



Australian Government
Independent National Security
Legislation Monitor

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Senator Raff Ciccone
Chair, Parliamentary Joint Committee on Intelligence and Security

By *pjcis@aph.gov.au*

Dear Chair

Submission to Parliamentary Joint Committee on Intelligence and Security on review of the Telecommunications and Other Legislation Amendment Bill 2025

I welcome the opportunity to make this submission to the review by the Parliamentary Joint Committee on Intelligence and Security (the Committee) of the Telecommunications and Other Legislation Amendment Bill 2025 (the Bill). This submission comments on aspects of the Bill that relate to my recently completed review of the *Surveillance Legislation Amendment (Identify and Disrupt) Act 2021 (SLAID Act)*.

INSLM supports the amendments in Schedule 1 of the Bill relating to network activity warrants (NAWs). These changes to existing secrecy provisions should be made as soon as possible to ensure that the Commonwealth can meet its disclosure obligations in criminal proceedings and to enable information collected under a NAW to be admitted into evidence where necessary to support a defendant's fair trial.

There are two other minor but important changes to the same secrecy provisions that the Committee may like to consider at this time: one to ensure that a person who is served with an 'assistance order' is able to seek legal advice on that order; and one to ensure that NAW information cannot be used in proceeds of crime proceedings in accordance with the original policy intention that NAW information not be available for use as evidence in such matters. Restrictions on the ability to seek legal advice on compulsive powers and an unintentionally wide use provision should be remedied as soon as practicable.

More significant changes to the secrecy and other provisions that apply to NAWs and related warrants are also needed. INSLM recognises that these are more complex changes and may be better considered as part of broader electronic surveillance reforms.

Recent INSLM review

In accordance with the *Independent National Security Legislation Monitor Act 2010*, I recently completed a review of the *SLAID Act*. The *SLAID Act* provided the Australian Federal Police (AFP) and Australian Criminal Intelligence Commission (ACIC) with new powers to be used under warrant to assist in combatting cyber-enabled and cyber-dependent crime including NAWs.



My report for this review (attached for information and also available on the INSLM website) was tabled on 1 September 2025. A Government response is yet to be provided. The report recommends significant changes to the way that *SLAID Act* warrants are issued and to aspects of the warrants and related powers. This submission focuses on the secrecy provisions as they are directly relevant to the Bill currently being considered by the Committee.

Limitations on use and disclosure of NAW information

Currently, information obtained under a NAW is subject to more restrictions on use and disclosure than information obtained under other *SLAID Act* warrants. This is consistent with NAWs being an intelligence warrant, subject to a lower threshold and potentially much wider in scope than other criminal warrants. It also ensures that sensitive capabilities and methods are not disclosed in court. The main restriction is that, in general, 'protected NAW information' may not be used, recorded, communicated, published or admitted in evidence in criminal proceedings.¹ There are similar restrictions about 'NAW intercept information'.²

The report of my review finds that the provisions that deal with when *SLAID Act* warrant information can be disclosed are so complex as to be almost impenetrable. The rules are also inconsistent, and in a few places too restrictive. **Recommendation 14** of my report identifies six elements to simplify secrecy, use and disclosure provisions and to remove unnecessary complexity and inconsistency.³

NAW information and the prosecution duty to disclose

Of particular relevance to the Committee's review of the Bill are my suggested changes to the restrictions on the use and disclosure of NAW information to ensure that potentially exculpatory material can be disclosed to the defendant in criminal proceedings, outlined in **Recommendation 14(e)** of my report.⁴

¹ *SD Act* s 45B(1); protected NAW information may be admitted in evidence in a prosecution for a protected NAW information secrecy offence and a proceeding that is not a criminal proceeding: s 45B(10).

² *Telecommunications (Interception and Access) Act 1979* s 63AE.

³ Jake Blight, Independent National Security Legislation Monitor, *Data Disruption, Network Activity and Account Takeover Powers: Review of Surveillance Legislation Amendment (Identify and Disrupt) Act 2021* (Report, July 2025), 177. ('*SLAID Report*')

⁴ *SLAID Report*, 177 [12.45] – [12.47] and Recommendation 14(e).



Compliance with prosecutorial disclosure obligations is critical to the proper administration of criminal justice and maintaining the court's capacity to ensure the accused's right to a fair trial.⁵ Failure to disclose may result in a miscarriage of justice.⁶ My review concluded that:

An amendment is needed to ensure that all material that would ordinarily need to be disclosed to and by the prosecution can be disclosed, even if it was obtained under a NAW. If the defence wishes, it should be able to use that material subject to any court orders that have been made about the way sensitive information is to be managed in the proceeding.⁷

I am satisfied that the amendments contained in Items 1-4 in Schedule 1 to the Bill effectively implement **Recommendation 14(e)**.

Additional related technical amendments

There are two relatively minor, and in my view uncontroversial, amendments in **Recommendation 14** that also relate to the use and disclosure of NAW information that the Committee may wish to give further consideration to as part of their review of the Bill.

- ▲ **Recommendation 14(d):** One area that requires specific and prompt reform is the current limitation under which a person who is subject to an assistance order cannot disclose information to a lawyer in good faith in order to seek advice on the assistance order. The Attorney-General's Department accepted that a person subject to an assistance order should be able to obtain legal advice, however, contended that this was implicitly permitted under the legislative scheme. I do not agree with that interpretation of the *Surveillance Devices Act 2004* and consider that necessary amendments should be made to clearly permit a person to seek legal advice about an assistance order they may be required to comply with.⁸ Similar amendments should be made for assistance orders related to data disruption warrants which are also subject to restrictions on information sharing.⁹
- ▲ **Recommendation 14(f):** Currently, there is some ambiguity about whether protected NAW information may be admitted in proceedings under the *Proceeds of Crime Act 2002* (Cth). Both the AFP and the Attorney-General's Department accepted that it was not intended that protected NAW information could be used in this way. To avoid any uncertainty, I consider that the *Surveillance Devices Act 2004* should be amended to make clear that protected network activity information cannot be admitted in evidence in *Proceeds of Crime Act 2002* (Cth) proceedings.¹⁰

⁵ CDPP, Statement on Disclosure: Statement on Disclosure in Prosecutions Conducted by the Commonwealth (Policy, March 2017) 3 [2]; 3 [3].

⁶ *Mallard v R* (2005) 224 CLR 125, 155-156 [81] – [83].

⁷ SLAID Report, 177 [12.47].

⁸ SLAID Report, 174-175.

⁹ SD Act ss 44(1)(ab), 45.

¹⁰ SLAID Report, 178.



Please let me know if the Committee requires further information about my recent review of the *SLAID Act* and the importance of these amendments. The best point of contact for my office is inslm@inslm.gov.au.

Yours sincerely



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