



Australian Government

Australian Government response to the Parliamentary Joint
Committee on Intelligence and Security:

Advisory Report on the *Telecommunications Legislation Amendment
(International Production Orders) Bill 2020*

NOVEMBER 2025

Recommendations made in the Advisory Report on the *Telecommunications Legislation Amendment (International Production Orders) Bill 2020*

Committee Recommendations

Recommendation 1:

In accordance with the Committee's recommendations from previous reports, which the Government has agreed to, the Committee recommends that the Government ensure that the Office of the Commonwealth Ombudsman's has sufficient resources to enable effective oversight of powers under the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018*.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 2:

The Committee recommends that a new subclause be added to the proposed Clause 182 of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979* to provide that designated international agreements must be published and tabled in the regulations, subject to parliamentary scrutiny, and subject to a period of disallowance.

For the commencement of the regulations, proposed Schedule 1 should be amended to provide that regulations made under clause 3 (i.e. listing an agreement as a designated international agreement) cannot commence until no earlier than the expiry of the standard period for disallowance (i.e. 15 sitting days) under the *Legislation Act 2003*, or until the commencement of the other party's agreement, whichever is the longer.

For the period for disallowance, the bill should be amended to provide that the statutory disallowance period for regulations made under proposed clause 3 of Schedule 1 is the longer of:

- the standard period for disallowance under the *Legislation Act 2003*; or
- the period for disallowance that applies in the parliament of the foreign country (i.e. the other party to the relevant international agreement).

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 3:

The Committee recommends that an additional subclause be added to the proposed Clause 182 of Schedule 1 of the *Telecommunications (Interception and Access) Act 1979* to provide that a designated international agreement may be renewed or extended for a period of three years without completing the parliamentary treaty process, if such a renewal or extension is proposed without amendment to the agreement.

However, the Committee recommends that the clause also provide that, following the term of the initial agreement and any additional three year period, any further renewal or extension should be subject to parliamentary scrutiny and disallowance even where no amendment is proposed.

Finally, the same clause should also be amended to provide that, whenever an amendment to a designated international agreement is made or proposed, the amended agreement must be specified as a new agreement in the regulations and thus subject to the usual parliamentary treaty process and be subject to disallowance.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 4:

The Committee recommends that a new subclause be included in proposed Clause 3 of Schedule 1 of the *Telecommunications (Interception and Access) Act 1979* to provide that – in order to qualify as a designated international agreement – the agreement must:

- prohibit the foreign government from intentionally targeting an Australian citizen or permanent resident; or
- prohibit the foreign government from intentionally targeting a non-Australian person located outside of Australia if the purpose is to obtain information about an Australian citizen or permanent resident;
- in relation to production orders for the interception of communications, require that the interception activities of the foreign government only be carried out for the purpose of obtaining information about communications of an individual who is outside of Australia;
- provide that all production orders must comply with the minimum requirements for foreign orders specified in paragraph 2.61;
- include safeguards for the use, handling and disclosure of information, as set out in paragraph 2.62;
- provide that all production orders must comply with the domestic law of the relevant foreign country;
- provide that production orders must not last longer than is reasonably necessary to accomplish the approved purposes of the order;
- provide that no production order may relate to the prevention, detection, investigation or prosecution of a political offence or an offence that is not recognised in the ordinary criminal law of Australia; and
- provide that a production order may only be issued if the same information could not reasonably be obtained by another less intrusive method.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 5:

The Committee recommends a subclause be included in proposed Clause 3 of Schedule 1 of the *Telecommunications (Interception and Access) Act 1979* to provide that a designated international agreement shall not permit a foreign government to:

- issue an order at the request of or to obtain information to provide to the Australian government or a third-party government, nor shall the foreign government be required to share any information produced with the Australian government or a third-party government.
- such a prohibition will not preclude a foreign government seeking authorisation to share information as set out by Recommendation 4.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 6:

The Committee recommends a subclause be included in proposed Clause 3 of Schedule 1 of the *Telecommunications (Interception and Access) Act 1979* to provide that incoming international production orders under a designated international agreement must only be issued for the purpose of obtaining information relating to the prevention, detection, investigation or prosecution of serious crime, including terrorism.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 7:

The Committee recommends that proposed Clause 182 of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979* be amended to provide that, for the purposes of the Act, an agreement – and a foreign government – will be considered to satisfy the statutory requirements (including the requirements set out in Recommendation 4 and Recommendation 8 of this report) if the Attorney-General, with the concurrence of the Minister for Home Affairs:

- determines that the agreement and the foreign government satisfy the statutory requirement; and
- submits a written certification, including a detailed explanation, of such a determination to the Joint Standing Committee on Treaties. That certification should be provided at the same time that the regulations are tabled.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 8:

The Committee recommends that the proposed Schedule 1 of the *Telecommunications (Interception and Access) Act 1979* be amended to state that a country seeking a designated international agreement with Australia must meet the following criteria:

- Demonstrates respect for the rule of law and the principles of equality and non-discrimination, as set out in paragraph 2.103;
- Demonstrates respect for applicable international human rights obligations and commitments, as set out in paragraph 2.104;
- Clear legal procedures and restrictions governing the use of electronic surveillance investigatory powers, as set out in paragraph 2.105; and
- If:
 - There is an agreement between Australia and a foreign country; and
 - If the agreement deals with (among others things) the issue of orders (however described) by a competent authority (however described) of the foreign country; and
 - One or more offences against the law of the foreign country are punishable by death

The name of the agreement must not be specified under paragraph (1)(b) unless the Minister has received a written assurance from the government of the foreign country relating to the non-use of Australian-sourced information obtained by virtue of the agreement in connection with any proceeding for a death penalty offence in the country or territory.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 9:

