

UNCLASSIFIED



Correspondence ref: OIGIS/OUT/2018/1296

File ref: 2018/141

Mr Andrew Hastie MP, Chair
Parliamentary Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT 2600

Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018

Dear Chair,

Thank you for giving me the opportunity to comment on the recommendations made by the Parliamentary Joint Committee on Intelligence and Security in relation to the *Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018* (the Bill). I also thank the Committee for giving such careful consideration to the oversight implications of new powers contained in Schedule 1 to the Bill. I recognise that the recommendations of the Committee are made in the context of the Committee accepting that there is a:

... genuine and immediate need for agencies to have tools to respond to the challenges of encrypted communications [and that the] absence of these tools results in an escalation of risk and has been hampering agency investigations over several years.

It is in response to this need that the Committee has recommended that the Parliament pass the Bill, with amendments, as soon as possible, with further reviews to be initiated immediately by the Committee and subsequently by the Independent National Security Legislation Monitor (INSLM). Given this urgency and the further scheduled reviews, I make these comments:

- I have reviewed the proposed Government amendments as circulated this morning (amendment sheet EK171, 9:22 am) and am satisfied that, in the context of urgency and planned review, the Government amendments satisfactorily address my concerns on the issues noted in recommendation 5.
- I particularly welcome the addition of notification requirements in relation to new powers in Schedules 1 and 5, and some amendments to reporting requirements in Schedules 2 and 5. These notifications will allow us to target our oversight of the new powers more effectively and make it more efficient and effective. Nevertheless overseeing these new powers will still be complex and resource intensive.
- I welcome recommendation 17 and consider that the first limb of that recommendation (amendments in relation to s 317ZG) has been implemented in full. However, in relation to the second limb of recommendation 17, there may need to be some further amendments to ss 317ZH(1) and (4) to account for ASIS and ASD's use of technical assistance requests.

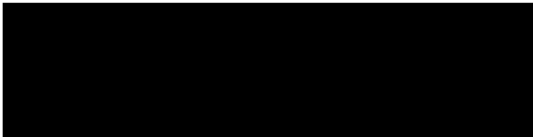
UNCLASSIFIED

UNCLASSIFIED

- There are a number of other matters raised in my submissions to the Committee that have not been addressed in the amendments however, given the urgency and opportunities for further reviews of the legislation in line with recommendations 14 and 16, these additional matters could be dealt with satisfactorily in Ministerial Guidelines, at least as an interim measure. I have suggested that the Ministerial Guidelines made under s 8A of the ASIO Act be updated accordingly and have said I would be happy to work with ASIO and the Department of Home Affairs in the development of revised Guidelines.
- I anticipate that ASIO (and to lesser extent ASIS and ASD) will need to develop detailed internal policies and procedures applicable to the exercise of new powers particularly those conferring broad discretions; I am happy to be consulted by agencies in the development of these policies and procedures.

Assuming the Bill is passed, I plan to divert resources within my office from oversight of other agencies to oversight of ASIO's use of the new powers in Schedules 1, 2 and 5. I hope to be able to make the results of that oversight available to the Committee and the INSLM to assist in their proposed reviews.

Yours sincerely



Margaret Stone
Inspector-General

6 December 2018