

OFFICIAL



Australian Government
Australian Security
Intelligence Organisation

ASIO submission to the Parliamentary Joint Committee on Intelligence and Security

Review of the Telecommunications Legislation Amendment (International Production Orders) Bill 2020

30 April 2020

Ref No. PCS 2020-007

OFFICIAL

Introduction

1. The Australian Security Intelligence Organisation (ASIO) welcomes the opportunity to provide a submission to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) review of the Telecommunications Legislation Amendment (International Production Orders) Bill 2020 (the Bill).
2. This submission complements ASIO's input to the Department of Home Affairs portfolio submission to the review.
3. ASIO supports the Bill as a key mechanism to enable ongoing and reliable access to a broad range of data and communications sourced from offshore providers.
4. The Bill will enable ASIO to receive telecommunications data (data), stored communications and intercepted communications (communications), through designated international agreements such as the prospective agreement between the Government of the United States of America and the Government of Australia, under the Clarifying Lawful Overseas Use of Data (CLOUD) Act.

Role of the Australian Security Intelligence Organisation

5. ASIO is Australia's national security intelligence service. Our purpose is to protect Australia from violent, clandestine and deceptive efforts to harm its people and undermine its sovereignty.
6. ASIO's key strategic priorities are:
 - countering terrorism;
 - countering espionage and foreign interference;
 - countering serious threats to Australia's border integrity; and
 - providing protective security advice to government and industry.
7. ASIO's role and functions are determined by law. ASIO must act lawfully, in line with the provisions of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) and other relevant legislation and guidance. ASIO must also act with propriety: our activities must be conducted effectively, efficiently, ethically and without bias. We act in a targeted and proportionate way, and wherever possible we use the least intrusive method available to collect security intelligence.
8. In protecting the nation and its interests from threats to security, ASIO operates under a comprehensive accountability framework, with robust and extensive oversight of both operational and non-operational activities. ASIO's key oversight body is the Inspector-General of Intelligence and Security (IGIS), an independent agency that scrutinises the operational activities of intelligence agencies to ensure they operate with propriety, according to law, consistent with ministerial guidelines and directives, and with due regard for human rights. The PJCIS, the Independent National Security Legislation Monitor and the Independent Reviewer of Adverse Security Assessments also provide wide-ranging oversight of ASIO's activities. Ministerial accountability is to the Minister for Home Affairs, who exercises all ministerial powers and functions under the ASIO Act except those that are explicitly with the Attorney-General.
9. ASIO engages fully with its oversight and accountability mechanisms to provide public assurance of the legality and propriety of ASIO's actions.

Benefits to ASIO investigations

10. Australia has seen a steady shift to encrypted Internet Protocol (IP) based communications over the past decade, with the majority of these services provided by offshore companies. This shift in communications practices has naturally been mirrored by the subjects of ASIO's investigations. Companies providing encrypted IP communications services are mostly based offshore and often fall outside the legal frameworks in Australia that authorise interception of communications or disclosure of telecommunications data. Such communications are therefore not accessible to ASIO or, when collected through warranted interception via onshore providers, are encrypted and unusable.
11. The Bill seeks to enable access by agencies such as ASIO to data controlled by technology companies located offshore, where such access is for national security purposes. It will enable ongoing and reliable access to a broad range of data and communications sourced directly from offshore providers.
12. Legislation that supports ASIO's ability to fulfil its function to obtain, correlate and evaluate intelligence relevant to security is essential. The Bill will provide ASIO with a clear legal mechanism to seek access to data and communications and will help ensure consistent and reliable access in support to investigations.

Authorisation process

13. The Bill introduces a robust authorisation process that will require the Attorney-General's consent to an ASIO application for an international production order (IPO) relating to interception and stored communications, before an application for an IPO can be made to the Security Division of the Administrative Appeals Tribunal (AAT). An IPO relating to a request for telecommunications data (including subscriber data) will not require the consent of the Attorney-General prior to an application being made to the AAT.
14. An application for an IPO will be considered by a nominated member of the Security Division of the AAT, who, subject to various considerations and if satisfied of the relevant threshold, will issue the IPO.
15. The role of the Attorney-General, in relation to IPOs for interception and stored communications, is consistent with ASIO's existing arrangements for use of special powers and communications interception. The role of the AAT will ensure that Australia complies with requirements under the United States CLOUD Act.

Conclusion

16. ASIO supports the Telecommunications Legislation Amendment (International Production Orders) Bill. By enabling ongoing and reliable access to data and communications sourced from offshore providers, where such access is for national security purposes, the Bill will assist us to fulfil our function of protecting Australia from violent, clandestine and deceptive efforts to harm Australians and undermine Australia's sovereignty.