



AUSTRALIAN
**CRIMINAL
INTELLIGENCE
COMMISSION**

CHIEF EXECUTIVE OFFICER



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8 February 2019

Mr Andrew Hastie MP
Committee Chair
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Mr Hastie

Review of the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018*

The Australian Criminal Intelligence Commission (ACIC) welcomes the opportunity to provide information to the Committee in relation to its Review of the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* (TOLA Act).

I note the ACIC is supportive of the positions adopted by the Department of Home Affairs in their submissions to the PJCS on the amendments made in the course of parliamentary consideration of the TOLA Act. Further, I offer the below for the information of the Committee in relation to the threat environment based on ACIC intelligence and the benefits the TOLA Act will provide in assisting the ACIC to efficiently and effectively gather intelligence to investigate and disrupt serious and organised crime impacting Australia.

Enduring serious and organised crime exploitation of encryption

The ACIC is Australia's national criminal intelligence agency, uniquely equipped with intelligence, investigative and information delivery functions and coercive powers. The ACIC works to identify new and emerging serious and organised crime threats and criminal trends, to create a national strategic intelligence picture across the spectrum of crime, to fill intelligence and knowledge gaps and to share information and intelligence holdings to inform national and international responses to crime. The ACIC undertakes all of its work in partnership with others.

As noted in the ACIC's *Organised Crime in Australia 2017*, the majority of serious and organised crime activities are enabled, to a large extent, by the use of technology. For example, ACIC

intelligence reveals that high-end encrypted smartphones continue to be preferred by serious and organised crime groups to reduce the visibility of their activities to law enforcement. Multiple outlaw motorcycle gangs and other serious and organised crime groups use deliberately encrypted communications devices and software applications as their primary means of communication, due to the content protection features available on these devices and applications.

The ACIC conducts work to identify emerging technologies and vulnerabilities, inform policy development, and formulate disruption strategies targeting serious and organised crime's exploitation of encrypted communications.

Operational intelligence collection benefits of the TOLA Act

Schedule 1 of the TOLA Act provides the ACIC with an avenue to collaborate with industry to secure critical assistance to more efficiently gather intelligence to disrupt serious and organised crime. The comprehensive framework provides an extension to existing relationships with industry to engage and ensure requests and notices are reasonable, proportionate and technically feasible.

The computer access warrants in Schedule 2 of the TOLA Act will be a key covert intelligence collection tool for ACIC activities, critical not only for preserving information and evidence but also for improving the safety of operational staff by complementing existing *Surveillance Device Act* warrant powers. Further, the improvements to search warrants as per Schedule 3 are key to account for the advancement of modern technologies, such as smart phones and complex communications systems.

ACIC implementation and operationalisation of the TOLA Act

As Australia's national criminal intelligence agency, the ACIC's anticipated use of the TOLA Act will be conducted in a strategic and targeted manner to gather intelligence in relation to an ACIC Special Investigation or ACIC Special Operation.

The ACIC notes the non-disclosure requirements as defined in section 317ZF of the *Telecommunications Act 1997* in relation to Technical Assistance Requests, Technical Assistance Notices and Technical Capability Notices. The ACIC would welcome the opportunity to provide additional information privately to the Committee, if appropriate, in relation to potential scenarios in which use of Schedule 1 is anticipated.

The ACIC is committed to ensuring that powers are used in a measured and considered way. As such, since implementation of the TOLA Act, the ACIC has been dedicated to ensuring as first priority that appropriate internal legal advice, governance, accountability and training processes are in effect for the new regime. As part of this process, assisted by guidance material provided by Department of Home Affairs, the ACIC has been working to update and develop appropriate templates and processes, training programs and internal procedures to ensure all relevant officers are aware of the scope of lawful use of the TOLA Act, as appropriate opportunities arise. Much of this internal guidance material is classified, the ACIC would welcome the opportunity to expand privately to the Committee on the implementation steps taken by the agency if appropriate.

I look forward to continuing to engage with the Committee throughout the implementation and review phase of these critical reforms.

Should your office require further information please have them contact [REDACTED]
[REDACTED]

Yours sincerely

[REDACTED]
Michael Phelan APM
Chief Executive Officer