



Australian Government
**Australian Commission for
Law Enforcement Integrity**

**PARLIAMENTARY JOINT COMMITTEE ON
INTELLIGENCE AND SECURITY**

**Review into the effectiveness of the
Telecommunications Legislation Amendment
(International Production Orders) Bill 2020**

**Submission by the
Australian Commission for Law Enforcement Integrity**

April 2020



Introduction

The Australian Commission for Law Enforcement Integrity (ACLEI) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Intelligence and Security's review into the effectiveness of the Telecommunications Legislation Amendment (International Production Orders) Bill 2020.

To assist the Committee:

- Part 1 of this submission will summarise the role, functions and powers of ACLEI
- Part 2 will outline the way ACLEI would make increased use of information from designated communications providers under the proposed Amendments.

ACLEI's role, functions, powers and jurisdiction

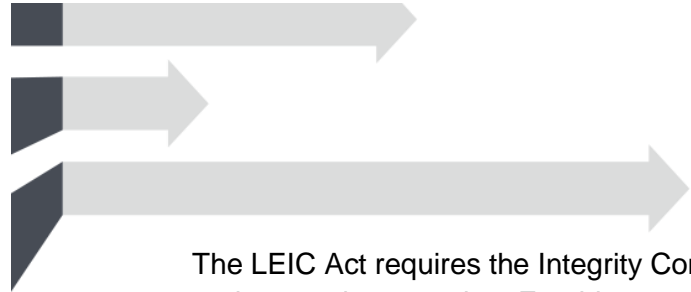
The office of the Integrity Commissioner, and ACLEI, are established by the *Law Enforcement Integrity Commissioner Act 2006* (Cth) (LEIC Act) to investigate and prevent corrupt conduct in Commonwealth law enforcement agencies.

ACLEI's strategic purpose is to make it more difficult for corruption in law enforcement agencies to occur or remain undetected. We undertake our oversight of law enforcement agencies in four main ways:

- We receive and assess notifications of alleged corrupt conduct by members of Commonwealth law enforcement agencies
- We conduct investigations into serious and systemic corrupt conduct
- We support our partner law enforcement agencies to detect corrupt conduct and perform their own investigations and
- We prevent corruption through training, support and identification of vulnerabilities.

The law enforcement agencies that we oversee are:

- the Australian Criminal Intelligence Commission (ACIC)
- the Australian Federal Police (including ACT Policing) (AFP)
- the Australian Transaction Reports and Analysis Centre (AUSTRAC)
- the Department of Home Affairs (including the Australian Border Force), and
- prescribed parts of the Department of Agriculture, Water and the Environment.



The LEIC Act requires the Integrity Commissioner to prioritise the investigation of serious and systemic corruption. For this purpose, the Integrity Commissioner has coercive information-gathering powers and the full suite of covert policing capabilities, including telecommunications interception; electronic and physical surveillance; and controlled operations.

Use of information from designated communications providers

Under the *Telecommunications (Interception and Access) Act 1979* (Cth) (TIA Act), ACLEI is able to intercept telecommunications and access stored communications and telecommunications data.

As ACLEI has previously submitted to the Committee, access to information under the TIA Act is critical to the success of ACLEI's investigations. Intercepted communications, stored communications, and telecommunications data are important evidence sources by which to advance investigations and for use in criminal prosecutions.


In situations where the stored communications and telecommunications data is stored overseas with foreign communications providers, ACLEI cannot use the powers under the TIA Act to access this information. Instead, we use the mutual legal assistance regime under the *Mutual Assistance in Criminal Matters Act 1987*. Our experience using this mutual legal assistance regime for accessing this information from foreign communications providers is that it is time consuming and slow. Significant delays may occur in the execution of requests at multiple points; in the application, transmission and execution of a mutual assistance request. Such delays might ultimately slow down and hinder the investigation.¹

Case Study: Operation Murray

ACLEI Operation Murray determined that an AFP officer was disclosing information to criminal entities via an ex-AFP member. It was an extensive 2 year investigation. On 22 May 2017 the AFP officer pled guilty to receiving a corrupting benefit charge. He was sentenced to 22 months imprisonment, to be released after serving 11 months on a recognisance to be of good behaviour for the balance of the term. The criminal entity he was assisting received a jail term of 8 ½ years for a significant drug offence as well as the corruption matter.

During this investigation, a request via the Attorney-General's Department to a foreign jurisdiction for access to Hotmail information took ten months from the time that the request was initially made to when access was provided. While ACLEI did eventually obtain the sought-after information, the passage of time and delay in receipt meant that its utility was limited.

¹ See https://www.unodc.org/documents/legal-tools/lap_mlaeg_report_final.pdf



For these reasons, ACLEI has not sought information of this kind with regularity in the past. That is because, notwithstanding the increasing relevance of such information in the digital age where geographic boundaries have less significance, the effort involved in pursuing the information and the time it takes for it to be provided diminishes its utility.

It is likely that ACLEI would pursue information of this kind with greater regularity following passage of the Bill. In particular, ACLEI anticipates it would seek information from such designated communications providers as Facebook, Hotmail, WhatsApp, and Google. That is because the regime proposed would simplify and streamline access to this information. This type of information could prove critical to the success of corruption investigations and criminal prosecutions resulting from those investigations.

ACLEI is also comforted by the clear guidance and safeguards the Bill provides in terms of accessing and handling this information. The requirements on Agency heads to notify the Ombudsman of the issue of an order, and to produce a copy of that order, enable clear oversight of the use of the proposed provisions.

Conclusion

ACLEI supports the proposed Telecommunications Legislation Amendment (International Production Orders) Bill 2020.

ACLEI believes that the Bill will be effective in achieving the aims of facilitating access to valuable data for the use in law enforcement investigations while ensuring safeguards are in place, in a manner consistent with the domestic regime in the TIA Act.

ACLEI believes that the regime would become a valuable tool in investigating corruption in Commonwealth law enforcement agencies.