The Committee recommends that, where relevant, the *Telecommunications and Other Legislation Amendment (International Production Orders) Bill 2020* be amended to implement the recommendations set out in the Committee's report of its Inquiry into the Impact of the Exercise of Law Enforcement and Intelligence Powers on the Freedom of the Press, including recommendation 2 (i.e. that the current role of the Public Interest Advocate, as provided for under the *Telecommunications (Interception and Access) Act 1979* be amended in line with the terms of that recommendation and expanded to apply to applications for international production orders.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 10:

The Committee recommends that proposed Clause 2 of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979* be amended to include a definition of 'urgent circumstances' which provides that in circumstances where:

- there is an imminent risk of serious harm to a person or substantial damage to property exists or, in the case of a national security IPO application, there is an imminent risk of loss of significant intelligence; and
- the production order is necessary for the purpose of dealing with that risk; and
- it is not practicable in the circumstances to submit an application in writing;

such circumstances would constitute 'urgent circumstances' for the purposes of making an oral or telephone application.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 11:

The Committee recommends that proposed Clauses 22(3), 33(3)(a), 52(3)(a) and 63(3)(a) of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979* be amended in a manner that is consistent with Recommendation 11 of the of the Committee's Review of the Mandatory Data Retention Regime. That is, these provisions should be amended so that:

- only officers or officials who are designated as authorised officers by the head of an enforcement agency may apply for IPOs;
- only officers or officials who hold a supervisory role in the functional command chain should normally be capable of being designated as 'authorised officers' (although other individuals who hold specific appointments – rather than entire classes of officers or officials – may also be capable of being designated as 'authorised officers')
- in order to authorise an individual to be an authorised officer, the head of an enforcement agency must be satisfied that it is necessary for an individual to be an 'authorised officer' in order for the individual to carry out his or her normal duties;
- prior to the head of an enforcement agency authorising an individual to be an 'authorised officer':
 - the relevant senior officer or official must complete a compulsory training program in relation to proposed new Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*; and
 - the head of the enforcement agency must be satisfied that the senior officer or official has the requisite experience, knowledge and skills to exercise the powers under proposed Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 12:

The Committee recommends that proposed Clause 2 of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979* amended to insert a definition of senior position holder that is consistent with the provisions of the *Australian Security Intelligence Organisation Act 1979*.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 13:

The Committee recommends that proposed Clauses 83 (3)–(4) and 92(3)–(4) of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979* be amended so that the Director-General of Security may only delegate powers to a senior position holder

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 14:

The Committee recommends that proposed Clauses 101(3)–(4) of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979* be amended to provide that the Director-General of Security can only authorise Australian Security Intelligence Organisation employees, or classes of Australian Security Intelligence Organisation employees, at the Executive Level 2 (or equivalent) and above to make applications on the Australian Security Intelligence Organisation's behalf.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 15:

The Committee recommends that proposed Clause 83(9) and 92(8) of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979* be amended to require the Australian Security Intelligence Organisation to provide the Attorney-General with:

- the particulars of the urgent circumstances because of which the person making the request considers it necessary to obtain oral agreement
- the matters that ASIO would have been required to set out in a written application to the Attorney-General.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 16:

The Committee recommends that the Australian Government ensure that the Commonwealth Ombudsman has sufficient resources to enable effective oversight of the proposed powers granted by the *Telecommunications Legislation Amendment (International Production Orders) Bill 2020*.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 17:

The Committee recommends that the Australian Government continue to ensure that the Inspector-General of Intelligence and Security is given appropriate resources to enable effective oversight of the proposed powers granted by the *Telecommunications Legislation Amendment (International Production Orders) Bill 2020*.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 18:

The Committee recommends that the proposed Schedule 1, Division 4 be amended to include an express provision for the Inspector-General of Intelligence and Security, or an official of the Inspector-General of Intelligence and Security, to access the register of international production orders in connection with its oversight responsibilities.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 19:

The Committee recommends that proposed Schedule 1, Clause 153 be amended to allow international production order information to be used, recorded or disclosed for the purposes of an official of the Inspector-General of Intelligence and Security exercising their duty as an official.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 20:

The Committee recommends that the Inspector-General of Intelligence and Security Act 1986 be amended to allow for officials of the Inspector-General of Intelligence and Security to share information relating to the international production orders regime with members of the Office of the Commonwealth Ombudsman and members of the Attorney-General's Department where sharing such information is connected to the roles and duties of the member of the organisation.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 21:

The Committee recommends that:

- the *Australian Security Intelligence Organisation Act 1979* be amended to provide that a report made under proposed subsection 94(2BBA) should form part of the Australian Security Intelligence Organisation's unclassified annual report; and
- the proposed subsection provide that the recommended statistics would not be provided where the Director-General of Security considers that providing such statistics would prejudice Australia's national security, or prejudice a national security investigation.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 22:

The Committee recommends that proposed Schedule 1, Clause 135 and 136 be amended to require the Australian Security Intelligence Organisation to:

- retain a copy of a particular document for three years, or for as long as any of the data obtained under an international production order is retained, whichever is the longer; and
- retain all relevant materials supporting an application for international production order for this period.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 23:

The Committee recommends that the Bill be amended to require the Parliamentary Joint Committee on Intelligence and Security to commence a review on the effectiveness and continuing need for an international production orders regime on the earlier of the date that is:

- three years after the date on which the first designated international agreement comes into force; or
- five years after the commencement of the proposed Schedule 1 of the *Telecommunications (Interception and Access) Act 1979*.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 24:

The Committee recommends that, following implementation of the recommendations in this report, the Bill be passed by Parliament.

Response:

The Government **notes** this recommendation.