



Australian Government
Independent National Security
Legislation Monitor

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Senator Helen Polley
Chair, Parliamentary Joint Committee on Law Enforcement

By email: le.committee@aph.gov.au

Dear Chair

Submission to Parliamentary Joint Committee on Law Enforcement inquiry into capability of law enforcement to respond to cybercrime

I welcome the opportunity to make this submission to the review by the Parliamentary Joint Committee on Law Enforcement (PJCLE) into the capability of law enforcement to respond to cybercrime.

In accordance with the *Independent National Security Legislation Monitor Act 2010*, I recently completed an independent review of the *Surveillance Legislation Amendment (Identify and Disrupt) Act 2021 (SLAID Act)*. There are aspects of my review that may be relevant to the PJCLE review including in relation to existing law enforcement capabilities in the detection, investigation and prosecution of cybercrime; emerging cybercrime threats and opportunities and challenges in the existing legislative framework.

The report of my review (attached for information and also available on the INSLM website) includes a summary of the current threat of cybercrime and the way that warrants under the *SLAID Act* have been issued to, and used by, the Australian Federal Police (AFP) and Australian Criminal Intelligence Commission (ACIC). I have made 21 recommendations for changes to *SLAID Act* powers.

The *SLAID Act* provided the AFP and ACIC with three new powers to be used under warrant to assist in combatting cyber-enabled and cyber-dependent crime: Network Activity Warrants (NAWs), Account Takeover Warrants (ATWs) and Data Disruption Warrants (DDWs); together with associated emergency authorisations and assistance orders. These are extraordinary powers. Unlike traditional law enforcement techniques, it is very unlikely that material gathered under these powers will ever be used in evidence, thus removing a longstanding mechanism for scrutinising the use of powers by law enforcement bodies.

SLAID Act powers can be used covertly and there is little or no meaningful public or parliamentary reporting on their use. DDWs are particularly unusual in that they allow for the intentional interference with electronic systems with the sole purpose of disruption and without court scrutiny. As with all cyber-related activities, there are significant complexities associated with the evolving international law norms for online law enforcement activity, particularly where an activity causes damage or has a disruptive effect in another country. Nevertheless, the use of NAWs, ATWs and DDWs by the AFP and the use of NAWs by ACIC has been effective in disrupting and gathering intelligence about cybercrime.

The central recommendations of my report include that the AFP retain all three warrants and associated powers; and that the ACIC retain the two warrants relevant to intelligence collection (but



not retain DDWs). The recommendation to retain these powers is subject to a significant caveat: I consider that the main safeguard, the system for issuing warrants, is not fit for purpose for these sorts of covert, highly intrusive and technology-dependent powers.

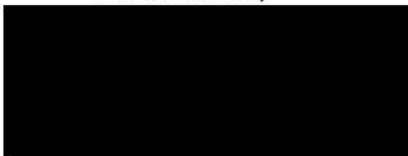
The present system largely depends on a small number of Administrative Review Tribunal members issuing warrants in their personal capacity on top of their administrative review work and without the benefit of independent technical advice, independent review or submissions on issues including public interest matters. Drawing on experience in the United Kingdom, Victoria, Queensland and New South Wales, I have recommended principles for a new system to ensure that warrant issuing is modernised to provide a robust, effective and efficient safeguard.

These principles for an effective warrant issuing system include the use of retired judges (preferably with criminal law experience) to issue warrants, review of applications by public interest monitors (who have capacity to make submissions where relevant), access to independent technical advice and independent allocation of warrants to decision-makers. These improvements will allow significant simplification of the current warrant criteria and related provisions. It will also provide sufficient safeguards to justify some enhancements to the powers in the form of named person ATWs and extended duration NAWs.

I have also made several recommendations to increase the effectiveness of oversight mechanisms, improve the utility of public and ministerial reporting and to remove unnecessarily prescriptive legislative requirements about record keeping and notification requirements. Additionally, I have recommended reform to simplify excessively complex and restrictive secrecy provisions. Further details are available in my report which was tabled on 1 September 2025.

I am very happy to brief the Committee on my review if that is of assistance. The best point of contact for my office is inslm@inslm.gov.au.

Yours sincerely



Jake Blight
Independent National Security Legislation Monitor