powers and had taken steps to implement the outcomes from our 2020–21 health checks.

For example, during our inspection we found NSWPF had a mature compliance culture in relation to its use of the industry assistance powers and had been proactive in developing and enhancing its framework to apply industry assistance powers. This included:

- taking action on our previous findings
- identify, disclosing and remedying instances of non-compliance
- improving recording of delegation consideration and effectiveness reports
- automated monitoring of in-force periods
- comprehensive delegate briefing packages
- proactive revocation processes.

We observed that NSWPF was the highest user of industry assistance powers and had expanded the types of assistance it was seeking from industry through the use of these powers. While we have identified instances of non-compliance, we did not identify systemic issues and we consider the maturity of NSWPF's culture of compliance has been an enabler for the agency to broaden its use of the powers with industry.

All 4 agencies accepted and advised they are acting upon our inspection findings in 2021–22. We will confirm agencies' progress at our next industry assistance inspections.

#### *Attempt to use a TAR without a related warrant or authorisation in place*

Industry assistance assist interception agencies with exercising a function or power and is not a framework by itself to access content or data. Section 317ZH prohibits

a TAR, TAN or TCN from replacing a warrant or authorisation if the issuing agency would otherwise need one for the activity.

We found one instance where Victoria Police appeared to have sought access to data without a warrant or authorisation in place. The DCP refused to action the TAR and no data was obtained. We found the assistance requested under the TAR would require a prospective data authorisation, however we were advised that only historic data authorisations were made in connection with the TAR. In the event that the DCP had actioned the TAR, we are concerned the DCP would have disclosed unauthorised prospective data.

We consider s 317ZH to be a crucial safeguard under the industry assistance framework. Agencies should actively and routinely consider whether a TAR, TAN or TCN has the effect of requesting or requiring a DCP to do acts that would require a warrant or authorisation to be in place.

We made a better practice suggestion that where there is a warrant or affiliated authorisation connected with an industry assistance mechanism, Victoria Police should specify the details of that warrant or authorisation on its briefing to decision makers, and in its industry assistance register. In response, Victoria Police advised warrant or authorisation details have been added to its industry assistance application form, TAR form, delegate authorisation form and register.

#### *Assistance provided outside the parameters of the TAR*

We identified several instances during our inspection of NSWPF where it appeared assistance was provided outside the in-force period of a TAR. These included instances where:

- a TAR expired but the assistance continued to be provided
- a DCP appeared unaware that they needed to await the formal TAR before providing assistance for the relevant protections to have effect
- a DCP had commenced assistance activities in line with the draft TAR provided as part of the consultation process and prior to the formal TAR having been given.

On each occasion, there were minimal impacts on DCPs – including minimal risk of DCP civil liability – due to the nature of the assistance provided. However, we consider there may be significant risks if this occurred in other circumstances. This includes the impact on the admissibility of evidence or exposure to civil or criminal liability for the DCP, particularly if a DCP that is unfamiliar with assisting law enforcement though Part 15 of the Act.



In response NSWPF advised it had implemented additional processes and updates to its industry assistance framework to pre-empt approaching expiry dates and ensure new requests or notices are in force when ongoing assistance is required. NSWPF also advised of its view that providing instructions to DCPs concerning when they can commence preparatory activities may cause confusion, or be viewed as an inappropriate intrusion into how a provider should carry on its affairs and when to commence its internal business processes, or how civil immunities may apply to the DCP.

### *Updating and Managing Instruments of Delegation*

Under section 317ZR of the Act, certain functions and powers of the chief officer can be delegated to certain levels or equivalent ranks within an agency. For state and territory agencies, this is defined as an Assistant Commissioner or a person holding the rank of Superintendent or an equivalent rank.

During our inspection Victoria Police did not have a comprehensive and appropriately framed instrument of delegation in place. During our 2020–2021 health check, we noticed that 2 delegation instruments signed by the chief officer delegated powers under the Act to give a TAR or TAN but did not delegate powers to revoke these industry assistance mechanisms. This impacted all 5 TARs we reviewed during the inspection. We were confident the errors did not result in serious risks or issues, and that this matter is resolved noting Victoria Police has updated its delegation instrument to cover all functions, and now has a separate revocation template.

During our inspection we identified that the relevant ACIC delegation instrument was not available within the core procedural documents in use by ACIC officers. The ACIC advised it was drafting a delegate briefing pack to emphasise that delegates must satisfy themselves they are covered by a delegation instrument. The ACIC advised that as the delegates under the instrument were within a single reporting line of Covert and Technical Operations, it considered the risk of non-compliance to be low. We noted there may be risk to this practice should the use of industry assistance powers expand to other areas of the ACIC, and suggested as a matter of better practice that instructions on confirming delegations should be included in quality assurance guidance. In response, the ACIC advised it has updated the pre-application checklist, guidelines and procedures with a link and references to the delegations instrument.

### *Deficiencies in training procedures*

Of the agencies inspected, we found that all had developed training for the use of Industry Assistance powers. For the AFP, ACIC and Victoria Police, we continued to

make better practice suggestions relating to the implementation of the training to target key audiences and alignment of training material with governance frameworks.

