



Australian Government
Attorney-General's Department

Deputy Secretary
National Security and Criminal Justice

14/1178

14 March 2014

Christine McDonald
Committee Secretary
Senate Standing Committee on Environment and Communications
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms McDonald

Response to Questions on Notice

Thank you for your letter dated 3 March 2014 to the Department of Communications attaching seven questions regarding the Telecommunications Legislation Amendment (Submarine Cable Protection) Bill 2013 (the Bill). Mr Drew Clarke has referred questions three to seven to me as they relate to the *Telecommunications (Interception and Access) Act 1979*, which is administered by the Attorney-General's Department.

I understand that the Department of Communications will provide you with answers to the first two questions.

Please find attached responses to questions three to seven.

Yours sincerely

Katherine Jones

(3) What technologies exist to intercept data traffic on submarine cables?

The legislative framework is drafted to be technologically neutral.

(4) What legal framework allows for state and non-state entities to lawfully intercept cable traffic?

The Department acknowledges the global nature of the telecommunications network. Cables are subject to international law and the domestic laws of the countries in which they transit or land. Each country has different legal protections and a different range of authorisations that operate within their jurisdictions. Australia is a party to international conventions that operate to generate consistency in this space, including the Council of Europe Convention on Cybercrime and the United Nations Convention on the Law of the Sea.

The *Telecommunications (Interception and Access) Act 1979* (the TIA Act) protects the privacy of communications passing over telecommunications networks in Australia. The TIA Act criminalises intercepting communications other than by certain Government agencies acting with lawful authority granted by a warrant under that Act. Which warrants are required for what conduct by Government agencies depends on the particular agency and the circumstances of a case. Communications passing over any part of the telecommunications networks in Australia, including undersea cables, can only be lawfully intercepted under a warrant.

Non-state entities cannot lawfully intercept communications passing over telecommunications networks in Australia unless they are subject to a limited range of exemptions under the TIA Act, such as an employee of a carrier engaged in the operation or maintenance of a telecommunications system.

(5) What protective measures are in place to prevent entities from unlawfully intercepting cable traffic?

Breaches of the TIA Act, including unlawful interception, are a matter for the Australian Federal Police.

(6) Is it the Department's understanding that all cable traffic into and out of Australia is intercepted, and if so, by what means, by whom, and under what legal authority?

(7) If no to question (6), can the Department identify the degree to which submarine cable traffic into and out of Australia is intercepted, by what means, and by whom, and under what legal authority.

As discussed in response to question 4, traffic passing over telecommunications networks in Australia can only be lawfully intercepted with a TIA Act warrant. Sections 63 and 105 of the TIA Act criminalise commenting on either the existence or non-existence of an interception warrant or the telecommunications services or persons specified by an interception warrant.