

Parliamentary Joint Committee on Intelligence and Security

ANSWERS TO INQUIRY QUESTIONS ON NOTICE

Department of Infrastructure, Transport, Regional Development and Communications

Division: Communications Infrastructure

Inquiry Name: Parliamentary Joint Committee on Intelligence and Security Review of Part 14 of the *Telecommunications Act 1997* - the Telecommunications Sector Security Reforms

Inquiry Date: 20 May 2021

Topic: Interaction between Telecommunications Sector Security Reforms and Security Legislation Amendment (Critical Infrastructure) Bill 2020

Question Type: Page 9-10, 20/05/2021

Mr Dreyfus asked:

Mr DREYFUS: Would you agree that the Security Legislation Amendment (Critical Infrastructure) Bill 2020, if it were to be enacted in its current form, could make the notification requirements under part 14 of the Telecommunications Act redundant?

Ms Brown: I'd have to give that some further thought.

Mr Kathage: My observation would be that, were the bill to be passed in its current form, there would be a second step, which is the activation of the obligations. So, it depends on how those obligations are activated, I suppose, is the point I'd make.

Mr DREYFUS: If you could, could you give that further thought. It is a somewhat technical question. The committee would be very pleased to receive any thoughts you've got on it, because you are the experts on this.

Answer:

The Department of Infrastructure, Transport, Regional Development and Communications (the Department) is pleased to provide our response to the question from the Parliamentary Joint Committee on Intelligence and Security as part of its review of Part 14 of the *Telecommunications Act 1997*, the Telecommunications Sector Security Reforms (TSSR).

The TSSR created the following obligations and powers:

- Security obligation: Carriers and carriage service providers (CSP) are required to 'do their best' to protect networks and facilities from unauthorised access and interference for the purposes of security as defined in the *Australian Security Intelligence Organisation Act 1979*, including maintaining 'competent supervision' and 'effective control' over telecommunications networks and facilities owned or operated by them;
- Notification obligation: Carriers and nominated carriage service providers (nCSP) are required to notify the Government of proposed changes to their systems and services that are likely to have a 'material adverse effect' on their capacity to comply with the security obligation. The notification obligation is intended to formalise information sharing between carriers and nCSPs and the Government. The obligation reflects the Government's interest in working with carriers and nCSPs to protect the security of Australia's telecommunications networks. The notification obligation helps the Government to understand how a carrier or nCSP is meeting the security obligation in Part 14 of the *Telecommunications Act 1997*, and managing identified security risks, in relation to proposed changes. In particular, the notification obligation allows the Government to consider the carrier or nCSP's approach to meeting that obligation in the context of the

national security threat landscape, having regard to confidential information held by the Government.

- Information gathering power: The Secretary of the Department of Home Affairs can obtain information and/or documents from carriers or CSPs to assess their compliance with the security obligation; and
- Directions powers: The Minister for Home Affairs may direct a carrier or CSP not to use or supply, or to cease using or supplying, a carriage service if the Minister considers the use or supply is, or would be, prejudicial to security (section 315A). The Minister for Home Affairs may also direct a carrier or CSP / nCSP to do or not do a thing if the Minister is satisfied that there is a risk of unauthorised interference with, or unauthorised access to, telecommunications networks or facilities that would be prejudicial to security (section 315B).

The directions powers are subject to safeguards including that the Minister for Home Affairs:

- must consult the Prime Minister and the Minister responsible for administering the *Telecommunications Act 1997* (section 315A);
- can only give a direction if he or she has received an adverse security assessment in relation to the carrier or CSP (sections 315A and 315B) and is satisfied reasonable steps have been taken to negotiate in good faith with the carrier or CSP (section 315B);
- must have regard to the compliance costs of the direction for the carrier or CSP and the potential consequences for competition in the telecommunications industry and for customers of the carrier or CSP (section 315B); and
- give the carrier or CSP an opportunity to make representations about the proposed direction (section 315B).

The Security Legislation Amendment (Critical Infrastructure) Bill 2020 (SLACI Bill) would enable the following additional positive security obligations to be activated for the telecommunications sector:

- adopting and maintaining an all-hazards critical infrastructure risk management program;
- mandatory reporting of serious cyber security incidents to the Australian Signals Directorate; and
- where required, providing ownership and operational information to the Register of Critical Infrastructure Assets.

However, these obligations would only apply to the telecommunications sector if a rule is made by the Minister for Home Affairs in relation to that obligation for a critical infrastructure asset or class of critical infrastructure assets. The rules will prescribe which security obligations are ‘switched on’ for a critical infrastructure asset or class of critical infrastructure assets.

The effect of the SLACI Bill on Part 14 of the *Telecommunications Act 1997*, including the notification requirements, would therefore depend on: whether a rule is made to apply security obligations to the telecommunications industry; which obligations are applied to the industry; and the content of the obligations. The Bill would have no impact on the notification obligations until Government considered rules to enable any new obligations under the Bill.

If the SLACI Bill is passed and a new rule were to be made by the Minister for Home Affairs that applied to the telecommunications industry, it would be desirable to minimise any duplication between that rule and the security obligations in Part 14 of the *Telecommunications Act 1997*.

The Department consulted with the Department of Home Affairs in preparing this response.