In response the ACIC advised that it was updating its training, procedures and guidelines. Victoria Police advised a training package was being developed that is tailored to personnel involved in the industry assistance regime and that training records would be kept.

During our 2021-22 inspection, we found the AFP had not acted in relation to our previous better practice suggestion to refresh its training program and provide more targeted training for compliant use of the industry assistance powers. While this suggested action did not follow findings of non-compliance, we consider the implementation of this previous better practice suggestion would achieve greater assurance of robust and responsive compliance with the Act. We expect the AFP will be a significant user of the industry assistance mechanisms and encouraged the agency progress this action at the earliest opportunity. As such, we reiterated our previous better practice suggestion to the AFP. In response the AFP advised it will consider appropriate training programs to support its governance framework and emphasise compliance requirements in relation to industry assistance.

#### *Ensuring compliance with warrant and authorisation provisions in other Commonwealth and State or Territory laws*

Where industry assistance is in connection with, related to, helps or gives effect to a warrant or authorisation, our inspections also assess compliance of these warrants or authorisations against the requirements of the relevant legislation.

Part 15 of the Act relies on the safeguards and protections within the separate legislative schemes for warrants and authorisations that govern how agencies request and receive personal information from DCPs. It is important the warrants and authorisations used in association with industry assistance mechanisms are properly applied for and authorised, without agencies seeking to rely only on considerations made for the industry assistance mechanisms.

During our 2020–2021 compliance assessment of the AFP, we made 2 suggestions relating to authorisations for access to telecommunication data under the TIA Act connected with industry assistance mechanisms. These suggestions pertained to the need to quarantine data where the authorisation to access the data under the TIA Act is in doubt, irrespective of whether the industry assistance mechanism had been appropriately applied. While the AFP sought legal advice, we consider this did not determine whether the authorisations were properly made. We reiterated our advice that where there is any doubt whether authorisations were properly given, the AFP should quarantine the information disclosed under these authorisations,

determine whether there has been subsequent use or disclosure of such information, and seek legal advice on remedial action. In response the AFP advised it would review the received legal advice, consider the previous suggestions made by our Office and take action as appropriate.

We observed several instances where NSWPF and Victoria Police applied the industry assistance mechanism in conjunction with warrants or powers under State law. For example, , based on advice from the Law Enforcement Corruption Commission overseeing NSW based warrants and authorisations, state provisions limited the ability of NSWPF to share information that would allow us to consider whether these warrants or authorisations used in connection with industry assistance mechanism were lawful, current and consistent with 'in-force' period for the industry assistance mechanism. Our Office is continuing to explore options to oversight industry assistance powers used in conjunction with powers or functions outside of our remit.

### *First use of a TAN*

In 2020-21 NSWPF became the first agency to issue a TAN under Part 15 of the Act. We inspected records associated with this TAN in 2021-22. We did not identify any systemic issues requiring a recommendation from our Office. We made 2 suggestions to NSWPF stemming from our review.

We found NSWPF was unable to provide evidence that consultation had been undertaken specifically by the chief officer or their delegate with the DCP before the TAN was given, as required under s 317PA(1) of the Act. Records indicated that consultation had been undertaken by NSWPF staff and that the delegate was provided with an account of the consultation that had occurred before giving the TAN. To ensure full compliance with the requirements of s 317PA(1), we suggested NSWPF establish a process to formalise consultation by a delegate when seeking to give a TAN. In response NSWPF advised it had developed a template email to be sent by the Chief Officer to a DCP to commence each consultation process required under s 317PA, and updated its business rules to reflect this requirement.

Under s 317LA(1)(a), the chief officer or his delegate must provide the AFP Commissioner with a written notice setting out the proposal for the TAN prior to the TAN being given to the DCP. We were unable to establish if NSWPF adhered to this requirement. We suggested NSWPF formalise its process for giving written notice to the AFP Commissioner by a delegate when seeking approval to give a TAN. In response, NSWPF advised:

- of its view the word 'give' does not require the Chief Officer to personally transmit the written notice required by s 317LA(1)(a) directly to the AFP

Commissioner, and that NSWPF had met the requirements of s 317LA(1)(a) for this TAN

- that to avoid doubt, a templated email has been developed to be sent by the Chief Officer to the AFP Commissioner, and NSWPF business rules have been updated to reflect this.

## Part 4: Ongoing engagement

As part of our role in influencing systemic improvement in public administration, we will continue to engage with the agencies outside of our inspections to provide advice as compliance issues arise. This includes conducting quarterly meetings with interception agencies using the industry assistance framework to discuss matters arising from our inspections.

We also discuss key issues and complexities identified through our oversight of the industry assistance framework with the responsible policy department, currently the Commonwealth Attorney-General's Department.

To support our oversight of the industry assistance framework, we also intend to engage with relevant operational agencies and departments to determine where it may be appropriate to view records relating to warrants and authorisations outside of the Ombudsman's oversight remit. This includes warrants or authorisations issued under state and territory legislation and Commonwealth powers not overseen by our Office.

