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Australian Security
Intelligence Organisation

Response to Question on Notice in relation to the PJCIS review of the Telecommunications Legislation Amendment (International Production Orders) Bill

21 May 2020

On 14 May 2020, during ASIO's appearance at the Parliamentary Joint Committee on Intelligence and Security (PJCIS) public hearing on the Telecommunications Legislation Amendment (International Production Orders) Bill, ASIO took on notice a question in relation to authorisation of international production orders. ASIO's response to the question on notice is below.

Question

On the face of it, the legislation literally says that any one of the 2,000-odd ASIO employees could make an application for an international production order. What level of the organisation do you think is an appropriate line to draw in order to get to some level of seniority? Would ASIO be able to submit to the committee its own description of the appropriate level of officer that the legislation could refer to?

Response

As with all ASIO intelligence activities, consideration in applying for, granting access to, and handling telecommunications data and intercepted or stored communications data should be consistent with ASIO's internal policies and procedures and Ministerial Guidelines (Attorney-General's Guidelines). Any approving officer must not authorise a data request unless they are satisfied that the disclosure would be in connection with ASIO's performance of its functions and consistent with the Ministerial Guidelines.

ASIO will ensure that the approval levels for international production orders (IPOs) are aligned with approval levels in ASIO's existing framework.

In relation to the level of seniority of ASIO officer for approval of IPOs, approval levels will be aligned to the specific type of data being requested and with consideration of the level of intrusiveness.

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Telecommunications data

- Requests for access to telecommunications data can span non-intrusive subscriber checks that simply identify the user of a service or their associated devices, through to more detailed checks in relation to data received in a nominated period.
- The minimum level of authorisation for a request for telecommunications data under the IPO framework will be Executive Level 1 (EL1), with an officer in a designated investigative or surveillance position undertaking the subscriber checks.
- The level of authorisation will increase as the level of intrusiveness increases, or as the level of priority increases. For instance, an 'immediate' request will require the minimum level of authorisation by an Executive Level 2 (EL2), compared to a 'routine' request, which will require approval by an EL1 officer.

Intercepted or stored communications data

- ASIO is developing an internal policy requirement for the Director-General to personally review and approve each application for an IPO for interception or stored communications before it is provided to the Attorney-General, and ahead of consideration by the Administrative Appeals Tribunal (AAT).
- While maintaining his oversight of IPO requests, the Director-General may not necessarily be the ASIO representative signing the IPO request.

The IPO legislation enables the AAT to require the person who signed the IPO request to appear before them to provide further information. It is not efficient, viable or indeed necessary for the Director-General to personally provide this information on each and every occasion as required by the AAT. As such, ASIO will look to develop a system to accommodate this situation while maintaining appropriate Director-General oversight.