## Annexes

### Annex 1| Industry assistance glossary of terms

Term/Acronym	Meaning
IA	<b>Industry Assistance.</b>
DCP	<b>Designated communications provider.</b> This refers to the entity that is requested/required to give assistance. Section 317C of the Act defines what constitutes a DCP.
Health check	An assessment of the readiness, or 'health', of an agency's compliance framework to identify any potential issues or risks, and areas for improvement.
Intelligence agencies	The Australian Secret Intelligence Service, Australian Security Intelligence Organisation and the Australian Signals Directorate. These are agencies, other than interception agencies, are empowered to issue TARs and TANs under Part 15 of the Act. 'Intelligence agencies' is a term of convenience used by Ombudsman staff; it is not used in the legislation.
Interception agency	The Australian Federal Police, Australian Criminal Intelligence Commission, and a police force of a state or the Northern Territory (per s 317B of the Act).
TAR	<b>Technical Assistance Request:</b> A request issued by an intelligence agency or an interception agency under s 317G of the Act. This is a request for the DCP to provide voluntary assistance.
TAN	<b>Technical Assistance Notice:</b> A notice issued by a designated intelligence agency or interception agency under s 317L of the Act. A TAN compels a DCP to provide assistance to interception or intelligence agencies. A TAN cannot require a DCP to create a new capability.
TCN	<b>Technical Capability Notice:</b> A notice given by the Attorney-General under s 317T of the Act requiring that a DCP take steps to ensure it is capable of providing assistance, or otherwise provide assistance to an interception or intelligence agency for a specified purpose.

Term/Acronym	Meaning
Industry assistance mechanisms	The substantive mechanisms that exist under Part 15 of the Act (i.e., TAR, TAN, TCN).
Inspection period	The period during which an inspection occurs for a specific agency. In relation to the annual reports, this is the financial year during which the inspections being reported were held.
Reporting period	The period for which records are being reviewed – generally, the financial year ending prior to commencement of inspections.

## Annex 2 | Industry assistance inspection criteria

**Objective:** To determine the extent of compliance with Part 15 of the *Telecommunications Act 1997* (the Act) by the agency and its officers (s 317ZRB[1])

### 1. Did the agency access industry assistance in accordance with the Act?

#### 1.1 Were TARs given, varied and revoked in accordance with the Act?

**Process checks:**

- Does the agency have effective procedures in place to ensure that TARs are properly given and varied?
- Does the agency have effective procedures in place to revoke TARs when required?

**Records checks in the following areas:**

- Whether TARs were given by a person with the authority to do so (ss 317G, 317ZM and 317ZR)
- Whether TARs were given to a ‘designated communications provider’ (ss 317G and 317C)
- Whether form and content requirements were met (s 317H)
- Whether TARs were given for appropriate purposes (ss 317G, 317C and 317E)
- Whether key decision-making considerations were demonstrated (ss 317JAA and 317JC)
- Whether TARs were properly varied (s 317JA)
- Whether TARs were revoked when required (s 317JB)

#### 1.2 Were TANs given, extended, varied and revoked in accordance with the Act?

**Process checks:**

- Does the agency have effective procedures in place to ensure that TANs are properly given, extended and varied?
- Does the agency have effective procedures in place to revoke TANs when required?

**Records checks in the following areas:**

- Whether TANs were given by a person with the authority to do so (ss 317L, 317LA, 317ZM and 317ZR)
- Whether TANs were given to a ‘designated communications provider’ (ss 317L and 317C)
- Whether the provider was consulted before the TAN was given (s 317PA)
- Whether form and content requirements were met (s 317M)
- Whether TANs were given for appropriate purposes (ss 317L, 317C and 317E)
- Whether State/Territory interception agencies obtained approval from the AFP Commissioner (s 317LA)
- Whether key decision-making considerations were demonstrated (ss 317P and 317RA)
- Whether TANs were properly extended (s 317MA) and/or varied (s 317Q)
- Whether TANs were revoked when required (s 317R)

### 1.3 Were TCN-related requests in accordance with the Act?

**Process checks:**

- Does the agency have processes in place to ensure TCN-related requests are made in accordance with the Act?

**Records checks in the following areas:**

- Whether requests to the Attorney-General complied with any procedures and arrangements to be followed as determined by the Attorney-General (s 317S)
- Whether requests to the Attorney-General for a TCN outlined all relevant information (ss 317T, 317U, 317V and 317ZAA)
- Whether requests to the Attorney-General for variation of a TCN outlined all relevant information (ss 317X, 317XA and 317ZAA)

### 1.4 Were limitations adhered to?

**Process checks:**

- Does the agency have processes in place to manage the key limitations to TARs, TANs and TCNs?

**Records checks in the following areas:**

- Whether restrictions around systemic weaknesses or vulnerabilities were adhered to (s 317ZG)
- Whether TCN limitations were considered in applications to the Attorney-General (s 317ZGA)
- Whether relevant warrants or authorisations were in place for the assistance sought (s 317ZH)